

COVER PAGE

Example Logo

JOHNNY SAMPLE
8 Some Sample Street
Town, State, Country, Postcode
04xx xxxxxx
me@example.net

Consulting Contract Template

Prepared for {owner} by {consultant}

This Consulting Contract (this “Agreement” or this “Consulting Contract”), effective as of {date}, (“Effective Date”) is made by and between {owner}, with offices located at {company street address}, {company city state postcode} (“Company”) and {consultant}, a business with offices located at {street address}, {city state postcode} (“Consultant”).

WHEREAS, Company wishes to retain Consultant to {work description} as more specifically set forth in Attachment 1; and

WHEREAS, Consultant agrees to perform the services set forth in this Agreement and Attachment 1;

NOW, THEREFORE, in consideration of the foregoing recitals and the terms, conditions and covenants contained herein, it is hereby agreed as follows:

1 ENGAGEMENT

Company hereby engages Consultant and Consultant agrees to render at the request of Company, independent consulting services (“Services”) as set forth in the Statement of Work at Attachment 1 and other statements of work which may be added hereto by way of modification to this Agreement (“Statement of Work”), all of which are incorporated herein and form a part hereof. Services shall be ordered by the Company’s issuance of purchase orders that incorporate this Agreement by reference and / or statements of work that incorporate this Agreement by reference or are otherwise added to this Agreement by way of modification hereto. Consultant shall provide the Services in a diligent and professional manner and in no event later than any scheduled completion dates set forth in the Statement of Work or the terms of any purchase order. Time is of the essence for this Agreement and any purchase orders and / or statements of work issued hereunder.

2 TERM

The term of this Agreement shall commence on the Effective Date and continue until [DATE], unless otherwise modified by mutual, written agreement of the parties or terminated as set forth herein.

3 COMPENSATION & PAYMENT

As consideration for the Services, and upon the submission of monthly invoices, within the payment terms stipulated herein, the Company shall pay Consultant at the rates or in accordance with the milestone payment schedule set forth on purchase order(s) issued by Company or in the Statement of Work, for such Services as are actually rendered by Consultant and accepted by the Company. In no event, however, shall Consultant perform, or receive compensation for: (a) additional services not set forth in the Statement of Work without a formal, bilateral modification to the Statement of Work encompassing such additional services; (b) services involving contingency payments prohibited by any applicable

law or regulation or by the Company's contract; or (c) services rendered that result in billings to the Company that are in excess of [DOLLAR AMOUNT] which is the total ceiling value or not-to-exceed (NTE) value for this Agreement. If expressly provided for in the Statement of Work and expressly not included in the firm-fixed-price that may be established in the Statement of Work, Company shall reimburse Consultant for reasonable and necessary out-of-pocket travel and other miscellaneous expenses relating to this Agreement, which are incurred at the direction of, and upon the prior written approval of, the Company. Such reasonable travel expenses include air/rail travel, taxis, auto rentals, meals, and lodging, provided that such reimbursement will not be in excess of that allowed by the paragraph above, and provided that no reimbursement shall be made for Consultant's commuting to facilities within a fifty-kilometer radius of Consultant's home or place of business. Travel must be authorized by Company prior to any anticipated reimbursable travel. Reimbursement for reasonable and actual expenses shall be made in accordance with the following rates: a. Air travel – Lowest unrestricted coach fare b. Rented Automobile – Compact Type, unless not practical c. Meals, Incidentals, Lodging (Accommodations) & Private Vehicle Usage – Actual and reasonable costs supported by original receipts, or the rates and allowances specified in Appendices B, C and D of the Treasury Board of Canada Travel Directive Effective April 1, 2008 (revised January 15, 2009), whichever is less. d. Miscellaneous Expense – Actual and reasonable pre-approved costs that are directly and reasonably required for performance of the Services. e. Alcohol and most entertainment costs are NOT allowable expenses, will not be reimbursed by Company, and shall not be included in any manner in any invoice submitted hereunder. All invoices shall include a breakout and description of the Services rendered, along with the actual hours and expenses incurred (for T&M type services) and milestone descriptions (for FFP type services), receipts (if required), and shall be submitted in a format prescribed by the Company indicating the applicable purchase order number issued by the Company or Statement of Work for which the invoice relates. Company shall make payment within thirty (30) days after receipt of a proper invoice that complies with the requirements of this Agreement. Company may withhold any amounts in an invoice that are in dispute, are contrary to the requirements of this Section 3, or are not substantiated by proper receipts. Payments made to Consultant shall not constitute or be construed as acceptance of any of the Services performed by Consultant under this Agreement.

