

## **CONSULTING AGREEMENT**

This Consulting Agreement (“Agreement”) is entered into as of \_\_\_\_\_ between Gardner Resources Consulting, LLC, which has a principal place of business at 110 Cedar Street, Suite 20, Wellesley, MA 02481-2102 (“GRC”) and \_\_\_\_\_, which has a principal place of business at \_\_\_\_\_ (“Contractor”; GRC and Contractor are referred to as the “Parties” and each of them is a “Party”).

WHEREAS, Contractor directly employs certain individuals who are qualified to perform programming, systems analysis, engineering, technical writing and/or other specialized services;

WHEREAS, Contractor desires to have GRC provide certain services to Contractor, and GRC desires to provide such services, including introducing Contractor and its personnel to GRC’s clients (or clients of GRC’s clients) needing the specialized services referenced above, arranging for interviews between Contractor and/or its personnel and the GRC client, negotiating rates of pay for the Contractor’s personnel, and performing associated administrative functions;

WHEREAS, in exchange for such services by GRC, Contractor is willing to provide its personnel to perform, on a temporary basis, the services desired by GRC clients and make the representations and agreements reflected below;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, the Parties hereby agree as follows:

### **1. DEFINITIONS**

(a) **“Client”** means a GRC Client to which Contractor and its personnel are introduced by GRC and/or agree to provide Services.

(b) **“GRC Client”** means any current, former or potential client of GRC, including any client or customer of a client of GRC.

(c) **“Purchase Order”** means a fully executed document between the Parties which defines the scope of the Services to be provided by Contractor and/or its personnel, which identifies the Purchase Order Personnel who will provide such Services, and which may contain other material terms and conditions, including, but not limited to, payment terms. The form Purchase Order is set forth in Exhibit 1 to this Agreement.

(d) **“Purchase Order Personnel”** means the employee(s) of the Contractor specified in a particular Purchase Order to provide the Services.

(d) “**Services**” means those programming, systems analysis, engineering, technical writing or other specialized services required by a Client, whether for a specific project or otherwise, and which Contractor, through the Purchase Order Personnel, agrees to provide to the Client as an independent contractor on a temporary basis, according to the training, skills, abilities and experience required by the Client, as reflected in a signed Purchase Order.

## **2. SCOPE**

Contractor shall, and shall cause its Purchase Order Personnel to, perform the Services set forth in each Purchase Order. Each Purchase Order shall be governed by, and subject to, the terms of this Agreement. If any conflict exists or arises between this Agreement and a Purchase Order, this Agreement shall supersede the Purchase Order to the extent of such conflict unless the Parties expressly provide to the contrary in the Purchase Order. Modifications to any Purchase Order shall not be effective unless signed by both Parties.

GRC may examine information regarding the ability of the Contractor and/or its personnel to provide services requested by a GRC Client. If deemed acceptable by GRC, GRC shall refer Contractor and/or its personnel to the GRC Client for further evaluation and possible engagement of the Contractor’s personnel, negotiate a rate for those Services based upon the direction of the Contractor or its personnel, and provide other agreed upon services.

Prior to the commencement of any Services, GRC and Contractor shall execute a Purchase Order in the form attached as Exhibit 1 to this Agreement, which shall be considered part of this Agreement and binding upon both Parties. Neither Party nor the Client shall incur any obligation for the engagement of any personnel of the Contractor unless GRC and Contractor have executed a Purchase Order. The Purchase Order shall specify the personnel of the Contractor who shall provide the Services; only the personnel identified on each Purchase Order may provide the Services specified in that Purchase Order.

## **3. TERM OF AGREEMENT**

(a) This Agreement shall commence on the date reflected above and shall continue until terminated as set forth below (“Term”).

(b) Nothing in this Agreement obligates Contractor or its personnel to accept any offer to provide any services to a Client. However, all terms and conditions of the Agreement shall remain in force during any and all periods during which any of Contractor’s personnel provide Services to a Client pursuant to an executed Purchase Order, and for any other periods before and/or thereafter as stated herein. In addition, Sections 5, 6, 7, 11, 14, 15, 17, 18 and 19 shall apply even if Contractor or any of its personnel rejects an offer to provide services to a Client. However, in such case GRC shall have no further obligation to Contractor.

(c) GRC may terminate this Agreement or a Purchase Order, as applicable, upon twenty-four (24) hours’ notice to Contractor, but only if: (i) the Client no longer desires the services of Contractor or of the Purchase Order Personnel (or any of them) for any reason; (ii) GRC or the Client learns that Contractor or any of its personnel has made a material

misrepresentation or otherwise breached this Agreement; or (iii) any Purchase Order Personnel terminates his/her relationship with Contractor.

(d) Either Party may terminate the Agreement and/or the provision of Services by any Purchase Order Personnel by providing thirty (30) days' written notice to the other Party. In the case of notice to GRC, to be effective, the notice must be sent to Contractor's usual point of contact with GRC.

(e) At any time, upon mutual written agreement of the parties, the parties may agree to terminate the Agreement or any Purchase Order because the work requested by the Client has been completed or the services of Contractor or its personnel are otherwise no longer required.

#### **4. ASSIGNMENT OF CONTRACT**

Contractor may not assign its rights or obligations under this Agreement or any Purchase Order. Contractor may not provide the Services reflected in a Purchase Order through anyone other than the Purchase Order Personnel specified in such Purchase Order unless approved by the Client and agreed in a writing signed by both Parties. GRC may assign its rights under this Agreement.

