



## **INDEPENDENT PRODUCT CONSULTANT AGREEMENT**

### **(Non-Professional IPC)**

This Independent Product Consultant Agreement (“Agreement”) is effective as of the Effective Date given on the signature page (“Effective Date”) by and between Forte Elements, LLC, a limited liability company of Utah, having a business address at 522 S 100 W, Provo, Utah 84601 (“Forte”); and \_\_\_\_\_, having an address as given on the signature page below (“Independent Product Consultant” or “IPC”).

### **Recitals**

A. Forte has developed an exclusive and proprietary line of formulations for natural nutritional supplements and other products, as well as various methods, processes and procedures, including descriptions, testing, samples, specimens and data related thereto, and Forte intends to continue researching and developing a variety of additional natural supplement products (“Products” as defined below).

B. Forte has developed certain trademarks, trade names, trade dress, logos, packaging, advertising materials, marketing strategies, vendors and customers (collectively “Intellectual Property Rights”).

C. Forte markets and intends to market Products and/or services through its online store and website, utilizing IPC as a consultant to inform members of the public of the existence and benefits of such Products and to recommend the same by encouraging purchase of the Products, referring and directing people to Forte’s online store and web page, for which efforts IPC will be compensated for paid up purchases of Product, according to the compensation provisions of this Agreement.

D. IPC is not professionally licensed and the circumstances of non-licensure have been fully disclosed to Forte.

E. IPC desires to enter into this Agreement to be approved as an approved Forte IPC to refer members of the public to the Forte online store and to participate in the compensation program set forth herein to enable IPC to provide information and consultation concerning the Products in accordance with approved Forte marketing literature, using the Intellectual Property Rights of Forte, and to direct people to the Forte online store to make purchases of Products. Forte desires to designate IPC as an approved Forte Independent Product Consultant to license IPC to use the Intellectual Property Rights as provided herein and in compliance with the conditions and limitations of such license.

Now, therefore, for good and valuable consideration, the receipt of which is acknowledged herein, the parties hereby agree as follows:

### **Terms of Agreement**

## **1. APPOINTMENT OF INDEPENDENT PRODUCT CONSULTANT**

1.1 Appointment and Acceptance. Forte hereby appoints and IPC hereby accepts a non-exclusive, non-transferable right to represent the Products, educate concerning the Products, and support, recommend, advertise, recommend, and otherwise market the Products, as defined below (collectively to "Recommend" the Products), in any state in which IPC is licensed and to encourage and direct members of the public to purchase the Products from Forte's online store, pursuant to the terms and conditions of this Agreement, using IPC's Forte identification code. Forte shall give IPC an IPC identification code which shall identify IPC as an approved and appointed Forte IPC and shall identify all customers referred or directed by IPC to purchase Products for purposes of compensating IPC in accordance with the terms of this Agreement.

1.2 Products. "Products" shall mean those products listed or identified on the Forte website, as it may be changed or amended by Forte from time to time.

1.3 Non-Exclusive Appointment. IPC may Recommend the Products under this Agreement in any state where IPC resides, and in any such other state or territory as otherwise approved in writing by Forte.

1.4 Marketing and Sales Channels. This appointment does not grant to IPC any right to possess Products or maintain an inventory of Products, except for minimal quantities of samples of Products, or for personal use by IPC and his/her family. IPC is not a seller or reseller of Products. IPC is a consultant with rights to Recommend the Products, educate consumers concerning the Products, and direct consumers to the Forte website for purchase of Products. Forte, through its online store or by any other method of distribution it may implement, is the sole distributor and seller of its Products. Forte reserves the right to sell Products through other means, including retail store fronts and other outlets.

1.5 No Sub-IPCs. IPC shall not have the right to appoint sub-IPCs, except with the prior, written approval of Forte. However, IPC may employ its own agents and employees to assist IPC in its efforts under this Agreement, in which case such agents and employees shall not be given IPC identification codes unless they are appointed directly by Forte as IPCs in their own right.

1.6 No Right to Manufacture or Distribute. IPC has no right to manufacture, produce, sell, or distribute the Products, or portions thereof.

1.7 Other Limitations. IPC is authorized to use the Intellectual Property Rights only in a manner and to the extent approved in writing by Forte. IPC shall not use or implement any intellectual property of others that conflict with or that infringes or violates the Intellectual Property Rights. IPC's use of the Intellectual Property Right shall be in strict compliance with Forte's license for use thereof.