4 INDEPENDENT CONTRACTOR

Consultant and Company shall at all times be deemed to be independent contractors and nothing herein shall be construed to create or imply that there exists between the parties a partnership, joint venture or other combined business organization. Consultant shall hold no authority, express or implied, to commit, obligate or make representations on behalf of Company and shall make no representation to others to the contrary. Nothing herein is intended nor shall be construed for any purpose as creating the relation of employer and employee or agent and principal between the parties. Except as otherwise specified herein, Consultant retains the right to direct, control or supervise the details and means by which the consulting Services are provided. Consultant's employees shall not be eligible for, or participate in, any insurance, pension, workers' compensation insurance, profit sharing or other plans established for the benefit of Company employees. Consultant shall be responsible for payment of all foreign and domestic taxes arising out of the Consultant's activities in connection with this Agreement, including without limitation, sales, goods and services, excise, value added or similar taxes, whether of federal or other jurisdictional level, social security taxes, unemployment insurance taxes, and any other taxes or business license fees as required. Company shall not be responsible for withholding any income or employment taxes whatsoever on behalf of Consultant, and Consultant further agrees to indemnify, defend and hold Company harmless from and against any claims or action arising out of or relating to Consultant's failure to withhold such taxes on behalf of Consultant or Consultant's employees.

5 AUDIT

Consultant shall retain all books, records, documents and other evidence pertaining to its Services rendered and billings made under this Agreement (“the Records”). The Records shall be subject to inspection and audit by Company and the Government (if necessary) at all reasonable times and upon reasonable notice for a period of three (3) years after final payment under this Agreement. If any audit of Consultant’s invoiced charges demonstrates that Consultant’s invoiced charges exceed the correct charges, Consultant shall immediately pay or refund such excess charges to Company’s account, and if such excess charges exceed the correct charges by more than five percent (5%), Consultant shall also pay or reimburse Company for all reasonable costs of such audit, to include any reasonable costs (including attorneys fees and costs) incurred by Company in collecting such excess charges from Consultant.

6 CONFIDENTIALITY

Each party shall receive in confidence (“receiving party”) from the other party (“disclosing party”) and treat as confidential all technical information, business/financial information, management information, and documentation which (i) is stamped or otherwise marked as being confidential or proprietary, whether in written or electronic form, (ii) pertains in any way to such party’s (or its affiliates’) business plans or methods, or (iii) otherwise is not generally known by others, and under the circumstances of the disclosure, the disclosing party had a reasonable expectation that the receiving party would know that the information is confidential or proprietary (collectively, “Proprietary Information”). Information that is disclosed orally or visually to a receiving party shall also be deemed Proprietary Information if the disclosing party identifies such information as proprietary at the time of disclosure and, within thirty (30) days after such disclosure reduces the subject matter of the disclosure to writing and submits it to the receiving party. A receiving party shall hold Proprietary Information received from the disclosing party in confidence, shall use such information only for the purpose of and in accordance with this Agreement and shall not further disclose such information to any third party without the prior written approval of the original disclosing party. The obligation to protect the confidentiality of Proprietary Information shall extend for a period of five (5) years following a party’s receipt of Proprietary Information. The restrictions of this Section shall not apply to any information: (i) lawfully received from another source free of restriction and without breach of this Agreement, (ii) that is published or becomes generally available to the public without breach of this Agreement, (iii) known by the receiving party prior to the time of disclosure, (iv) independently developed by the receiving party without resort or access to the Proprietary Information; or (v) that the disclosing party has approved for further release by the receiving party. Proprietary Information shall remain the property of the disclosing party and shall be returned or destroyed upon written request or upon termination or expiration of this Agreement. Receiving party may retain in the files of its legal counsel for archival purposes only, one copy of all written materials returned.

