

# CONSULTING AGREEMENT

This CONSULTING AGREEMENT (the "Agreement") is made as of 1/1/2000 (the "Effective Date") by and between Clark Kent ("Consultant") and LexCorp, Inc., a Delaware corporation ("Client").

WHEREAS, Client desires to engage Consultant to perform technical consulting services (the "Services"), and Consultant desires to perform such Services.

NOW, THEREFORE, Consultant and Client (collectively the "Parties"), for good and valuable consideration, the receipt of which is hereby acknowledged, agree as follows:

1. **Services.** For a period of approximately one month commencing on the Effective Date (or for such longer period as the Parties may agree in writing, which need not be a formal amendment to this Agreement), Consultant will consult and work with Client's personnel on such specific assignments as are provided from time to time by Company in email or other written directions (the "Services"). Consultant will perform the Services in a diligent, professional and workmanlike manner, consistent with industry standard. Consultant will not perform or invoice Client for Services in excess of twenty (20) hours per week without Client's prior written consent.
2. **Fees & Expenses.** Client shall pay Consultant at the rate of \$100 per hour for the Services, and reimburse Consultant for reasonable out-of-pocket expenses incurred in connection with the Services. Consultant will transmit an invoice to Client every two weeks, and Client will pay Consultant all amounts due within ten (10) days of receipt of such invoice. Late payments shall be subject to a late payment fee of five percent (5%) of the amount due.
3. **Intellectual Property.** [Coding:] As between Consultant and Client, Consultant's original work product prepared for Client in connection with the Services (the "Work Product") shall be deemed a "work made for hire" under United States Copyright Law. To the extent such Work Product cannot be deemed a work made for hire, Consultant hereby assigns, sells and conveys all right, title and interest in and to such Work Product to Client in exchange for Client's covenants hereunder. Notwithstanding the foregoing, Client understands and agrees that: (a) Ruby on Rails is an open source software ("OSS") platform; and (b) Consultant's Work Product shall be subject to the terms and conditions of the applicable Ruby on Rails or other OSS license.  
[Teaching:] As between Consultant and Client, Consultant's original work product prepared for Client in connection with the Services shall be deemed the property of Consultant, as long as such work violates neither the conditions in this Section, nor the Confidentiality provisions in Section 5.
4. **Open Source Software.** It is understood that Consultant may, at Consultant's discretion, make use of libraries from various "Open Source" software products during the course of work. Consultant may submit back to such libraries any improvements ("patches") made to the Open Source Software during the course of work, as long as the submission of such patches violates neither the conditions in this Section, nor the Confidentiality provisions in Section 5.
5. **Confidentiality.** Consultant agrees to maintain in confidence Client's confidential and proprietary information ("Confidential Information"), and not to disclose or use such information other than in connection with Consultant's Services hereunder.
6. **Term & Termination.** This Agreement is effective as of the Effective Date set forth above, and shall continue until terminated, either immediately due to a material breach or either party's bankruptcy, insolvency or assignment for the benefit of creditors, or upon thirty (30) days written notice by one party to the other for any other reason. The termination or expiration of this Agreement shall not relieve Client of its obligations to pay Consultant for any Services rendered or expenses incurred prior to termination, or relieve Consultant of his obligation to maintain the confidentiality of Client's Confidential Information. Sections 3, 4, 5, 6, 7, 8, and 9 shall survive the termination and/or expiration of this Agreement.

7. Limitation of Liability. NEITHER PARTY SHALL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER IN TORT, CONTRACT OR OTHERWISE, AND EVEN IF SUCH DAMAGES ARE FORESEEABLE.
8. Disclaimer. OTHER THAN AS SET FORTH HEREIN, CONSULTANT DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ERROR-FREE OPERATION, UNINTERRUPTED OPERATION, AND NON-INFRINGEMENT.
9. General. This is the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior agreements, representations and understandings. Any amendment to this agreement must be in writing signed by the Parties. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any dispute arising out of or relating to this Agreement shall be brought and heard in the Courts located in San Francisco, California, and the Parties irrevocably consent to the jurisdiction of such courts, waiving any challenges based on venue and the convenience of the forum. The prevailing party in any action to enforce or interpret this Agreement shall be entitled to its reasonable attorney's fees and costs. If any provision of this Agreement shall be deemed unenforceable, it shall be revised so as to render it enforceable, or if not capable of such revision, severed herefrom, and the remainder of the Agreement shall be enforced.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

“CONSULTANT”

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

Clark Kent

“CLIENT”

LexCorp, Inc., a Delaware corporation, a corporation

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

Lex Luthor, its President