#### **5. NON-INTERRUPTION OF SERVICES**

Contractor acknowledges that GRC and the Client at all times desire to avoid any interruption of Services due to any Purchase Order Personnel terminating his/her relationship with Contractor. Contractor further acknowledges that GRC has entered into this Agreement with Contractor in reliance on Contractor's representations in Section 8 below, including but not limited to the representation that Contractor is the direct employer of the Purchase Order Personnel. Accordingly, Contractor and GRC agree that if any Purchase Order Personnel terminates his/her relationship with Contractor for any reason, or if GRC learns that Contractor's representations in Section 8 below are materially false, incomplete or inaccurate, GRC may terminate the relevant Purchase Order or the Agreement in accordance with Section 3(c) above, and may engage such Purchase Order Personnel, directly or indirectly, to continue to provide the Services to the Client. Contractor further acknowledges and agrees that as of such notification of the termination of the Purchase Order or the Agreement, GRC shall have no further obligation to Contractor with respect to such Purchase Order Personnel except as to payment for Services performed by such Purchase Order Personnel prior to the date of notification, subject to the conditions for payment specified in this Agreement. Contractor agrees that the exercise by GRC of its rights under this Section shall not be deemed a violation of any statutory, contractual or other obligation of GRC to Contractor under this Agreement or relating to any agreement between Contractor and any other person or entity, whether such other agreement is executed before or after the date of this Agreement. Contractor further agrees not to file any form of legal claim, complaint, lawsuit, charge or any other form of action against GRC as a result of GRC exercising its rights under this Section.

## **6. FEES FOR USE OF GRC CLIENTS AND CONTRACTORS**

(a) Contractor agrees that, during the Term of the Agreement and for a period of twelve (12) months thereafter (the “Restricted Period”), Contractor will not, directly or indirectly, for itself or for any other person or entity, (i) solicit, attempt to solicit, or become or attempt to become engaged in any capacity by, any GRC Client to which Contractor was introduced by, or about which it has received information from, GRC or any GRC Client for which Contractor has performed Services, to provide any services within the Restricted Area, in each case except through GRC; or (ii) hire, engage or otherwise retain, or attempt to hire, engage or otherwise retain, any other GRC contractor, personnel of a GRC contractor, or any GRC employee, in all cases to which Contractor was introduced by, or about which it has received information from, GRC or any Client for which Contractor has performed Services, to provide any services within the Restricted Area.

(b) Notwithstanding the foregoing, it shall not be a violation of Section 6(a) for any Purchase Order Personnel to be hired, within the Restricted Area, as a direct employee of the Client for which he/she was performing Services so long as such hiring occurs during or within a reasonable time period following the term of the relevant Purchase Order (as determined in GRC’s sole discretion) and so long as Contractor and/or the Purchase Order Personnel promptly provides written notice of such hiring to GRC. GRC retains sole discretion to determine whether this exception applies.

(c) Contractor agrees to notify GRC if Contractor is solicited by any person or entity (including, without limitation, the Client, a competitor of GRC, or any other third party), to provide, directly or indirectly, within the Restricted Area, new or continuing services to the Client, such notification to be made within forty eight (48) hours of such solicitation. Contractor further agrees to advise any such person or entity of the existence of this Section 6 at the time of the solicitation.

(d) In the event that Contractor provides any services to a GRC Client or retains the services of any GRC contractor, personnel of a GRC contractor, or GRC employee, each in violation of the obligations set forth in Section 6(a) above, then Contractor shall pay to GRC, for each such instance, the sum of Forty Five Thousand Dollars (\$45,000) as liquidated damages and not as a penalty. Contractor acknowledges and agrees that such liquidated damages are a reasonable estimate of the damages to be sustained by GRC in the event of such a breach by Contractor, and is not a penalty. Notwithstanding any such payment, all other terms and conditions of this Agreement shall remain in full force and effect. GRC and Contractor agree that a liquidated damages provision is appropriate with regard to such breach because (i) the provisions set forth in the Agreement and the promises made with respect thereto are essential for the protection of the GRC’s interests; (ii) damages for breach of this Section would be difficult to ascertain or quantify with certainty; and (iii) the sum specified above represents a reasonable estimate of the harm likely to result from such breach. For the avoidance of doubt, Contractor will not be required to pay the liquidated damages reflected above in the case of any hiring that meets the conditions reflected in Section 6(a). Contractor further agrees that notwithstanding the foregoing, GRC shall be entitled to seek and obtain equitable relief consistent with Section 19 below for any other breach or threatened breach of Section 6(a).

(e) The liquidated damages provided for in this Section shall be due immediately upon demand by GRC or its authorized representative; except that GRC may, in its sole and absolute discretion, waive or otherwise modify the requirement to pay such fee, on a case by case basis, in a writing signed by an executive officer of GRC. Contractor may request a waiver or modification by submitting a written request to GRC prior to Contractor taking the action for which the waiver or modification is sought. Any waiver granted in one circumstance shall not operate as a waiver in any other circumstance.

(f) For purposes of this Section, the term “Restricted Area” means any state where Contractor provided or was offered an opportunity to provide Services to a Client and any other state where any GRC contractor has provided or could be offered an opportunity to provide any services for the Client.

## **7. NON-SOLICITATION**

During the Restricted Period, Contractor agrees not to, directly or indirectly, for itself or any other person or entity (i) solicit or induce any other GRC contractor or employee to terminate his/her/its relationship with GRC; and/or (ii) solicit or induce any contractor or employee of any GRC Client to terminate his/her/its relationship with such GRC Client.

## **8. REPRESENTATIONS AND WARRANTIES**

Contractor, for itself and its personnel, represents, warrants and agrees to the following:

(a) Contractor is the direct, W-2 employer of all Purchase Order Personnel. Contractor shall make available to GRC documentation sufficient to confirm such direct employment relationship. Contractor acknowledges that the Company is strictly relying upon this representation;

(b) All information provided by Contractor regarding Contractor, Contractor’s personnel, and/or the relationship between Contractor and its personnel (including, but not limited to, resumes, reference information, and tax, visa or other similar documentation) is true, accurate and complete to the best of Contractor’s knowledge;

(c) Contractor has not entered and will not enter into any agreement with any person or entity, including any Purchase Order Personnel, that would interfere with GRC’s ability to enforce its rights under Section 5;

(d) Contractor is a business entity registered to do business in each state in which Contractor’s personnel are engaged to provide Services. Contractor hereby certifies that its corporate business name is . Contractor also certifies its federal employer identification number (EIN) is ;

(e) Contractor maintains a set of books and records which accurately reflect its income, expenses, and all other information required to be maintained by any applicable law or regulation

or is otherwise customarily and regularly maintained by other businesses engaged in the business of providing temporary staffing services;

(f) Contractor and its personnel are not restricted by any employment or other agreement from providing the Services reflected in the relevant Purchase Order;

(g) Contractor has full right and power to enter into this Agreement and each applicable Purchase Order;

(h) Contractor will provide all Services, and fulfill all of its obligations hereunder, in good faith and in a professional, responsible and capable manner;

(i) Contractor shall transmit all amounts due to Purchase Order Personnel for services performed pursuant to an applicable Purchase Order promptly upon receipt of the same from GRC;

(j) Contractor will not violate any intellectual property rights of any third party in connection with the performance of the Services; and

(k) all Services, including, but not limited to, any deliverables set forth in an applicable Purchase Order, will be original unless otherwise agreed in writing by GRC and/or the Client.