## **2. TERM**

2.1 Initial Term. The term of this Agreement shall be for one year, beginning on the Effective Date and continuing for one year thereafter (the "Initial Term"), unless earlier terminated pursuant to the provisions of this Agreement.

2.2 Renewal. The term of this Agreement shall be automatically renewed for successive periods of one year (each a "Renewal Term") after expiration of the Initial Term and each Renewal Term, unless either party gives written notice to the contrary thirty (30) days before the expiration of the then current term, in which event this Agreement shall expire at the end of the then current term. Nothing contained in this Agreement should be interpreted as requiring either party to renew or extend the Agreement.

### **3. RECOMMENDING PRODUCTS**

3.1 Customer Order Procedure. IPC's activities under this appointment shall be restricted to Recommendation of the Products, as that term is defined above, and referral or directing of the customer to Forte's online store and web page. IPC shall provide to any customer, that it refers or directs to Forte's website, IPC's identification code with instructions to any such customer to use the IPC's identification code in placing orders directly online with Forte. Any purchase made by a customer shall be credited to IPC's account for compensation only if the customer uses the IPC's identification code in placing an order. If a customer fails to use the IPC's identification code in placing the order, any purchase of Products made by such customer shall not be credited to the IPC's account. Product returns, failure of payment, and back charges will be adjusted as a debit on IPC's account in the next month's statement. Forte shall ship or have its agent or contractor ship all Products to the address provided by the customer promptly after receipt of an order. Forte reserves the right to delay or deny shipment if the customer's credit card or other form of payment is not approved.

3.2 Product Pricing, Terms of Purchase, Shipment and Delivery, Refunds, etc. Forte's Product pricing, general terms and conditions of purchase, payment, shipment, delivery, refunds, returns, restocking, etc., shall be found on Forte's website or online store, and all customer purchases shall be subject thereto. Forte reserves the right to adjust pricing of its Products and amend its general terms and conditions from time to time. In connection with its Recommendation of the Products and communications with customers or potential customers of Forte, IPC is prohibited from making any representation, promise or condition inconsistent with Forte's general terms and conditions. IPC agrees to become familiar with Forte's online store, general terms and conditions, Products, sales and marketing materials, and other information provided by Forte concerning the same in order to faithfully and accurately educate customers and potential customers concerning the Products and the purchase of the same.

### **4. COMPENSATION OF INDEPENDENT PRODUCT CONSULTANTS**

4.1 Compensation to IPC. Compensation for IPC's Recommendation of Products shall be based solely on the number, volume and amount of Products purchased by customers through Forte's online store and/or website, who use IPC's identification code with each purchase. IPC's identification code shall be stored in Forte's system and recalled when a customer who has previously provided IPC's identification code, and each additional purchase shall be credited to IPC's account for compensation, unless the customer provides a different IPC identification code on any subsequent purchase in which case, the purchase shall be credited to

the new IPC account for compensation. Customers are free to use any IPC identification code they choose in ordering products from the Forte website, and no IPC is entitled to claim or retain any rights to customers who choose to utilize a different IPC identification code in subsequent purchases.

4.2 IPC Compensation Formula. The compensation formula by which IPC is compensated under this Agreement is set forth on Schedule A, attached hereto. IPC is not entitled to any compensation except a set forth in Schedule A. Forte will provide monthly compensation reports to IPC. IPC may object to any compensation report in writing within fifteen (15) days following receipt of the compensation report. IPC agrees that objections submitted to Forte beyond that time will be untimely, and will not be considered. Forte reserves sole discretion to modify compensation report after review and consideration of a timely written objection.

4.3 Compensation Payment. Forte shall pay IPC compensation quarterly based on the compensation report from the previous quarter. Quarters are based on the calendar year.

4.4 IPC's Responsibility to Pay Taxes on Compensation. As an independent contractor, IPC shall bear all responsibility to pay taxes on its compensation, including federal income tax, social security tax, medicare tax, state income tax and other taxes typically withheld by employers. Forte does not employ IPC and will not withhold any amounts from IPC's compensation except as mandated by law. IPC shall be solely responsible to report and pay taxes due on all compensation received by Forte under this Agreement. Forte will send out 1099 tax forms annually to report IPC's income from Forte.

