



PADI In-Store Independent Contractor Instructor Agreement

THIS AGREEMENT (the "Agreement") is entered into effective the ____ day of _____, 20__, by and between _____ (hereinafter referred to as "Facility") and _____ (hereinafter referred to as "Instructor").

RECITALS

Whereas, the Facility is in the business of selling, renting, and servicing scuba diving related equipment.

Whereas, the Instructor is in the business of teaching diving as a trained and certified professional instructor of PADI (Professional Association of Diving Instructors) as defined by the most current PADI Standards and Procedures Manual, and holds a current Teaching status with PADI at the time of this Agreement.

Whereas, the Facility desires to contract on an independent contractor basis with Instructor for Instructor to provide dive training instruction at Facility.

THE PARTIES AGREE AS FOLLOWS:

1. Term.

This Agreement shall govern the relationship of the parties for an initial one year period commencing as of the Effective Date and for a period of one (1) year thereafter, and for successive one (1) year terms thereafter, unless otherwise terminated or amended, as provided herein.

2. Duties.

Instructor agrees to provide dive instruction services at Facility, and to also provide other services as requested by Facility in connection with Facility's retail store, on the terms and conditions set forth in this Agreement.

Facility agrees to make its facilities available to Instructor for dive instruction, on the terms and conditions set forth in this Agreement.

3. Compensation.

All monies collected for any scuba diving instruction hereunder shall be collected by and all financial records, books and accounts pertaining to such instruction shall be maintained by and considered property of the Facility. The Facility agrees to pay to Instructor \$_____ per each course taught. In addition, Instructor shall receive \$_____ per _____ as compensation for in-store services according to scheduling as decided by store management. Instructor shall work for _____ hours per week in the retail facility. Instructor is to be paid on a _____ basis with commission paid as agreed under the following terms: _____

_____.

Instructor acknowledges and agrees that the Facility shall not be responsible for any expenses incurred by the Instructor except those permitted by prior written consent of the Facility.

4. Independent Contractor.

The parties intend to create an independent contractor relationship, and it is of the essence of this Agreement that Instructor is an independent contractor for all purposes, including tax purposes. Any contrary final determination by a board, administrative proceeding, or court of competent jurisdiction shall entitle the Facility to amend this Agreement in any way necessary to establish and maintain an independent contractor relationship. In the event such amendment is not possible, this Agreement may be terminated by Facility. Neither party to this Agreement has any authority to employ or retain any person on behalf of the other. Each shall have the exclusive right to select, engage, fix the compensation of, discharge and to otherwise manage, supervise and control any persons hired by them, and shall be responsible for all obligations and discharge all liabilities imposed under labor, wage hour, workers' compensation, unemployment compensation or insurance, Social Security and other federal, state and municipal laws and regulations.

Instructor agrees that he will not be treated by the Facility as an employee, and that he is solely responsible for any tax liability relating to his business, including payment of federal income taxes, self-employment taxes and payroll taxes, as required. Instructor hereby agrees to indemnify and hold the Facility harmless against any costs, charges or claims which may arise out of the failure to perform obligations or discharge the liabilities referenced in this section.

Instructor agrees that the Facility has no interest in Instructor's private business, financial or otherwise, and that the Instructor is solely responsible for any acts or omissions occurring within the course of Instructor's private business.

Nothing contained within this agreement shall be construed so as to give Instructor any vested interest in the assets, tangible or intangible, of the Facility.

5. Professional Services.

All diver training provided by Instructor shall be conducted to meet the current teaching standards set forth by the Professional Association of Diving Instructors. The Facility shall not require Instructor to teach under conditions which would violate those current standards as pertain to instructor-student ratios, equipment, exercises, records maintenance, and confined and open-water teaching requirements.

Instructor agrees to abide by all rules and policies established by the Facility, whether prior to or during the term of this Agreement. Instructor further recognizes that the implementation and enforcement of such rules and regulations is required to promote the good will of the business and to generate the highest potential income for the Instructor, the Facility, and the Facility's employees.