Contractor understands and agrees that any falsification, misstatements, omissions, or other lack of candor by Contractor regarding the above, including without limitation the qualifications or availability of it or its personnel, or the relationship between Contractor and its personnel, constitutes a breach of this Agreement and may be grounds for immediate termination of Contractor's services by either GRC or the Client.

## **9. PAYMENT FOR SERVICES**

(a) **Condition Precedents to Payment of Compensation.** Notwithstanding anything to the contrary set forth in this Agreement or any applicable Purchase Order, Contractor acknowledges and agrees that GRC shall only be obligated to pay Contractor to the extent that Client pays GRC compensation for the Services provided by Contractor pursuant to a Purchase Order, and then only if the following conditions are satisfied: (i) the payment is explicitly authorized by an applicable Purchase Order, and (ii) Contractor has complied with the requirements in this Section regarding submission of records of hours worked and invoices. Amounts that satisfy these conditions are referred to herein as the “**Amounts Due to Contractor.**”

(b) **Payee.** Payment of Amounts Due to Contractor will be made in the corporate or business name of Contractor.

(c) **Timing of Payments.** Subject to the limitations specified in this Agreement, payment of Amounts Due to Contractor shall be made within ten (10) business days of receipt of such amounts by GRC from the Client (“Net 10”), on the periodic basis set forth in the Purchase Order. For the avoidance of doubt, in no event shall GRC be liable for payment of any amounts to Contractor before Client has paid GRC such amounts.

(d) **Other Terms Relating to Payment.** Payment to Contractor will be in accordance with the terms in the Purchase Order, and in no circumstances, will exceed the amount authorized in that Purchase Order. Neither GRC nor the Client shall provide or be liable to Contractor for any other compensation in any form, including but not limited to any benefits.

(e) **Records of Hours Worked and Invoices.** Contractor shall maintain records of the hours that each Purchase Order Personnel provides Services to Client, and shall obtain signed verification of such records from a Client representative. Contractor shall submit to GRC, no later than fourteen (14) days after the end of each month, such verified records, together with an invoice reflecting the hours of Services provided by the Purchase Order Personnel and verified by the Client for the month, and the amounts due to Contractor for such hours. Contractor will invoice GRC only for the hours reflected in the verified record for each month.

(f) **Late Invoices.** Invoices received by GRC more than fourteen (14) days but within sixty (60) days following the end of the applicable month will be subject to a five percent (5%) discount on the invoice total for each month in arrears. Invoices received by GRC between sixty (60) and ninety (90) days following the end of the applicable month will be subject to a ten percent (10%) discount on the invoice total for each month in arrears. Invoices received in excess of ninety (90) days following the end of the applicable month will not be paid by GRC unless otherwise specifically agreed by Client.

(g) **Billing to Client and Amounts Retained by GRC.** GRC will bill the Client based upon the hours contained in Contractor's invoice and substantiated by verified records, at the rate agreed upon between GRC and the Client. The difference between the amount paid to GRC by the Client and the Amounts Due to Contractor shall be retained by GRC as a commission for the services rendered by GRC (including locating Contractor, arranging for interviews between Contractor's personnel and the client, and performing associated administrative functions).

(h) **Limitation on Payments to Contractor.** Notwithstanding any other provision of this Agreement, Contractor agrees that in the event that either Contractor or any Purchase Order Personnel does not complete the Services, or does not provide proper termination notice, or his/her/its services are not acceptable to the Client, Contractor shall receive payment on any outstanding invoice(s) only upon GRC's receipt of funds from the Client for each such invoice. For avoidance of doubt, GRC shall not be liable to pay Contractor as to any outstanding invoice until and unless Client provides GRC with payment for the same.

## **10. TRAVEL, LIVING AND OTHER COSTS**

No travel, living, entertainment or other costs of Contractor or its personnel will be paid by GRC except to the extent agreed by the Client in advance and included in any payment made to GRC by the Client. Whether a Client for whom Contractor is performing services will pay any such costs is a matter between Contractor and the Client. Any such costs may be included in Contractor's invoice only if authorized by the Client.

## **11. CONFIDENTIALITY**

Contractor agrees that neither it nor its personnel will disclose to any third party, without the prior written consent of an executive officer of GRC or an authorized representative of the Client, as may be applicable, any information relating to the business of (i) GRC, (ii) the Client, (iii) the customers and/or clients of the Client or of any GRC Client, (iv) any GRC employees, or (v) any other GRC contractors, if such information could reasonably be construed as confidential and was obtained in the course of Contractor's providing services to any Client, interviewing with GRC or any GRC Client, or contracting with GRC. Contractor agrees not to disclose any pay rate applicable to any Purchase Order Personnel to any employee or other contractor of GRC or of a GRC Client, or to any competitor of GRC, unless GRC consents in writing to such disclosure. Contractor agrees to comply with the requirements of the Health Insurance Portability and Accountability Act ("HIPAA") applicable to GRC or any GRC Client, and agrees to comply with any Business Associate Agreement between GRC and its clients. Contractor further agrees to execute a HIPAA Business Associate Agreement with GRC if and when requested to do so by GRC. Contractor further agrees that neither it nor its personnel will, at any time, whether during any interview with GRC, a GRC Client, or the customer or client of a GRC Client, or during or after providing any Services, or at any other time, reproduce, disclose to any third party, or remove from the premises of GRC, a GRC Client, or a customer or client of any GRC Client, any tangible or intangible property whatsoever which could reasonably be construed as constituting confidential information of GRC, the GRC Client, or the customer or client of the GRC Client.