4.5 IPC's Responsibility to IPC's Employees and Agents. To the extent that IPC employs or engages any person or organization to assist IPC in its activities and duties under this Agreement, IPC is solely responsible for payment of income or compensation to such person or organization and Forte disclaims any relationship or affiliation with any such person. IPC is the sole person or entity with whom Forte has a relationship under this Agreement and to whom Forte may pay compensation, reimbursement or any other payment resulting from or related to the services provided by IPC under this Agreement.

## **5. INDEPENDENT PRODUCT CONSULTANT'S PRODUCT REPRESENTATIONS**

5.1 Product Recommendation Efforts. IPC shall use his/her/its best efforts to Recommend Forte's sale and distribution of the Products and shall utilize IPC's own facilities and personnel in such efforts and activities. All efforts to recommend Forte Products shall be made in IPC's own name, on its own behalf.

5.2 Records. IPC shall keep accurate records of all necessary information, as required by various government agencies regarding IPC's independent business activities. IPC shall keep its records, contracts, and accounts relating to its business activities to Recommend the Products for at least two years and, for good cause, shall permit authorized representatives of Forte to examine such records on reasonable notice and during business hours.

5.3 IPC's Duty to Notify Forte of Claims. IPC shall notify and advise Forte promptly of any charges, complaints, or claims of any kind made by customers or potential customers of

Forte who have been referred to Forte by IPC and who have purchased Products from Forte and reported Product problems or defects. IPC shall include in any such notification sufficient detail to allow Forte to understand the nature of the charge, complaint or claim and to identify and contact any such person. IPC shall cooperate in good faith with Forte by providing information and assistance as requested by Forte.

5.4 IPC Prohibited From Making or Offering Product Warranties or Claims. IPC shall be prohibited from making any warranty concerning the Products and from making any claims or representations concerning the use and efficacy of the Products EXCEPT as to those representations expressly included in Forte's marketing material and written information concerning the Products. Neither IPC nor any of IPC's employees, agents or contractors ("IPC Affiliates") shall make any statement, representation, or warranty regarding Forte or any Product which is not expressly set forth in writing in Forte's marketing or Product materials and written information.

5.5 IPC Affiliates. IPC agrees to provide Forte upon request, without any cost, a list of the names of the IPC's Affiliates. It is understood that this list of names and addresses is proprietary and confidential.

5.6 No Adverse Conduct. IPC agrees: (i) to conduct IPC's business in a manner that reflects favorably on the Products and the name, goodwill, and reputation of Forte; (ii) not to disparage Forte or the Products or engage in any deceptive, misleading, or unethical practices that may be detrimental to Forte, the Products or the public in any manner, whether orally or in writing, or in any publication, including by print, text, electronic or other means, including Internet and social media sites such as twitter, Facebook ,etc. ; (iii) to make no false or misleading representations about Forte or the Products; (iv) not to publish, use, or cooperate in the publication or use of any misleading or deceptive advertising material; (v) to make no representations, claims, warranties, or guarantees about the Products that are inconsistent with the literature distributed by Forte, including all warranties and disclaimers contained in such literature; and (vi) to comply with all professional licensing laws, regulations and requirements of the states in which IPC, or its principal, is professionally licensed, and with all pertinent federal laws and regulations which apply to IPC and to maintain its licensing status in good standing.

5.7 Compliance with Laws. IPC shall comply will all applicable federal, state and local laws and regulations in performing its obligations under this Agreement and in all other dealings with respect to the Products, including any and all professional licensing laws and regulations pertinent to IPC's own professional license, or the licensure of its principal.

5.8 Compliance with Federal Stark Laws, Anti-Kickback Laws, FTC Laws and Regulations and State and Federal Consumer Protection Laws. In addition to any requirements to comply with federal and state laws set forth in the foregoing provisions, IPC agrees that he/she/it will comply with federal Stark Law, 42 U.S.C. 1395; federal Anti-Kickback Law, 42 U.S.C. 1320 and FTC truth in advertising laws, and state consumer protection laws applicable to IPC. Forte will take all reasonable steps to assure IPC that Forte's marketing materials, Product information, and web page do not contain any violations of the foregoing laws and will not expose IPC to violation of such laws as IPC relies on such information in its activities hereunder.