Recruitment and scheduling of classes shall remain the sole responsibility of the Facility, except as pertains to the Instructor's specific in-store work duties. Regarding such activity, the Facility will provide the place of business, advertising, promotion, teaching locations (including pools, classrooms, charter boats and other locations as deemed necessary by the facility pursuant to current PADI teaching standards). The Instructor's transportation costs shall be the responsibility of the Instructor, except in those specific instances in which the Facility has given its prior written consent to incur such costs.

The _____ shall provide all class supplies, equipment, and support materials, including but not limited to certification envelopes and forms, appropriate postage, medical forms, waiver and release forms, textbooks, student folders, quizzes and exams, class dive gear, and audiovisual aids. Instructor agrees to utilize dive gear as featured by the Facility and such gear is to be supplied by _____ at a cost of \$_____.

Instructor agrees to be responsible for all supplies and equipment issued to him for instruction use and shall repay any loss of said materials at a rate of ____% of Facility cost within _____ day/s of notice of the loss.

The Facility agrees to provide all reasonable maintenance and upkeep of the equipment and support materials used in instructional classes, except for specific damages which are a direct result of negligence or misuse on the part of the Instructor. In such case, Instructor shall be responsible for replacement of the items according to the terms defined above.

The scheduling of students among the various Facility-employed or retained Instructors shall be within the absolute discretion of the Facility based on the Facility's determination of its best interests.

Instructor agrees to be held responsible for the completion of any class begun by him for the Facility, except in the case where the Instructor's Agreement is terminated by the Facility. In such case, the Facility shall assume sole responsibility for having the class completed to current PADI standards by another active PADI Instructor.

6. Professional Liability Insurance.

Instructor shall at all times maintain current professional liability insurance of not less than \$1,00,000 combined single limit of liability, as required by PADI to hold Teaching status. Such insurance shall be provided by such companies as are acceptable to PADI, and shall name the Facility as an additional insured during the term of this Agreement. Insurance costs shall be provided by _____, including costs resulting from subsequent additional insureds, such as but not

limited to, pool sites, charter boats, or other such teaching facilities requiring additional insured status.

Instructor agrees that such policy or policies shall be open to inspection by the Facility at all times and shall give notice to the Facility within _____ days concerning any termination, alteration, or other change of status of the policy or policies, or teaching status as a PADI Instructor. Instructor shall cause the insurance company or companies to furnish the Facility with certificates of such policy or policies detailing the coverage therein, such certificates to be delivered to the Facility by _____, 20__.

7. Termination.

This Agreement may be terminated at any time, with or without cause, by either party upon thirty (30) days prior written notice given to the other party. Additionally, this Agreement shall be terminated immediately upon the occurrence of any of the following: (1) The Instructor's death, (2) In the event of Instructor's disability, (3) In the event that Instructor is convicted of any felony or crime involving moral turpitude, (4) In the event that Instructor fails to perform the duties specified in this Agreement for at least ten (10) days following written notice by the Facility and failure of the Instructor to cure said failure, (5) In the event that the Facility decides to terminate or reduce its instructional program for any reason.

8. Records and Files.

All records and mailing lists related to instruction or any other Facility business shall remain sole property of the Facility. The Instructor shall be responsible for providing the Facility with all records of training as required by professional instructor liability insurance provisions and recommended by PADI Standards. These records include, but are not limited to exams, tests and quizzes, Training completion forms, Waiver and Release forms, Medical History forms, and Skill Evaluation Sheets.

The Instructor shall have available from the Facility such records of Training as necessary for his legal liability protection. Instructor agrees that any information taken from class records may be used only for legal purposes, including but not limited to lawsuits and ethics investigations; such information, as sole property of the Facility shall not be used in any manner relating to the Instructor's personal, social, or business activities (except as included in his duties as directed by the Facility), and especially may not be utilized in any manner which could be interpreted as being in competition with or detrimental to the best interests of the Facility.

9. Protection of Facility's Business Interests.

9.1 Recitals. The parties agree and acknowledge that:

9.1.1 Facility is engaged in the business of providing dive services to the general public, including Instructor services;

9.1.2 The Instructor will acquire by virtue of this independent contractor relationship with the Facility, at substantial expense and effort of the Facility, specialized knowledge, training and skills relating to the Facility's legitimate business interests;

9.1.3 The Instructor will acquire by virtue of this independent contractor relationship with the Facility, access to and knowledge of trade secrets, confidential business lists, records and information of the Facility, as well as, knowledge of the Facility's substantial relationships with prospective and/or existing customers;

9.1.4 The compensation to be paid to Instructor under the terms of this Agreement includes compensation for the value of goodwill generated by the Instructor on behalf of the Facility while providing his services.