## **12. INDEPENDENT CONTRACTOR STATUS**

Contractor shall provide competent, professional services in the required disciplines, using its own appropriate independent skill and judgment, and the manner and means that appear best suitable to it to perform the work, and GRC shall have no right to and shall not interfere. Evaluation of Contractor's performance, if any, shall be made by the Client. GRC shall have no right or responsibility hereunder to and shall not review such performances, require progress reports, set the order or sequence for performing of services, or set Contractor's hours or location of work, except that neither Contractor nor its personnel shall perform any services on GRC's premises.

The Parties agree that Contractor is an independent contractor to GRC, that there is no relationship of partnership, joint venture, employment, franchise, or agency between the Parties, and that neither Contractor nor its personnel are authorized to act or attempt to act, or represent itself or themselves, directly or by implication, as an agent of GRC or in any manner assume or create or attempt to assume or create any obligation or responsibility, express or implied, on behalf of, or in the name of, GRC or to bind GRC in any manner. Contractor agrees and has advised its personnel that Contractor and its personnel are not employee(s) of GRC or the Client and are not entitled to (and in any case hereby waive) any benefits provided or rights guaranteed by GRC or the Client, or by operation of law, to the respective employees of GRC or of the Client, including but not limited to group insurance, liability insurance, disability insurance, worker's compensation insurance, vacation, sick leave or other time off, retirement plans, health plans, premium "overtime" pay, and the like. It is understood and agreed that since the Contractor is an independent contractor of GRC, and all Purchase Order Personnel are employees of Contractor and not of GRC, GRC will make no deductions from fees paid to Contractor for any federal or state taxes, and neither GRC nor the Client has any obligation to provide worker's compensation coverage for Contractor or its personnel or to make any premium "overtime" payments, except as may otherwise



be agreed in an applicable Purchase Order. It shall be the Contractor's responsibility to provide worker's compensation insurance coverage, pay any applicable premium "overtime" rate, and make required tax withholdings or other payments (including FICA, FUTA, income tax, and any other federal or state taxes) to or on behalf of all Purchase Order Personnel. Contractor shall provide GRC with suitable evidence of the same whenever requested. In the event of any claims brought or threatened by any party against GRC or the Client relating to the status, acts or omissions of Contractor or its personnel, Contractor agrees to cooperate with GRC in the defense of such claims, including, without limitation, with respect to any of the foregoing.

The Parties hereto acknowledge and agree that neither Contractor nor any of its personnel is an agent of GRC or the Client for any purpose whatsoever. Contractor is prohibited from acting, or holding itself out, as an agent of GRC or the Client.

### **13. NON-EXCLUSIVITY**

Except as limited by the terms of Section 6 above, during the Term of this Agreement and any Purchase Order Contractor may, directly or indirectly, provide temporary staffing services to any other person or entity other than GRC.

### **14. LIABILITY**

(a) Contractor is solely and completely responsible for all services it and its personnel provide to the Client, and neither the Client nor its customers or clients, nor GRC, shall be liable in any manner to any party with respect to any services provided by Contractor or its personnel. GRC does not indemnify Contractor for any liability incurred by Contractor, its agents, employees or contractors.

(b) Contractor understands, acknowledges and agrees that GRC acts in good faith to describe the task requirements set forth by the Client. Contractor further acknowledges and agrees that it has the opportunity to discuss directly with the Client these task requirements pertaining to each Purchase Order prior to executing such Purchase Order, and that GRC has no right to control any aspect of the work of any Purchase Order Personnel. Accordingly, Contractor, on behalf of itself and of all Purchase Order Personnel, hereby releases GRC from any liability relating to the task requirements, the conditions under which the Purchase Order Personnel will be working, and any representations by GRC regarding the same.

(c) Contractor, on behalf of itself and of all Purchase Order Personnel, hereby releases GRC from any liability for statements made by GRC, without malice, to third parties who inquire about the performance of Contractor or any of its personnel.

### **15. OWNERSHIP OF INTELLECTUAL PROPERTY**

Unless Contractor and Client reach a written agreement to the contrary, in which case Contractor agrees to promptly provide a copy of the same to GRC, Contractor agrees, for itself and its personnel, that, as to each Client, (a) all documents, deliverables, software, systems designs, disks, tapes and any other materials (collectively, "Materials") created in whole or in part by Contractor

or any Purchase Order Personnel in the course of or related to providing Services shall be deemed “work for hire” for the Client, and (b) Contractor and each Purchase Order Personnel will immediately disclose to such Client all discoveries, inventions, enhancements, improvements and similar creations (collectively, “Creations”) made, in whole or in part, by such Purchase Order Personnel in the course of or related to providing services to such Client.

All ownership and control of Materials and Creations, including any copyright, patent rights and all other intellectual property rights therein, shall vest exclusively with the Client for whom the Materials and/or Creations are created or made. To the extent any Materials or Creations may not be considered works for hire or any intellectual property rights in the same do not vest exclusively with such Client, Contractor hereby assigns to such Client all right, title and interest that Contractor may have in such Materials and Creations, and agrees to assign, and automatically assigns, all future Materials and Creations to such Client, without any additional compensation and free of all liens and encumbrances of any type. Contractor affirms that the compensation agreed to in any Purchase Order includes payment for assigning such rights to such Client. Contractor agrees to perform and to cause its personnel to perform, at any time during this Agreement and thereafter, all acts reasonably required by the Client to register its rights and otherwise to transfer, perfect and defend the Client’s ownership of the Materials and Creations.