5.9 Change in IPC's Business. If IPC is a business organization, IPC shall promptly notify Forte in writing upon any change in the management or control of IPC or upon any transfer of more than 25% of the ownership of IPC's business. If, during the term of this Agreement, IPC retires from professional practice, allows IPC's license to expire, or has had such license suspended or terminated, IPC shall immediately notify Forte in writing of such change in its professional status and provide an explanation of the circumstances and nature of the same in sufficient detail for Forte to understand such event and surrounding circumstances and consider the implications of the same upon the standing of IPC under this Agreement.

## **6. PRODUCT TRAINING AND CERTIFICATION**

6.1 Product Training. IPC shall comply with all requirements established by Forte from time to time for IPCs and IPC Affiliates to be trained and certified in connection with the Promotion and support of the Products. IPC shall be responsible for all expenses in connection with the training and certification of itself and its IPC Affiliates. IPC shall at all times have an appropriate number of fully trained and certified personnel available to assist IPC as it Recommends the Products to customers of Forte. IPC shall comply with all requirements of Forte regarding educating customers in the use and limitations of the Products and familiarizing customers with the information included with the sale and delivery of Products.

6.2 Confidentiality Agreements. IPC shall require that all IPC Affiliates sign a confidentiality agreement covering all confidential aspects of this Agreement, including but not limited to the protection of Forte Confidential Information under Section 11.1.

## **7. ADVERTISING**

7.1 Approval of Advertisements. IPC may Recommend and publicize the Products in print, broadcast and digital advertisements, catalogues and promotional materials as it deems necessary, provided that all advertisements and promotional materials are approved by Forte in writing prior to publication or broadcast.

7.2 Forte Advertising Materials. Forte agrees to provide IPC with masters of existing literature and promotional materials pertaining to Products listed on its website, as well as biographical material, photographic transparencies, digital and electronic text and images ("Masters"), subject to the terms and limitations contained in this paragraph. IPC may use the Masters to reproduce advertising materials for its use, on the condition that IPC will not modify any Masters without Forte's express prior written approval. IPC shall not modify in any way the content of the Masters or develop additional promotional or advertising materials without Forte's express prior written approval. All copyright, trademark and other proprietary right markings on the Masters shall be accurately reproduced. Forte intends to provide an approved Style Guide for IPC's use in marketing at a reasonable time, but within its sole discretion.

7.3 Advertising Costs. Forte may provide a budget to be used by IPC to offset the cost of trade shows, advertising and other marketing and public relations initiatives. IPC shall be solely responsible to pay for all advertising, promotion and publicity of the Products. In the event Forte provides a budget for the foregoing purpose, Forte will at a reasonable time thereafter notify IPC and provide guidelines or policies and procedures for implementation of the budget.

## **8. OTHER SUPPORT BY FORTE**

8.1 Training of IPC Affiliates. Due to the highly proprietary and innovative nature of the Products, Forte may require that IPC or certain of IPC's Affiliates who are directly involved in Recommending and providing support of the Products be certified by Forte or, at Forte's option, by IPC prior to their assistance and/or participation in the Recommendation and support of the Products. Forte shall provide all necessary training to certify IPC and IPC Affiliates in the Promotion and support of the Products. Forte may establish certification procedures and requirements for IPC and IPC Affiliates in order to Recommend and/or provide support for the Products and to educate customers in the use of the Products.

8.2 Inquiries and IPC Consulting. Forte agrees to answer inquiries by telephone or correspondence from IPC at no extra charge. If IPC requests Forte to provide additional support or to send any personnel to IPC's place of business to provide additional training in the Recommendation and use of the Products, Forte agrees to provide additional training in the form and nature it deems appropriate for IPC's needs, in Forte's sole discretion, including video conferencing and on site visits. In the event additional training is provided at IPC's request, IPC shall pay Forte's standard consulting fees in effect at the time, as well as all business class airfare, food, travel, and lodging expenses for Forte's personnel.

## **9. INTELLECTUAL PROPERTY OWNERSHIP**

9.1 Ownership. Forte owns all rights, title and interest in and to the Intellectual Property Rights, as well as to the Masters and Confidential Information, and all translations, modifications, enhancements or corrections of any and all of the foregoing.

9.2 Registration of Trademarks. Forte, in its sole discretion, may elect to apply for the registration of one or more of its Trademarks at its own expense. In such event, Forte shall so notify IPC, and IPC, at Forte's expense, shall assist and cooperate with Forte in connection therewith.