7 INTELLECTUAL PROPERTY RIGHTS

7.1 Inventions

1. Consultant shall promptly disclose to Company all inventions, software, development, improvements, and contrivances (hereinafter “Inventions”) in Consultant’s field of endeavor in the line of Company’s present or future business which are made or conceived or actually or constructively

reduced to practice by Consultant or with Consultant's assistance or under Consultant's direction in the course of performance during the term and any extension of the term of this Agreement, whether or not patentable and whether made by any of Consultant's employees solely or jointly with others, which relate to or are suggested by or result from any Services which the Consultant may perform pursuant to this Agreement or from any information obtained by the Consultant in any discussions or meetings with employees of Company.

2. Consultant shall assign and does hereby assign all Consultant's rights, title and interest in and to said Inventions to Company, and shall assist Company in every way to protect, at Company's expense, said Inventions, including but not limited to, the signing of patent applications, oaths and assignments in favor of Company relating to the said Inventions, respecting such applications in the United States and in any and all foreign countries and shall assist in any interference proceedings or litigation involving any patents that may be obtained for such Inventions.
3. Consultants shall make no applications for patents on any such Inventions except for Company's benefit as herein provided.

7.2 Cooperation

1. "Intellectual Property Rights" shall mean all intellectual and industrial rights, including intellectual and industrial rights to inventions and patents for inventions, including reissues thereof and continuations in part, copyright, designs and industrial designs, trademarks, know-how, trade secrets and confidential information, and other proprietary rights. Consultant hereby undertakes and agrees to cause any individuals contracted by it or employed by it to perform work hereunder to waive all moral rights and *droits de suite* in and to all intellectual property, including Inventions and copyrightable materials, created by such individuals in their performance of this Agreement and does waive, for itself, any and all moral rights it may have in and to any such intellectual property created in the performance of this Agreement. Consultant further agrees that, subject to the above paragraphs and all subparagraphs thereunder, during and after the term of this Agreement, Consultant shall execute any documents necessary to vest full title in any such intellectual property in Company, and will otherwise assist Company in obtaining, either for itself or its assigns, at Company's expense, all advantages and benefits which may be derived from any such intellectual property, in every proper way during and subsequent to this Agreement, including the securing of all Intellectual Property Rights.
2. Consultant agrees that, with respect to all copyrightable materials which were not first produced, programmed or designed by Consultant but were incorporated into Services performed and delivered to Company in connection with this Agreement, Consultant shall grant a royalty-free, non-exclusive, and irrevocable license to Company to use, reproduce, dispose of, translate, publish and to authorize others of Company's choosing to do the same with respect to any and all said materials, provided this license shall be only to the extent the Consultant has the right or in the future acquires the right to grant such licenses without becoming liable for any compensation to others solely because of such grant. In this regard, Consultant further agrees to promptly notify Company of any such limitation of which Consultant is aware concerning said materials.
3. Data — All notes, drawings, designs and technical data developed in connection with or pursuant to the terms of this Agreement shall become and/or remain the exclusive property of Company, and Company shall have the exclusive right to use and disclose them for any purpose. Upon completion of the Services or earlier termination of this Agreement, Consultant agrees to promptly deliver to Company all materials, including all copies thereof, that are in Consultant's possession or under his/her control that were developed in connection with this Agreement.

8 REPRESENTATIONS & WARRANTIES

Consultant represents and warrants that Consultant and each officer or employee thereof who renders Services hereunder:

1. shall perform the Services in accordance with the highest standards of professional skill and that for a period of six (6) months from the completion date of the Services, Consultant shall, at no charge to Company, furnish such materials and services as may be necessary to correct any defects in the materials or deliverables developed under the applicable Statement of Work;
2. shall comply with all applicable federal and other jurisdictional laws, including local laws, in performing the Services;
3. it has the authority and capacity to enter into this Agreement and it is not subject to any restrictive covenant or other legal obligation which prohibits the Consultant from performing the Services;
4. hasn't any relationship with any third party with whom Company has contracted which would cause such person to have a conflict of interest in relation to this Agreement or in respect of the Services. Should any such conflict of interest arise during the term of this Agreement, the Consultant covenants and agrees to immediately notify Company; and
5. is and will continue to be, where applicable, a GST registrant in accordance with the A New Tax System (Goods and Services Tax) Act 1999 (Australia).