## **16. INSURANCE**

Before providing any Services under any Purchase Order, Contractor will obtain for itself and its personnel, at its own expense, comprehensive General Liability (GL) insurance coverage for any and all work covered by this Agreement, for limits of liability not less than \$500,000, and worker’s compensation coverage not less than the applicable statutory limits, and will name GRC as an Additional Insured and provide a copy of the binder, the policy or a certificate of insurance to GRC upon request.

Worker’s compensation coverage will not be required if Contractor obtains an Affidavit of Exemption for Certain Corporate Officers or Directors pursuant to the provisions of MGL 152, Section 1 (4) as amended by Chapter 169 of the Acts of 2002 ([www.mass.gov/dia](http://www.mass.gov/dia) Form 153).

## **17. INDEMNIFICATION**

Contractor shall indemnify and hold harmless GRC and Client, and their respective officers, directors, agents, owners, and employees, from any and all claims, demands, liabilities, damages, expenses (including reasonable attorney fees), suits and judgments (collectively, “Claims”) arising from or otherwise relating in any manner to this Agreement, its negotiation, performance and/or termination, or the performance by Contractor or Contractor’s personnel of the Services, against GRC or Client, by Contractor’s employees or by any other person or entity (including private parties, governmental bodies and courts), including, without limitation, Claims related to HIPAA, worker’s compensation, wage and hour laws, employment taxes, and benefits, and whether relating to Contractor’s status as an independent contractor, the status of its personnel, or any other matters involving the acts or omissions of Contractor and its personnel. Indemnification shall be for any and all losses, including costs and attorneys’ fees.

## **18. NO ENCUMBRANCE OF GRC'S CONTRACTUAL RIGHTS**

Contractor agrees that it is not currently, and shall not subsequently become, a party to any agreement that in any manner encumbers or otherwise affects the ability of GRC to enforce any of its rights under this Agreement, including, without limitation, the rights set forth in Sections 4, 5, 6, 7, 11, 17, 18, 19 and 20. For the avoidance of doubt, and without limiting the generality of the foregoing, Contractor specifically agrees that it shall not require any Purchase Order Personnel to agree to a provision concerning non-competition, non-solicitation or other similar restrictive covenant that would restrain such Purchase Order Personnel from continuing to perform services for a Client if GRC invokes its rights to ensure non-interruption of services to such Client under Section 5 of this Agreement.

## **19. BREACH**

(a) Contractor agrees that: (i) the provisions of Sections 6, 7 and 11 are necessary and reasonable to protect the Company's Confidential Information and goodwill; (ii) the specific time, geography and scope provisions set forth in those sections are reasonable and necessary to protect the Company's business interests; and (iii) in the event of Contractor's breach of any of the agreements set forth in Sections 6, 7 and 11, the Company would suffer substantial irreparable harm and that the Company would not have an adequate remedy at law for such breach. In recognition of the foregoing, Contractor agrees that in the event of a breach or threatened breach of any of these covenants, in addition to such other remedies as may be provided for in this Agreement, or the Company may have at law, without posting any bond or security, GRC shall be entitled to seek and obtain equitable relief, in the form of specific performance, or temporary, preliminary or permanent injunctive relief, or any other equitable remedy which then may be available. The seeking of such injunction or order shall not affect GRC's right to seek and obtain damages or other equitable relief on account of any such actual or threatened breach.

(b) Contractor further agrees that in addition to any other remedy provided in this Agreement, any breach of any other provision of this Agreement by Contractor or its personnel entitles GRC to recover from Contractor damages and/or equitable relief, in the form of specific performance, or temporary, preliminary or permanent injunctive relief, or any other equitable remedy which then may be available.

(c) If GRC is successful in recovering damages or obtaining equitable relief, Contractor agrees to be responsible for paying all of GRC's expenses in seeking such relief, including all costs and fees, including attorneys' fees.

## **20. EMPLOYEE AGREEMENT**

Contractor agrees that it shall obtain a signed "Contractor's Employee Agreement" in the form of Exhibit 2 hereto, agreeing to the terms of Sections 4, 6, 7, 8, 11, 12 and 15 of this Agreement, from each Purchase Order Personnel and deliver the same to GRC before such Purchase Order Personnel may begin work under any Purchase Order.

## **21. MISCELLANEOUS**

(a) This Agreement and any attached Purchase Order(s) and Exhibit(s), including those relating to separate requirements imposed by the Client, represent the entire agreement and understanding of the parties regarding the subject matter hereof and any modification thereof shall not be effective unless contained in writing signed by both Parties. No other document, including any agreement between the GRC and the Client, shall be deemed to modify any terms of this Agreement unless expressly stated in writing to do so and signed by both GRC and Contractor.

(b) Each provision of the Agreement shall be considered severable such that if any one provision or clause conflicts with existing or future applicable law, or may not be given full effect because of such law, it shall not affect any other provision of the Agreement which can be given effect without the conflicting provision or clause. To the extent that there may be any conflict between the terms of this Agreement and of the Purchase Order, this Agreement shall take precedence unless otherwise specifically stated in the Purchase Order.

(c) The headings and titles of Sections, paragraphs and the like are inserted for convenience of reference only and shall not affect the meaning or interpretation of this Agreement in any manner.

(d) Neither the failure nor delay by GRC to exercise any right, remedy, power or privilege under this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege, nor shall any waiver with respect to any occurrence be construed as a waiver with respect to any other occurrence. No waiver of any right, remedy, power or privilege under this Agreement will be effective unless in writing signed by the Party to be charged thereby.

(e) Contractor represents that Contractor has read and understands the terms of this Agreement, has had an opportunity to ask any questions and to seek the assistance of legal counsel regarding these terms, and is not relying upon any advice from GRC in this regard.

(f) This Agreement shall be governed by the laws of the Commonwealth of Massachusetts, except for its choice of law principles, regardless of where Contractor's work, or the work of any Purchase Order Personnel, is performed. The Parties agree that any dispute arising from or relating to the Agreement (including any Purchase Order) shall be brought in the state or federal courts of the Commonwealth of Massachusetts, and shall be heard by a judge alone, and the Parties hereby waive any right to a trial by jury. Contractor agrees to the exercise of personal jurisdiction over it by such courts to the full extent permitted by law.