## **10. INTELLECTUAL PROPERTY USE**

10.1 Limited Authorization to Use Trademarks. IPC shall have the right to use the Trademarks in its advertising and promotional materials subject to Forte's written approval as required herein and in accordance with Forte's policies in effect from time to time. IPC has not paid for the use of the Trademarks and nothing contained in this Agreement shall give IPC any interest or claim of ownership in the Trademarks. IPC agrees not to assert or claim any interest in or do anything which may adversely affect the validity or enforceability of the Trademarks or any other trade name, trademark or service mark belonging to or licensed by Forte. IPC agrees not to attach any additional trade names, trademarks or service marks to any of the Products, or to reference such in any print or electronic media. IPC further agrees not to affix any Forte trade name, trademark or service mark to any product not produced by Forte.

10.2 No Similar Trademark Use. IPC shall not use in a proprietary manner a corporate name, trade name, assumed name, domain name or any other name having "Forte" therein or being confusingly similar thereto or to any other of Forte's trade names, trademarks or service

marks. IPC shall not apply for the registration of any of the Trademarks or for any name, mark, design or symbol confusingly similar thereto anywhere in the world, whether in their own name or in the name of Forte or any other party, without Forte's prior written consent or request.

10.3 Notice of Unauthorized Use or Infringement by Third Parties. IPC shall notify Forte of any unauthorized use or infringement of any of Forte's Intellectual Property Rights. If IPC becomes aware of any actual or possible such infringement by third parties, IPC shall promptly notify Forte of such actual or possible infringement and shall cooperate with Forte in the prosecution of its rights against the infringing party. Such cooperation shall include providing personnel and documents as reasonably required. Forte shall be responsible for costs in connection with any action of IPC requested by Forte and shall reimburse IPC for all out-of-pocket expenses incurred by IPC in this regard.

10.4 Patent Rights. IPC shall respect the patent and copyright rights of Forte and shall not file patent or copyright applications that cover the Products or conflict with Forte's rights to the Products.

10.5 Product Tampering and Unauthorized Uses. Unless authorized by Forte in writing, IPC shall not: (i) reverse engineer or analyze the Products for such purpose without authorization from Forte; (ii) copy or permit any unlicensed third party to copy or reverse engineer any or all of the Products; or (iii) alter the Products or their packaging in any way, including without limitation, alteration or destruction of any copyright, trademarks, trade names or service marks, or other notices affixed to the Products or their packaging. IPC shall Recommend the Products in compliance and consistent with Forte's marketing and packaging material and information, including the Masters received from Forte.

## **11. RESTRICTIVE COVENANTS**

As a material inducement to Forte to enter into this Agreement, IPC agrees to the covenants in Paragraphs 11.1, 11.2 and 11.3. For purposes and for interpretation of this Article 11 and its subsections, the term "IPC" shall include IPC Affiliates.

### **11.1 Confidentiality.**

11.1.1 As used herein, the term "Confidential Information" means all proprietary business and technical information and materials used in the production, marketing and sales of the Products, including but not limited to the terms of this Agreement, the Intellectual Property, IP Materials, Masters, the information and lists, pricing lists, commission structure, project information, business plans, financial and technical documents, drawings, blue-prints, photographs, renderings, processes, techniques, programs, software, databases, trade secrets, and the like.

11.1.2 During the Term, and thereafter, IPC agrees not to (i) divulge the Confidential Information to any person or entity, other than as required in the ordinary course and performance of duties required hereunder, or (ii) make use of or assist others in making use of any Confidential Information except for performing under the terms of this Agreement.

11.2 Non-Solicitation. During the Initial Term and any Renewal Term and for a period of two (2) years after this Agreement has ended or been terminated, IPC shall not directly or indirectly induce, solicit, or attempt to persuade, directly or indirectly, any former, current or



future contractor, agent, employee, manager, consultant, director or other participant in the Forte Business (“Employee”) to enter into any relationship with the IPC, or any business organization in which IPC is involved, which is in competition with the Forte Business. The foregoing prohibition shall include a prohibition against IPC agreeing to enter into any such prohibited relationship, even if an Employee may have made the initial contact regarding employment with IPC, or any business organization in which IPC is involved, which is in competition with the Forte Business.

