

## Appendix 11

# Example: Independent Contractor Associate Agreement\*

### INDEPENDENT CONTRACTOR AGREEMENT

This Agreement is entered into as of \_\_\_\_\_, 200\_ (the "Effective Date"), by and between Colleen Contractor, D.D.S., an individual ("you" or "your") and Smith and Johnson, Inc., a professional corporation ("Practice," ) with offices at 100 Main Street, Anywhere, U.S.A, reflecting an independent contractor association between you and the Practice.

1. **Association.** You will be associated as an independent contractor with the Practice as a general dentist on a part-time basis commencing on \_\_\_\_\_. The term of your association shall be for \_\_\_\_\_ months, starting on the Effective Date (the "term"), the association automatically renewable for successive periods equal to the term in length (each a "successive term"), but either you or the Practice shall have the right to terminate your association, for any reason and without liability, upon thirty (30) days prior written notice to the other. Upon termination, you will vacate the premises and promptly remove all patient records and personal supplies and belongings.
2. **General Duties.** As an independent contractor, you will be responsible for scheduling and maintaining office hours to treat your patients, as you deem appropriate. Practice shall not exercise any control or direction over the professional aspects of your providing services, which control and direction shall be your sole responsibility, provided, however, that such services are to be rendered in accordance with the provisions of this agreement and the bylaws, rules and regulations, standards and policies of Practice and any regulatory agency with jurisdiction over matters subject to this agreement. At all times, your services so rendered shall comply with (1) all applicable federal, state, and local laws, regulations and ordinances, (2) the professional standards then prevailing in the community, and (3) currently accepted methods, practices and code of ethics of the American Dental Association. You will maintain memberships in professional societies as appropriate, and attend such professional meetings and continuing dental education programs as may be necessary to maintain your professional knowledge and skills.
3. **Compensation.** You will pay the Practice \$\_\_\_\_\_ by the [date] of each month for use of one operatory, equipment, office personnel and supplies. [Alternate approach: You will pay the Practice \_\_\_\_\_ percent (\_\_\_\_%) of your gross collections, that is, gross fees billed and collected attributable to services which you perform and complete, less (a) any professional or other discounts which you or the Practice grant, and (b) \_\_\_\_\_ percent (\_\_\_\_%) of the laboratory charges for your production.] As an independent contractor, you will be solely responsible for all billing for services you render, and for all contractual allowances, free care, discounts, bad debts, collections, and costs related to the foregoing.
4. **Responsibility for taxes.** As an independent contractor of the Practice, and not an employee, you will be solely responsible for payments of all federal income and self-employment taxes related to income paid to you by the Practice. By agreeing to become associated with the Practice, you agree to indemnify and hold harmless Dr(s). Susan L. Smith and James S. Johnson personally and the Practice from any personal state or federal tax liabilities you incur.

5. **Business expenses.** The Practice will be responsible for paying rent, utilities, provision of adequate dental equipment and office staff support, and one operatory available by schedule. You shall be responsible for dental supplies, your own dental instrumentation, your own professional malpractice insurance coverage, your own laboratory billings, and hiring and compensating your chairside assistant.
6. **Indemnification.** By entering into this agreement, you hereby agree to indemnify and hold Dr(s). Susan L. Smith and James S. Johnson individually and the Practice harmless for any malpractice liability resulting from treatment provided by you. It is your responsibility to obtain malpractice insurance in the minimum amount of \$ \_\_\_\_\_ and to provide a copy of this policy to the Practice prior to your commencement. You must require that any insurance carrier provide the Practice at least 15 days prior written notice of any cancellation, termination, modification or amendment.
7. **Patient flow and management responsibilities.** It is your responsibility to develop and secure your patient base. You will attend general practice meetings at the request of the Practice. You will be specifically responsible for the direction, hiring and/or termination of the dental assistant assigned or hired by you and in either event compensated by you.
8. **Patient records.** Your association as an independent contractor with the Practice does not entitle you to general access to the patient records of the Practice. You shall have access only to those records of patients whom you treat. You shall complete, in a timely manner, all patient records on each patient treated and shall maintain the confidentiality of such records as required by federal, state, and local laws, regulations and ordinances. All patient records, histories, charts, and other information regarding patients treated or matters handled by you under this agreement, regardless of whether any of the foregoing are in your possession, shall be your property subject to all applicable federal, state and local laws, regulations and ordinances and any applicable code of ethics. On termination or expiration of this agreement for any reason, you shall be responsible for maintaining and moving your records.
9. **Business records.** Your association as an independent contractor with the Practice requires you to maintain business records, but does not entitle you to general access to the business records of the Practice. You shall have access to the business records of the Practice only to the extent necessary to verify compensation due to you from the Practice should a dispute arise. We each agree to sign and abide by a HIPAA Business Associates Agreement if required by law.
10. **Option to Enter Practice.** The parties contemplate that Employee shall enter the Practice as an equity owner for a minimum of \_\_\_\_\_ years, effective upon the termination of this Agreement as of \_\_\_\_\_ (the "effective date"). On the effective date, Practice and Employee covenant and agree that Employee shall have the option to acquire capital stock in the Practice on the terms herein provided. The terms of the purchase shall provide that Employee shall be entitled to \_\_\_% and Drs. Susan L. Smith and James S. Johnson, collectively, \_\_\_% of the Practice net income, and that Employee shall purchase at book value as then accounted for in the financial statements of Practice not including any goodwill, a \_\_\_% interest in the Practice. Employee's equity interest in such Practice being purchased herein shall be paid for in equal consecutive monthly installments of principal, plus 5% interest on the remaining unpaid balance, over a \_\_\_\_\_ year period, pre-payable without penalty. The equity purchase shall be undertaken on such other reasonable and customary terms as the parties may mutually agree upon.

If prior to the effective date Employer dies, becomes disabled (as defined in Employer's major medical insurance policy), retires or withdraws from the practice, Employee shall have the option to purchase the Practice, exercisable by a writing to Employer or Employer's representative, at its appraised value, excluding good will, as determined by each party selecting an independent appraiser with experience in valuing dental practices in the area or region, which appraisers shall agree upon a third independent appraiser with such experience who shall alone

make the appraisal for this purpose and whose selection and determination shall be final. If prior to the effective date Employer shall attempt to sell the Practice to a party other than Employee, Employee shall have the right of first refusal to purchase the Practice from Employer on identical terms and conditions. Employee's option to purchase or right of first refusal, as the case may be, shall be exercisable by a written notice specifying Employee's intent and delivered to Employer or Employer's representative within 60 days of the event prompting such option or right.

- 11. Miscellaneous.** This letter of agreement includes our entire agreement with respect to your status as an independent contractor and supersedes all oral discussions, which we may have had. This agreement may be amended or assigned by you and the Practice at any time only by an instrument in writing signed by both parties.

This agreement is signed by the parties and effective on the date first written above.

Smith and Johnson, Inc.

Colleen Contractor, D.D.S.

By: \_\_\_\_\_  
Susan L. Smith, D.D.S., President

\_\_\_\_\_  
Colleen Contractor, individually

\*This sample agreement is reproduced only as an example. It is intended for familiarizing parties considering entering into such an arrangement. However, this sample should not be used without the services of an attorney. The law varies from jurisdiction to jurisdiction and parts of this agreement may be invalid, incomplete or unenforceable depending upon the jurisdiction in question.