9.2 Covenant not to Disclose.

In consideration of this Agreement, Instructor agrees that any programs, systems, forms, or texts developed while in the employ of the Facility shall remain the property of _____. Furthermore, Instructor agrees that he will not, for a period of _____ subsequent to the termination of his employment at the Facility, disclose any techniques, procedures, or programs concerning training, rentals, sales, merchandising, activities, or other operations utilized by the Facility.

During or any time after termination of the Instructor's independent contractor relationship with the Facility, Instructor shall not, without authorization of the Facility, disclose to or use for the benefit of any person, corporation, or other entity, or himself, any files, proprietary trade secrets, or other confidential information concerning the business clients, students, methods, operations, financing, employees, products or marketing of the Facility. Trade secrets and confidential information shall mean information not generally known by Instructor except as a consequence of Instructor's provision of services pursuant to this agreement. All of the records, reports, claims, and correspondence kept by Instructor shall be the sole property of the Facility, except as otherwise provided by law. Instructor acknowledges that all files, client records, lists, books, records, literature, products, and other materials owned by the Facility or used by it in connection with the conduct of its business or the conduct of the business of Facility shall at all times remain the property of the Facility, including, without limitation, student files, furniture, motor vehicles, computer equipment, office equipment, software, manuals, workbooks, forms, and stationary; and, that upon termination of this Agreement, irrespective of the time, manner, or cause of said termination, Instructor will surrender to the Facility all such property, unless otherwise provided by law.

9.3 Covenant Not to Solicit.

Instructor agrees with the Facility, and any and all successors or assigns to the goodwill of the business, that during the Instructor's independent contractor relationship with the Facility and for a period of two (2) years following the termination of Instructor's independent contractor relationship with the Facility, Instructor shall not:

(1) induce or attempt to persuade any current or future employee, agent, manager, consultant, director or other participant in the business of the Facility to terminate such employment or other relationship in order to enter into any relationship with the Instructor, any business organization in

which the Instructor is a participant in any capacity whatsoever, or any other business organization in competition with the business of the Facility; or

(2) call on or solicit, either for Instructor or for any other person or firm, any of the customers or students of the Facility on whom Instructor called, with whom Instructor became acquainted, or of whom Instructor learned during his independent contractor relationship with the Facility, nor shall Instructor make known to any other person or firm, either directly or indirectly, the names or addresses of any such customers or students or any information relating in any manner to the Facility's trade or business relationship with such customer or patient.

9.4 Non-Compete.

During the term of this agreement, Instructor shall not conduct scuba diving courses or provide scuba diving instruction or management except under and pursuant to this Agreement, except with the prior written permission of the Facility.

Instructor agrees with the Facility, and any and all successors or assigns to the goodwill of the Facility's business, that during the Instructor's contractual relationship with the Facility and for a period of two (2) years following the termination of Instructor's contractual relationship with the Facility, for any reason (whether due to expiration, voluntary or involuntary termination, or due to any other reason); Instructor shall not engage personally, or through a business entity, in any activity that would be in competition with the business activity of the Facility, within a _____ mile radius of any of the Facility's locations. Instructor acknowledges and agrees that this section of this Agreement is reasonably related to protecting the Facility's legitimate business interests. This non-compete provision includes, but is not limited to, providing: scuba instruction, retail sales of diving related equipment, dive trips, air fills, dive equipment services; and seeking or gaining employment with a direct diving retail competitor of the Facility.

9.5 Remedies.

The Instructor agrees that the Facility, and any and all successors and assigns to the goodwill of the business, shall be entitled to injunctive relief in addition to all other remedies both legal and equitable, should Instructor breach the covenants contained in this section. The parties agree and stipulate that temporary injunctive relief shall issue upon a proper bond as determined by a court of competent jurisdiction.