11.3 No Circumvention. During the Initial Term and any Renewal Term, IPC shall not (i) directly or indirectly contact any person or entity disclosed by Forte to IPC for the purpose of taking advantage of a business opportunity other than under the terms of this Agreement, (ii) otherwise seek to circumvent a Relationship or potential Relationship between a third party and Forte except with Forte’s approval, or (iii) seek to establish any rights, including but not limited to any intellectual property rights of Forte anywhere in the world based on the Confidential Information or on any information derived from Forte. As used in this Paragraph, a “Relationship” means a business arrangement, transaction, contract, understanding or other business relationship.

11.4 Remedies. IPC acknowledges that compliance with the provisions of this Section 11 is necessary to protect the business interests and goodwill of Forte and that a breach of any of these provisions will irrevocably and continually damage Forte, for which money damages are not adequate. Consequently, if IPC breaches or threatens to breach any of the obligations of this Section 11 of this Agreement, Forte shall be entitled to a preliminary and permanent injunction, prohibiting IPC from further violating this Agreement. Forte shall also be entitled to obtain any other remedy cumulative under law and/or money damages from IPC in the event of such breach. Nothing in this Agreement shall prohibit Forte from also pursuing any other remedy available. No action by Forte in pursuing a given remedy shall constitute an election to forego other remedies.

## **12. FORTE’S POLICIES AND PROCEDURES FOR INDEPENDENT PRODUCT CONSULTANTS**

12.1 Policies and Procedures. The parties acknowledge that Forte anticipates that it may hereafter adopt written Policies and Procedures to govern the activities of IPCs and the relationship between Forte and its IPCs, which may be adopted and amended from time to time in Forte’s sole discretion. Forte will publish the Policies and Procedures on its website and maintain such policies and update or modify the same from time to time. If and when such are adopted, Forte will, within a reasonable time thereafter, make the Policies and Procedures available on its website. IPC agrees that within a reasonable time, but no longer than thirty days, after Policies and Procedures are published on Forte’s website, IPC will read the Policies and Procedures. Therefore, such Policies and Procedures are expressly incorporated and adopted herein, and are deemed to be a part of this Agreement, as of the date they are published on the website. IPC agrees that it will be bound by the Policies and Procedures as adopted and as amended from time to time. In the event the Policies and Procedures are amended at any time after the Effective Date hereof in such a manner that IPC does not approve, IPC may give notice to Forte of its non-approval and such notice will constitute a notice of termination by IPC hereunder. Forte is not obligated to negotiate with IPC or to modify the terms of any amendment to the Policies and Procedures.

### **13. LIMITATION OF LIABILITIES**

13.1 NO CONSEQUENTIAL DAMAGES. IN THE EVENT IPC MAKES A CLAIM AGAINST FORTE IN ANY FORUM OR VENUE AND REGARDLESS OF WHETHER SUCH CLAIM IS MADE IN ARBITRATION OR IN A COURT OF COMPETENT JURISDICTION, INCLUDING ANY CLAIM FOR BREACH OF CONTRACT OR TORT, IPC SHALL HAVE NO ANY LIABILITY HEREUNDER FOR ANY INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, LOSS OF PROFIT OR BUSINESS OPPORTUNITIES, WHETHER OR NOT IPC WAS ADVISED OF THE POSSIBILITY OF SUCH.

13.2 DISCLAIMER OF WARRANTY. EXCEPT AS EXPRESSLY SET FORTH HEREIN, NEITHER PARTY MAKES, AND EACH PARTY HEREBY SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE PROMOTION OF THE PRODUCTS CONTEMPLATED BY THIS AGREEMENT, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

13.3 LIMITATION ON DAMAGES. IN THE EVENT FORTE IS FOUND LIABLE TO IPC ON ANY CLAIM THAT MAY BE ASSERTED BY IPC, REGARDLESS OF THE FORUM IN WHICH IT IS ASSERTED, FORTE'S LIABILITY TO IPC SHALL NOT EXCEED AMOUNTS PAID TO IPC BY FORTEPLUS SUCH AMOUNTS AS ARE DUE UNDER THE COMPENSATION FORMULA ATTACHED HERETO. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING WITHOUT LIMITATION ANY ACTION FOR BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION, AND OTHER TORTS.

### **14. REPRESENTATIONS, WARRANTIES, INDEMNIFICATION**

14.1 General Representations. Each Party hereby represents and warrants that: (a) it is a corporation or other entity duly organized and validly existing and in good standing under the laws of the state of its incorporation or organization, (b) it has full power and authority to enter into this Agreement and to perform its obligations hereunder; and (c) it has obtained all permits, licenses, and other governmental authorizations and approvals required for its performance under this Agreement, or in the case IPC is an individual, that he/she is legally competent to execute this Agreement and has or will immediately comply with subparagraph (c), and will continue to comply with the same through all terms this Agreement is in force.

