

Consulting Agreement

PARTIES

This Agreement is entered into this XXX day of XXX (the "Effective Date"), by and between XXX, a XXX company (hereinafter "Consultant"), located at: XXX and XXX, a company registered in the state of XXX: (hereinafter "Client"), locate at: XXX Client wishes to retain Consultant and Consultant wishes to perform the services (the "Services"), subject to the following terms:

Scope of Services

Consultant shall use reasonable efforts to provide the Services described in Exhibit A, attached hereto and made a part of this Agreement. All Services will be performed diligently and in a timely and professional manner.

Term

This Agreement shall commence on the Effective Date noted above and shall continue in effect until a party terminates the Agreement by providing a minimum of thirty (30) days prior written notice to the other party. In that event, payment for all Services rendered, plus travel and living expenses, if any, up to the date of termination, shall be promptly made to Consultant by Client.

Payment Terms:

A. All payments under this Agreement will be made in US dollars in accordance with the fees and payment schedule noted in Exhibit A. If payment is not received when due, then Consultant reserves the right to temporarily cease performing the Services and/or terminate the Agreement until such time as all outstanding invoices have been paid.

B. Except as noted in 3.C below, all federal, state and municipal income taxes applicable to the proceeds received by Consultant and social security, unemployment and workers' compensation shall be the responsibility of Consultant.

C. The fee(s) shown in Exhibit A is exclusive of any sales, use or other taxes that may be assessed or levied by a governmental agency/authority on this Agreement or the Services/work product. All such taxes and levies will be the Client's responsibility to paid, either to Consultant or directly to the assessing authority.

Independent Contractor

Consultant and its employees, sub-contractors, representatives, agents, etc. are all independent contractors and not an employee, agent, or representative of Client, and no partnership, joint venture or any other legal entity is hereby created or implied under this Agreement.

Ownership

Client shall retain and be the exclusive owner of all rights, title and interest in all copyrights related to the work product developed by Consultant for Client under this Agreement as a "work made for hire", excluding however, any 'open source software' and related documentation, included by Consultant into the work

product. Title and ownership shall pass to Client upon receipt of full payment of all invoices. Consultant retains ownership rights to all qualifying derivative works developed independently by Consultant, including related concepts, know-how, ideas, expression of ideas, copyrights, and trademarks, etc.

Confidentiality

Consultant will not use or disclose to others any Client confidential information, including the work product and related data, analysis, results and reports prepared for Client under this Agreement (collectively the "Information"), except as necessary to perform the Services, which may require disclosure to its employees, sub-contractors, or to a third party who have all signed appropriate confidentiality agreements with Consultant to maintain the confidentiality of the Information. This obligation of confidentiality shall not apply to any information, data, analysis, results, reports, etc. which is already in Consultant's possession or known to Consultant or its sub-contractors without a legal obligation to keep confidential, or to such data and information that is now or hereinafter enters the public domain, or has been developed by Consultant or its sub-contractors independently of this Agreement. This paragraph 6 shall survive expiration, assignment, or termination of this Agreement.

Warranty/Disclaimer

Consultant represents that the Services will be performed in a professional manner. Except as aforesaid, Consultant makes no other representations or warranties of any kind, either express, implied or by operation of law or otherwise, regarding the Services, including the work product developed under this Agreement, or any other item furnished under this Agreement or in connection therewith. Consultant disclaims any and all implied warranties of merchantability or fitness for a particular purpose, including infringement or title. This paragraph 7 shall survive expiration, assignment, or termination of this Agreement.

Limitation of Liability

In no event shall either party be liable for any consequential, incidental, indirect, special, exemplary, or punitive damages arising directly or indirectly out of or related to this Agreement or the Services/work product or any other item furnished under this Agreement or in connection therewith. Consultant's maximum liability for damages, if any, shall not exceed the fees paid to Consultant for the Services that caused the damage(s). This paragraph 8 shall survive expiration, assignment, or termination of this Agreement.

Indemnification

In consideration of the Services provided by Consultant hereunder, Client agrees to indemnify, defend and hold Consultant, its partners, employees, officers, consultants, agents and representatives harmless from and against any and all claims, demands, losses (including reasonable attorney's fees, expert witness fees and court fees) arising out of or in conjunction with this Agreement, the Services, the work product, or any third party's use of the Services, work product, data, results, or reports furnished. This Section 9 shall survive expiration, assignment, or termination of this Agreement.

Disputes

Prior to either party commencing any legal action(s) under this Agreement, the parties will attempt, in good faith, to resolve the dispute by themselves. If the parties are unable to reach agreement on any matter in dispute after 60 days of good faith negotiations, then the parties agree to submit the dispute to ADR

(Alternative Dispute Resolution) mediation for settlement. The parties shall mutually agree on the entity to conduct the mediation which will be held in a location convenient to both parties. The mediation expenses will be shared equally by both parties. The parties agree that arbitration shall not be a proper venue to resolve any dispute under this Agreement. Each party shall be responsible for its own expenses. This Section 10 shall survive expiration, assignment, or termination of this Agreement.

General

- A. This Agreement, along with Exhibit A, constitutes the entire agreement between the parties and may not be modified or amended except by written authorization from authorized representatives of both parties. Terms and conditions contained on any purchase order form (if used) or other forms are hereby void and of no effect.
- B. This Agreement shall be governed by and construed in accordance laws of XXX, without giving effect to any conflict-of-laws principles that would result in the application of the laws of a different state or venue. Both parties hereby consent to the exclusive jurisdiction and venue of the state and federal courts of XXX. Process may be served on either party by U.S. mail, postage prepaid, certified or registered, return receipt requested.
- C. The provisions of this Agreement are severable and the invalidity of any provision hereof shall not affect the validity of any other provision.
- D. Neither party shall be held responsible or liable to the other party or to any third party nor be deemed to have defaulted under or breached this Agreement for failure to fulfill its obligations under this Agreement due to causes beyond its control including, but not limited to, terrorist acts, riots, war, acts of war, insurrections, strikes, acts of God, material or product delays, any type of virus, or pandemic, failures in the internet or related carriers and third-party controlled equipment, or any Governmental actions [collectively a 'Force Majeure' event]. Payment for Services rendered shall be made by __ to Vendor promptly when such Force Majeure causes are removed.
- E. No waiver by either party shall be binding unless set forth in a writing and signed by representatives of both parties.

SIGNATURE AND DATE

AGREED AND ACCEPTED:

CLIENT Name: Signature: Date:

CONSULTANT Name: Signature: Date:

EXHIBIT A

CONSULTING AGREEMENT

Services to be performed: XXX Billing Rate(s): XXX