9 INSURANCE

Consultant agrees to procure and maintain during the term of this Agreement, at Consultant's own cost and expense, professional indemnity and public liability insurance, with the following minimum liability limits:

1. \$1,000,000 for professional liability;
2. \$5,000,000 for public liability.

Consultant agrees to provide appropriate certificates or other evidence of such insurance coverage as may be requested by Company. Consultant agrees that the procurement and maintenance of the above insurance coverage shall not limit or affect any liability that Consultant may incur under this Agreement or otherwise.

10 SAFETY

Consultant agrees to comply with all federal, provincial and territorial occupational health and safety laws, regulations and standards, and all Company's safety rules of which Consultant has notice, regarding the performance of Services under this Agreement. Consultant agrees to communicate Company's safety rules to Consultant's contractors and employees. Consultant responsible for maintaining a safe workplace by following commercially accepted safety and health rules and practices. Consultant is responsible for immediately reporting accidents, injuries, and unsafe equipment, practices or conditions related to Consultant's performance of work for Company to the Authorized Representative of Company identified herein. Company is committed to keeping its workplaces free from hazards. Consultant authorizes Company to provide minor first aid to those individuals performing Services on

behalf of Consultant hereunder, with the consent of the injured person, for injuries sustained on Company' property. If Company believes immediate emergency care is necessary for an illness or injury to Consultant's employees, Consultant authorizes Company to call for ambulance service, and Consultant agrees to pay (or to reimburse Company) for any such ambulance charge. Consultant shall defend, indemnify and hold Company and its officers, directors and employees harmless from and against all expenses, costs, damages, liabilities and losses incurred by Company in connection with any claim, investigation, demand, action, suit or proceeding arising out of or resulting from the provision of any medical care or treatment to those individuals performing Services on behalf of Consultant hereunder or the calling of ambulance services for such employees by Company.

11 PUBLICITY

Except as required by law, Consultant shall not issue any press release or make any other public statement relating to this Agreement, any Services performed under this Agreement, or any of the transactions contemplated by this Agreement, without obtaining the prior written approval of Company as to the contents and the manner of presentation and publication of such press release or public statement.

12 ACCEPTANCE

If Company is not reasonably satisfied with any Service, it will so notify Consultant with an explanation of the deficiency. Consultant will, at its own expense, re-perform the Service within twenty-one (21) days after receipt of Company's notice of deficiency. The foregoing procedure will be repeated until Company accepts or finally rejects the Service in its reasonable discretion.

13 TERMINATION

This Agreement may be terminated by either party in the event the other party fails to perform its obligations hereunder on time, fails to assure timely performance, or otherwise fails to perform its material obligations; provided, however, that prior to such termination the terminating party notifies the defaulting party in writing at least fifteen (15) days in advance, states the reasons why the Agreement should be terminated and affords the defaulting party an opportunity to cure any alleged default during such fifteen (15) day notice period. Either party may terminate this Agreement, upon notice and without liability, in the event the other party: (a) files a petition in bankruptcy; (b) has filed against it an involuntary petition in bankruptcy not dismissed within sixty (60) days; (c) consents to the appointment of a receiver, custodian, trustee or liquidator; or (d) dissolves, liquidates or makes a general assignment for the benefit of creditors. Company may terminate this Agreement, or any Services to be performed hereunder, in whole or in part, without cause and for its own convenience, by providing Consultant written notice of termination at least fifteen (15) days in advance, specifying the extent to which the Agreement is so terminated and the date upon which such termination becomes effective. Company shall have no liability for such termination except for liability for Services rendered or expenses incurred by Consultant in accordance with this Agreement prior to the effective date of such termination and for which payment has not been made. Upon termination of this Agreement, Consultant shall return to Company all copies of any Company data, records, or materials, of whatever nature and regardless of media. Consultant shall also furnish Company with all work in progress or portions thereof. Within thirty (30) days following termination or expiration of this Agreement, Consultant shall submit to Company a termination proposal detailing the work completed and accepted by

Company and the proposed value of such completed and accepted work. The amount due Consultant as a result of any termination hereunder will be as follows:

1. For Services performed on a firm-fixed-price (FFP) basis:
 1. The lesser of 1) a prorated portion of the overall Statement of Work price based on the percent of the work completed and accepted up to the date of termination or 2) actual hours expended under the Statement of Work at the Consultant's most favored rate for such consulting services, such hours to be supported with suitable records.
2. For Services performed on a time-and-materials (T&M) basis:
 1. Actual hours expended under the Statement of Work for accepted Services at the hourly rates set forth in the Statement of Work.