9.6 Severability.

In the event a court of competent jurisdiction determines that any part or provision of this Section constitutes an unenforceable restraint on trade, or is otherwise unenforceable, the parties agree that this agreement shall not be null and void, but shall be enforceable in such ways, in such geographical area and for such duration which may be determined to be permitted by law of the State of _____, considering all relevant factors

10. Waiver.

The waiver by the Facility of the breach of any provision of this Agreement by the Instructor shall not operate or be construed as a waiver of any subsequent breach by the Instructor.

11. Notices.

Any notices permitted or required under this Agreement shall be deemed given upon the date of personal delivery or two business days after the date of deposit in the United States mail, postage fully prepaid, return receipt requested, addressed to the Facility at:

[Facility Name]
[Facility address]
[City], [State] [Zip Code]

addressed to the Instructor at:

or at any other address as any party may, from time to time, designate by notice given in compliance with this Section.

12. Law Governing.

This Agreement shall be governed by and construed in accordance with the laws of the State of _____.

13. Titles and Captions.

All section titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the context nor effect the interpretation of this Agreement.

14. Entire Agreement.

This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement. This Agreement may be subsequently modified only by a writing signed by the parties to this Agreement, except as may be otherwise expressly provided in this Agreement.

15. Non-Assignment.

This agreement is personal to each of the parties hereto, and neither party may assign nor delegate any of their rights or obligations hereunder without first obtaining the written consent of the other party.

16. Agreement Binding.

This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

17. Attorney Fees.

In the event an arbitration, suit or action is brought by any party under this Agreement to enforce any of its terms, or in any appeal therefrom, it is agreed that the prevailing party shall be entitled to reasonable attorneys fees to be fixed by the arbitrator, trial court, and/or appellate court.

18. Computation of Time.

In computing any period of time pursuant to this Agreement, the day of the act, event or default from which the designated period of time begins to run shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall begin to run on the next day which is not a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day thereafter which is not a Saturday, Sunday, or legal holiday.

19. Pronouns and Plurals.

All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require.

20. Presumption.

This Agreement or any section thereof shall not be construed against any party due to the fact that said Agreement or any section thereof was drafted by said party.

21. Further Action.

The parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of the Agreement.

22. Parties in Interest.

Nothing herein shall be construed to be to the benefit of any third party, nor is it intended that any provision shall be for the benefit of any third party.

23. Savings Clause.

If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

24. Separate Counsel.

The Instructor has been advised that it is important for the Instructor to seek separate legal advice and representation in this matter.

25. Effective Date.

This Agreement shall be effective only upon the complete execution of this Agreement in duplicate and the actual physical delivery of a completely signed duplicate original to each party. A facsimile copy of the signed document shall be effective, so long as the original duplicate copy from which the facsimile transmission was made is delivered pursuant to the provisions of Section 11, "Notices".

26. Warranties by Instructor.

The Instructor has warranted that (a) entering into this Agreement and providing the property and services required of him or her in meeting his or her obligations under the terms of this Agreement does not and will not create any legal or equitable rights in the favor of any former employer or contractor of the Instructor against the Instructor or the Facility; (b) Instructor holds a current Teaching status with PADI and that his certification has never been suspended or revoked at any time; and

(c) Instructor is not presently a defendant in any lawsuit pending in any court or other forum relating to any allegation of negligence or wrongful intentional conduct in connection with his activity of dive training or instruction, nor does Instructor know of any circumstances where any such claim is likely to be asserted.

27. Indemnification.

Instructor hereby agrees to indemnify the Facility and undertakes to defend the Facility against and hold the Facility harmless from any claim, suits, loss or damage, including attorney's fees, arising out of or relating to Instructor's use of the Facility name, trademark or logo, the conducting of the courses, actions by the Instructor, or any other manner which in any way pertains to this Agreement or the matters contemplated herein.

Further, Instructor expressly authorizes the Facility to deduct from all sums which shall be or become due and owing by the Facility to the Instructor, any amounts which may become due and owing by Instructor to the Facility pursuant to this agreement.

IN WITNESS WHEREOF, the Facility has executed this Independent Contractor Agreement with _____,
on the ____ day of _____, 20_____.

_____[Name of Facility]
Witness

By: _____

As its: _____

IN WITNESS WHEREOF, the Instructor has executed this Independent Contractor Agreement with the Facility on the ____ day of _____, 20__.

Witness

Signature of Instructor