(g) This Agreement may be signed in two or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same Agreement.

\_\_\_\_\_  
Signature

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

Its: \_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
Signature

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

Its: \_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_

**EXHIBIT 1  
PURCHASE ORDER**

In accordance with the Contractor Agreement signed by Gardner Resources Consulting, LLC (“GRC”) and (Federal I.D. Number ) (“Contractor,” and together with GRC, the “Parties”) dated , 20 , the Parties agree as follows:

1. Contractor agrees to make available the Purchase Order Personnel specified in Section 11 below to perform services for (“Client”), in order to complete such project or deliver such services (the “Services”) as are specified in Section 12 below (“Project”). Such Services shall begin on , 20 or such other date as may be mutually agreed between Contractor and the Client (“Start Date”), and shall terminate on the one-year anniversary of the Start Date (“Termination Date”), except as otherwise specified in Section 4 below.
2. Contractor shall be compensated at a rate of \$ per hour for the Services of the Purchase Order Personnel on the Project (“Contractor’s Rate”), subject to the conditions specified in Sections 3, 5 and 10 below and any additional conditions specified in the Contractor Agreement.
3. The Maximum Hours for the Project specified by the Client are: hours. The Maximum Allocated Funds allocated under this Purchase Order for completion of the Project, based on the Maximum Hours and Contractor’s Rate are \$ . Notwithstanding the foregoing, Contractor is not entitled to payment of any amounts other than for services actually performed by the Purchase Order Personnel and properly invoiced and documented in accordance with the requirements specified in the Contractor Agreement.
4. Unless otherwise specified by GRC or the Client or unless the Purchase Order or Contractor Agreement is earlier terminated, following the original Termination Date this Purchase Order shall be deemed to have been extended beyond the original Termination Date on a month to month basis to a new Termination Date and with a new Maximum Allocated Funds amount, pro-rated on a monthly basis, on the same terms and conditions as stated herein and in the Contractor Agreement referenced above, until such time as the Project is completed, or Contractor provides thirty (30) days prior written notice of a refusal to extend this Purchase Order, or the Contractor Agreement or Purchase Order is terminated in accordance with Section 3 of the Contractor Agreement. For purpose of this Purchase Order, “month to month” means the period beginning on the next calendar date immediately after the previous Termination Date and terminating on the same calendar date of the next month (or, if there is not such date, the closest date thereto in that month). The thirty- (30-) day period of Contractor’s notice of termination shall commence on the actual calendar date that it is received by an authorized representative of GRC. The purpose of this paragraph is not to extend the Termination Date indefinitely and create a continuous relationship, but is instead to cover situations where the original estimates for project completion require adjustment.

5. At the end of each week, for billing and payment purposes, Contractor shall submit a to GRC a record of the hours of services performed by the Purchase Order Personnel, approved by an authorized Client representative verifying the number of hours worked, on a form regularly used by the Client for such purposes or otherwise agreed by GRC. At the same time, Contractor will submit an invoice to GRC for those hours verified by the Client on the time records. No payments will be made to Contractor without such verified time records and such invoices. GRC will pay such invoices in accordance with the terms of the Contractor Agreement.
6. Prior to the release of payments, the following required documents must be received by Gardner Resources Consulting, LLC:
  - Signed Contractor Agreement
  - Signed current Purchase Order
  - Signed Contractor's Employee Agreement from each individual providing Services to Client
  - Signed W9 Form
  - Signed HIPAA Business Associate Agreement, if requested by GRC
  - Certificate of Insurance for comprehensive General Liability coverage for limits not less than \$500,000
  - Certificate of Insurance for Workers' Compensation coverage for Statutory Limits, or an Affidavit of Exemption for Certain Corporate Officers or Directors pursuant to the provisions of MGL 152, Section 1 (4) as amended by Chapter 169 of the Acts of 2002 (<http://www.mass.gov/lwd/workers-compensation/forms/form-list-numbered/f153.pdf>).
  - Copy of Articles of Incorporation
  - Marketing Materials (Web Site, Brochures, Business Cards, Advertisements, etc.)
  - Client approved timesheet
  - Invoice
7. Contractor and the Client will discuss and agree upon the hours and location where the work is to be performed. The parties hereto acknowledge and agree that GRC does not specify the time or location of the Services.
8. Contractor agrees to complete the Project and produce the end result required by the Client.
9. Contractor's Rate is a confidential matter between Contractor and GRC and shall not be divulged to any other party, including the Client and the Purchase Order Personnel.
10. Contractor's Rate will remain in effect until the later of the completion of the Project or one year from the Effective Date.

11. The following Purchase Order Personnel are the personnel of Contractor who will work on the Project. Contractor hereby certifies that each individual listed below has been informed of and has represented to Contractor that he/she understands his/her obligations under this Purchase Order, the Contractor Agreement, and the Contractor's Employee Agreement:

\_\_\_\_\_

12. The Purchase Order Personnel are engaged deliver Services on the Project as follows:

\_\_\_\_\_

The undersigned have read, understand, and agree to the terms and conditions herein.

13. This Purchase Order shall be effective on the date this Purchase Order is fully executed by the undersigned parties (the "Effective Date").

For and on behalf of:

**Gardner Resources Consulting, LLC**

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

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

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

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

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

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





## **EXHIBIT 2 CONTRACTOR'S EMPLOYEE AGREEMENT**

In accordance with the Contractor Agreement between Gardner Resources Consulting, LLC ("GRC") and (Federal I.D. Number ) ("Contractor"), dated , under which Contractor has agreed to provide services to ("Client"),<sup>1</sup> ("Contractor's Employee"), as an employee of Contractor, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agrees as follows:

### **1. ASSIGNMENT OF CONTRACT**

Contractor's Employee understands and agrees that he/she may not assign his/her rights or obligations under this Contractor's Employee Agreement or any Purchase Order. Contractor's Employee further understands and agrees that he/she may not assign the services reflected in an applicable Purchase Order (the "Services") to any other person unless approved by the Client and agreed in a writing signed by GRC and the Client.