14.2 Forte Limited Warranty. Forte provides a limited warranty to IPC and to Forte's customers that all of the Products shipped to Forte's customers shall be free of defects and as stated in the literature and warranty information accompanying shipment of the Products for the warranty period stated therein ("Limited Warranty"). The Limited Warranty extends directly from Forte to ICP and Forte's customers who receive shipments from Forte or its agent or contractor. All recourse regarding the Limited Warranty shall be made directly to Forte.

14.3 IPC Warranty. If IPC is a business organization, IPC hereby represents and warrants that (i) it shall have a constituency and percentage ownership of its principals that has been agreed upon by Forte prior to execution of this agreement, (ii) it is and shall at all times be adequately funded with operating capital, (iii) its Recommendation of the Products and its performance under the Agreement in any manner shall not infringe nor violate any patent, copyright, trade secret, trademark, or other proprietary right of any third party, or any contractual obligation to third parties, and (iv) at least one of IPC's principals is professionally licensed in the state(s) where IPC does business and such person is familiar with the laws and regulations pertinent to his/her specific profession, or if not, that Forte has been notified in writing of such fact and the circumstances surrounding such non-licensure. If IPC is an individual, he/she represents and warrants subparagraphs (ii), (iii) and (iv).

14.4 No Additional Warranties. IPC shall not make any warranty, guarantee, or representation, oral or written, on behalf of Forte which is inconsistent with, different from, or in addition to the warranties, guarantees (if any) or representations made expressly by Forte herein.

14.5 Indemnification by IPC. IPC agrees to defend, indemnify and hold Forte harmless from any third party claim, loss, damage, expense or liability for damages or injury, directly or indirectly arising out of any breach of any representations, warranties and/or obligations in this Agreement by IPC, its employees or agents. Such indemnification shall include the payment of all reasonable attorneys' fees and other costs of defending any such claims. In the event that IPC becomes liable to indemnify Forte hereunder, IPC agrees to pay Forte the amount of its legal fees and expenses incurred by Forte to defend against the indemnified claim(s) within thirty (30) days after IPC has been notified of the amount of fees and expenses which have been billed by Forte's legal counsel.

## 15. TERMINATION

15.1 Events of Termination. Either party may terminate this Agreement at any time if: (i) either party breaches this Agreement and fails to cure the breach within fifteen (15) days of receiving written notice of the breach ("Notice Period"); (ii) either party sells a substantial part of its assets to a third party; (iii) a receiver is appointed for the other party or its property; (iv) the other party makes, or attempts to make, an assignment for the benefit of its creditors; (v) any proceedings are commenced by or for the other party under any bankruptcy, insolvency, or debtor's relief law; (vi) the other party liquidates or dissolves or attempts to liquidate or dissolve; (vii) there is a material breach of this Agreement which results from the willful or grossly negligent act of the breaching party; or (viii) IPC's professionally licensed principal loses his/her professional license for any reason whatsoever (unless the loss of IPC's professional license is due to retirement, professional inactivity or relocation to a different state).

15.2 Notice of Termination. Either party may give notice of termination of this Agreement under Section 2.2 or Section 15.1 by notifying the other party in writing at any time after the occurrence of any of the events stated in Sections 2.2 or 15.1.

15.3 Effect of Termination. The expiration or termination of this Agreement shall not discharge or relieve either party from any obligation which accrued before expiration or termination, shall not relieve any breaching party from liability for damages resulting from such breach, subject to the provisions and limitations on damages contained in this Agreement, and

shall not destroy or diminish the binding force and effect of any of the provisions of this Agreement that expressly, or by reasonable implication, come into or continue effect on or after expiration or termination hereof. Any termination rights contained in this Section are in addition to, and not in lieu of, any remedies available at law or in equity or elsewhere provided in this Agreement.

15.4 Post-Termination Actions. Upon expiration or termination of this Agreement for any reason, the parties shall have the following rights and obligations: (i) all unpaid invoices shall automatically become due and payable on the effective date of termination, even if longer terms had been previously provided or allowed; and (ii) upon notice of termination, Forte shall be entitled to withhold any or all credits to IPC's account for any purchase of Product made by customers who use IPC's identification code in connection with such purchase, or for whom IPC's identification code has been stored in Forte's system.