### **2. FEES FOR USE OF GRC CLIENTS**

(a) Contractor's Employee agrees that, while Contractor is performing services for Client pursuant to any Purchase Order, and for a period of twelve (12) months thereafter (the "Restricted Period"), Contractor's Employee will not, directly or indirectly, for himself/herself or for any other person or entity, (i) solicit, attempt to solicit, or become or attempt to become engaged in any capacity by, any GRC Client to which Contractor's Employee was introduced by or about which he/she has received information from, GRC or from any GRC Client for which Contractor's Employee has performed Services, to provide any services within the Restricted Area (as defined below), in each case except through GRC; or (ii) hire, engage or otherwise retain, or attempt to hire, engage or otherwise retain, any other GRC contractor, personnel of a GRC contractor, or any GRC employee, in all cases to which Contractor was introduced by, or about which it has received information from, GRC or any Client for which Contractor has performed Services, to provide any services within the Restricted Area.

(b) Notwithstanding the foregoing, it shall not be a violation of Section 6(a) for Contractor's Employee to be hired, within the Restricted area, as a direct employee of the Client for which he/she was performing Services so long as such hiring occurs during or within a reasonable time period following the term of the relevant Purchase Order (as determined in GRC's sole discretion) and so long as Contractor and/or Contractor's Employee promptly provides written notice of such hiring to GRC. GRC retains sole discretion to determine whether this exception applies.

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<sup>1</sup> For purposes of this Contractor's Employee Agreement, (a) the term "Client" also includes any customer or client of the Client specified herein for whom Contractor's Employee provides services under an applicable Purchase Order entered into in connection with the Contractor Agreement; and (b) the term "GRC Client" means any current, former or potential client of GRC, including any client or customer of a client of GRC.

(c) Contractor's Employee agrees to notify GRC if he/she is solicited by any person or entity (including, without limitation, the Client, a competitor of GRC, or any other third party), to provide, directly or indirectly, within the Restricted Area, new or continuing services to the Client, such notification to be made within forty-eight (48) hours of such solicitation. Contractor's Employee further agrees to advise any such person or entity of the existence of this Section 1 at the time of the solicitation.

(d) In the event that Contractor's Employee provides any services to a GRC Client in violation of the obligations set forth in Section 1(a) above, then Contractor's Employee shall pay to GRC, for each such instance, the sum of Forty-Five Thousand Dollars (\$45,000) as liquidated damages and not as a penalty. Contractor's Employee acknowledges and agrees that such liquidated damages are a reasonable estimate of the damages to be sustained by GRC in the event of such a breach by Contractor's Employee, and is not a penalty. Notwithstanding any such payment, all other terms and conditions of this Contractor's Employee Agreement and the Contractor Agreement shall remain in full force and effect. Contractor's Employee agrees that a liquidated damages provision is appropriate with regard to such breach because (i) the provisions set forth in this Contractor's Employee Agreement and the promises made with respect thereto are essential for the protection of the GRC's interests; (ii) damages for breach of this Section would be difficult to ascertain or quantify with certainty; and (iii) the sum specified above represents a reasonable estimate of the harm likely to result from such breach. For the avoidance of doubt, Contractor's Employee will not be required to pay the liquidated damages reflected above in the case of any hiring that meets the conditions reflected in Section 1(a). Contractor's Employee further agrees that notwithstanding the foregoing, GRC shall be entitled to seek and obtain equitable relief for any other breach or threatened breach of Section 1(a).

(e) The liquidated damages provided for in this Section shall be due immediately upon demand by GRC or its authorized representative; except that GRC may, in its sole and absolute discretion, waive or otherwise modify the requirement to pay such fee, on a case by case basis, in a writing signed by an executive officer of GRC. Contractor's Employee, or Contractor on his/her behalf, may request a waiver or modification by submitting a written request to GRC prior to Contractor's Employee taking the action for which the waiver or modification is sought. Any waiver granted in one circumstance shall not operate as a waiver in any other circumstance.

(f) For purposes of this Section, the term "Restricted Area" means any state where Contractor's Employee provided or was offered an opportunity to provide services to the Client and any other state where any GRC contractor has provided or could be offered an opportunity to provide any services for the Client.

### **3. NON-SOLICITATION**

During the Restricted Period, Contractor's Employee agrees not to, directly or indirectly, for himself/herself or any other person or entity (i) solicit or induce any GRC contractor or employee to terminate his/her/its relationship with GRC; and/or (ii) solicit or induce any contractor or employee of any GRC Client to terminate his/her/its relationship with such GRC Client.

#### **4. REPRESENTATIONS**

Contractor Employee represents, warrants and agrees to the following:

(a) Contractor's Employee is the direct, W-2 employee of Contractor. Contractor's Employee shall make available to GRC documentation sufficient to confirm such direct employment relationship. Contractor's Employee acknowledges that GRC is strictly relying upon this representation;

(b) all information provided by him/her (including, but not limited to, resumes, reference information, and tax, visa or other similar documentation) in consideration for providing services to or on behalf of the Client is true, accurate and complete to the best of Contractor Employee's knowledge;

(c) Contractor's Employee is not restricted by any employment or other agreement from providing services to the Client;

(d) Contractor's Employee will provide all Services, and fulfill all of his/her obligations under this Contractor's Employee Agreement and any applicable Purchase Order, in good faith and in a professional, responsible and capable manner;

(e) Contractor's Employee will not violate any intellectual property rights of any third party in connection with the performance of the Services;

Contractor's Employee understands and agrees that any falsification, misstatements, omissions, or other lack of candor by Contractor Employee regarding the above, including without limitation his/her qualifications or availability, may be grounds for immediate termination of the services of Contractor or Contractor's Employee by GRC or the Client.