15.5 Return of Property, Materials and Confidential Information. Upon termination of this Agreement for any reason, IPC shall promptly return to Forte all property belonging to Forte, including but not limited to the Masters, IP Materials and Confidential Information, without retaining any copies thereof.

15.6 Surviving Provisions. After termination of this Agreement for whatever reason, the provisions of Sections 5.6, 9, 10, 11 and 13 shall survive and remain in full force and effect.

## **16. MISCELLANEOUS**

16.1 Notices. All notices shall be in writing, sent by first class mail postage prepaid, certified, return receipt requested, or by facsimile with original to follow by first-class mail, or delivered personally. Mailed notices shall be considered given on the date received; e-mail notices on the date transmitted; and personally delivered notices on the date of delivery.

16.2 Entire Agreement. This Agreement, together with any schedules attached hereto, constitutes the entire agreement between the parties and supersedes prior negotiations, correspondence, or understanding relating to the subject matter of this Agreement. The parties agree that no representation, promise, assurance or oral agreement, whether made prior to or after the date and time this Agreement is executed, shall be of any force or effect, and the parties agree that they shall each be estopped from asserting any such representation, promise, assurance or oral agreement if it is in any way inconsistent with the terms of this Agreement.

16.3 Independent Contractors. Forte and ICP are independent contractors. Nothing in this Agreement shall be construed to make either party a joint venturer, partner, employee or agent of the other.

16.4 Severability. If any term, provision, covenant or condition of this Agreement is held invalid or unenforceable for any reason, the remainder of the provisions shall continue in full force and effect as if the Agreement had been executed with the invalid portions eliminated. The parties agree to substitute for the invalid provision a valid provision which most closely approximates the intent and economic effect of the invalid provision.

16.5 Prevailing Terms. This Agreement shall apply to all orders submitted to Forte by customers referred by IPC.

16.6 Governing Law and Consent to Jurisdiction. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah. Any action or proceeding brought by either party shall be brought in a state or federal court of competent jurisdiction located in the State of Utah.

16.7 Assignment. This Agreement is and shall be binding upon and inure to the benefit of the parties and their permitted successors and assigns; provided, however, this Agreement shall not be assigned, transferred or granted to any third party without the express written permission of the other party to this Agreement, unless such assignment, transfer or grant is made by Forte in connection with a merger or with the sale of all or substantially all of its assets, in which case IPC agrees that such is permitted hereunder.

16.8 Amendments. Any amendments to this contract must be in writing and signed by an authorized representative of each party.

16.9 Remedies. No remedy made available under this Agreement is intended to be exclusive of any other remedy. Each and every remedy shall be cumulative and in addition to every other remedy under this Agreement or existing at law or in equity.

16.10 Waivers. Any delay, omission or failure to exercise any right or remedy under this Agreement shall not constitute a continuing waiver or acquiescence in the event giving rise to such right or remedy.

16.11 Attorney's Fees. If either party brings legal action to enforce its rights under this Agreement, by arbitration or otherwise, the prevailing party in such action shall be entitled to receive all costs and expenses, including but not limited to reasonable fees of attorneys, accountants, and other experts, incurred by the prevailing party in investigating and prosecuting (or defending) such action.

16.12 Interpretation. The headings used in this Agreement are for convenience only and shall not affect the construction of any provisions thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives as of the respective dates indicated below.

Effective Date: \_\_\_\_\_

**INDEPENDENT PRODUCT CONSULTANT**

By: \_\_\_\_\_

Address: \_\_\_\_\_

Printed Name: \_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email Address: \_\_\_\_\_

**FORTE, LLC**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Note: Exhibits A must be completed and attached hereto.**

## **EXHIBIT A**

### **(Compensation Schedule)**

Independent Product Consultant shall be compensated and shall be entitled to receive the following remuneration for IPC's services:

- 1) 10% of personal sales revenue (less actual shipping costs) generated using personal IPC code through the ForteElements.com website.
- 2) Minimum Qualifying Commission Amount. Commissions will be paid according to Section 4 and Exhibit A of the INDEPENDENT PRODUCT CONSULTANT AGREEMENT only upon achieving quarterly sales of \$2,000 per calendar quarter.