#### **5. CONFIDENTIALITY**

Contractor's Employee will not disclose to any third party, without the prior written consent of an executive officer of GRC or an authorized representative of the Client, as may be applicable, any information relating to the business of (i) GRC, (ii) the Client, (iii) the customers and/or clients of the Client or of any GRC Client, (iv) any GRC employees, or (v) any other GRC contractors, if such information could reasonably be construed as confidential and was obtained in the course of Contractor's or Contractor's Employee's providing services to the Client, interviewing with GRC or any GRC Client, or contracting with Contractor. Contractor agrees not to disclose his/her pay rate for his/her services for the Client to any employee or other contractor of GRC or of a GRC Client, or to any competitor of GRC, unless GRC consents in writing to such disclosure. Contractor's Employee agrees to comply with the requirements of the Health Insurance Portability and Accountability Act ("HIPAA") applicable to GRC or any GRC Client, and agrees to comply with any Business Associate Agreement between GRC and its clients or between GRC and Contractor. Contractor's Employee further agrees he/she will not, at any time, whether during any interview with GRC, a GRC Client, or the customer or client of a GRC client, or during or after providing any services to the Client, reproduce, disclose to any third party, or remove from the

premises of GRC, a GRC Client, or any customer or client of any GRC Client, any tangible or intangible property whatsoever which could reasonably be construed as constituting confidential information of GRC, the GRC Client, or the customer or client of the GRC Client.

## **6. CONTRACTOR'S EMPLOYEE'S STATUS**

Contractor's Employee understands and agrees that neither he/she nor Contractor is an employee of GRC or the Client. Contractor's Employee further understands that he/she is not entitled to any benefits provided or rights guaranteed by GRC or the Client, or by operation of law, to the respective employees of GRC or of the Client, including but not limited to group insurance, liability insurance, disability insurance, worker's compensation insurance, vacation, sick leave or other time off, retirement plans, health plans, premium "overtime" pay, and the like, and Contractor's Employee hereby waives any claim to the same to the full extent permitted by law. Contractor's Employee understands and agrees that since Contractor's Employee is an employee of Contractor and not GRC, GRC will make no deductions from fees paid to Contractor for Contractor's Employee's services to the Client for any federal or state taxes. Contractor's Employee understands and agrees that GRC and the Client have no obligation to provide Worker's Compensation coverage for him/her or to make any premium "overtime" payments, except as may otherwise be agreed in an applicable Purchase Order. Contractor's Employee understands that it is the Contractor's responsibility to provide Worker's Compensation insurance coverage, pay any applicable premium "overtime" rate, and make required tax withholdings or other payments (including FICA, FUTA, income tax, and any other federal or state taxes) to or on behalf of Contractor's Employee. In the event of any claims brought or threatened by any party against GRC or the Client relating to the status, acts or omissions of Contractor or Contractor's Employee, Contractor's Employee agrees to cooperate with GRC in the defense of such claims, including, without limitation, with respect to any of the foregoing.

Contractor's Employee acknowledges and agrees that Contractor's Employee is not an agent of GRC or the Client for any purpose whatsoever. Contractor's Employee is prohibited from acting, or holding himself/herself out, as an agent of GRC or the Client.

## **7. OWNERSHIP OF INTELLECTUAL PROPERTY**

Contractor's Employee agrees that (a) all documents, deliverables, software, systems designs, disks, tapes and any other materials (collectively, "Materials") created in whole or in part by Contractor's Employee in the course of or related to providing any services to the Client shall be deemed "work for hire" for the Client, and (b) Contractor's Employee will immediately disclose to the Client all discoveries, inventions, enhancements, improvements and similar creations (collectively, "Creations") made, in whole or in part, by Contractor's Employee in the course of or related to providing services to the Client.

All ownership and control of Materials and Creations, including any copyright, patent rights and all other intellectual property rights therein, shall vest exclusively with the Client. To the extent any Materials or Creations may not be considered works for hire or any intellectual property rights in the same do not vest exclusively with the Client, Contractor's Employee hereby assigns to the Client all right, title and interest that Contractor's Employee may have in such Materials and

Creations, without any additional compensation and free of all liens and encumbrances of any type. Contractor's Employee affirms that the compensation paid to him/her for the services performed for the Client includes payment for assigning such rights to the Client. Contractor's Employee agrees to perform, at any time, all acts reasonably required by the Client to register its rights and otherwise to transfer, perfect and defend the Client's ownership of the Materials and Creations.

## **8. INDEMNIFICATION**

Contractor's Employee shall indemnify and hold harmless GRC and Client, and their respective officers, directors, agents, owners, and employees, from any and all claims, demands, liabilities, damages, expenses (including reasonable attorney fees), suits and judgments (collectively, "Claims") arising from or otherwise relating in any manner to this Contractor's Employee Agreement, its negotiation, performance and/or termination, or the performance by Contractor's Employee of the Services, against GRC or Client, by Contractor's Employee or by any other person or entity (including private parties, governmental bodies and courts), including, without limitation, Claims related to HIPAA, worker's compensation, wage and hour laws, employment taxes, and benefits, and whether relating to Contractor's Employee's status or any other matters involving the acts or omissions of Contractor's Employee. Indemnification shall be for any and all losses, including costs and attorneys' fees.

## **9. MISCELLANEOUS**

Each provision of the Contractor's Employee Agreement shall be considered severable such that if any one provision or clause conflicts with existing or future applicable law, or may not be given full effect because of such law, it shall not affect any other provision of the Contractor's Employee Agreement which can be given effect without the conflicting provision or clause. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts, except for its choice of law rules, regardless of where Contractor's Employee performs services for the Client. Contractor's Employee agrees to the exercise of personal jurisdiction over him/her by the courts of the Commonwealth of Massachusetts the full extent permitted by law.

## **10. EXECUTION**

By executing this Employee Agreement, Contractor's Employee certifies that (a) he/she is a direct employee of Contractor; (b) he/she has agreed to provide the Services reflected in a Purchase Order between GRC and Contractor; and (c) he/she has been informed by Contractor of his/her obligations under the Contractor Agreement and the applicable Purchase Order, has had an opportunity to ask questions about such obligations, and fully understands and agrees to abide by such obligations, and by the obligations set forth in this Contractor's Employee Agreement.

Signed: Contractor: \_\_\_\_\_

Contractor's Name:

Dated: \_\_\_\_\_