Upon payment of the agreed to termination settlement amount, Company shall thereafter have no liability or obligation to Consultant for any further compensation, fees, expenses or other payments related to this Agreement.

14 LIABILITY AND INDEMNIFICATION

Neither Company, nor its officers, directors, employees, affiliates, or parent companies shall be liable for any injury to the person or property of Consultant or its employees or contractors, except to the extent that such injury was directly caused by the fault or negligence of Company or its employees acting within the scope of their employment. In addition to any other indemnification obligation herein, Consultant shall indemnify, defend and hold Company and its officers, directors, and employees, harmless from and against all expenses, costs, damages, liabilities and losses (including, without limitation, reasonable attorneys fees) incurred by Company in connection with any claim, investigation, demand, action, suit or proceeding (whether civil, criminal, administrative or investigative) arising out of or resulting from Consultant's performance of the Services, including but not limited to, the following:

- 1.
2. Consultant's failure to deduct and pay taxes required by law on compensation Consultant is obligated to pay to its officers, employees or independent contractors; and
3. Personal injury or death, as well as loss or damage to property, caused directly or indirectly by the acts, omissions or negligence of Consultant or any of Consultant's agents, employees, officers or independent contractors engaged in the performance of the Services under this Agreement.

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES INCURRED BY THE OTHER PARTY OR ANY THIRD PARTY, WHETHER IN CONTRACT, TORT, OR BASED UPON A WARRANTY, EVEN IF THE OTHER PARTY OR ANY THIRD PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. COMPANY'S MAXIMUM LIABILITY UNDER THIS AGREEMENT SHALL BE THE SUM OF THE STATEMENT OF WORK AND / OR PURCHASE ORDER TOTAL VALUES, LESS ANY PAYMENT MADE TO CONSULTANT HEREUNDER.

15 MISCELLANEOUS

1. Severability — If any provision of this Agreement shall be held to be invalid or unenforceable, such provision shall be stricken and the remainder of the Agreement shall remain in full force and effect to accomplish the intent and purpose of the parties. The parties agree to negotiate

the severed provision to bring the same within the applicable legal requirements to the extent possible.

2. **Governing Law** — The validity, interpretation and/or enforcement of this Agreement shall be governed by the laws of the State of {state}, {jurisdiction}, including its recognition of applicable federal law, but excluding such jurisdiction's choice of law rules.
3. **No Waiver** — Any failure or delay by either party to exercise any right, power or privilege hereunder or to insist upon observance or performance by the other party of the provisions of this Agreement shall not operate or be construed as a waiver thereof. No waiver shall be binding on either party unless it is in writing and signed by an authorized representative of the party to be bound.
4. **Survival** — The obligations in this Agreement that by their terms naturally survive the expiration or termination of this Agreement shall so survive, including without limitation Sections 5, 6, 7, 8, 13, 14, 15, 18 and 20.
5. **Contradictory Terms** — Notwithstanding any provisions on any form supplied by Company or Consultant, all purchase orders or requests for service issued pursuant to this Agreement or in connection with the Services to be provided hereunder shall be subject to and governed by the terms and conditions of this Agreement and the attachments hereto. No provision that alters, revises, or supplements the terms of this Agreement, which may appear on any purchase order, or other form provided by the parties shall have any force or effect unless such provision(s) are agreed to in writing by Company and Consultant and are expressly incorporated herein.
6. **Anti-Assignment** — Neither party may assign, subcontract, or otherwise transfer its rights or obligations under this without the prior written consent of the other party, which shall not be unreasonably withheld.
7. **Integration/Modification** — This document and any exhibits or attachments hereto embody the entire Agreement of the parties with respect to the subject matter hereof and supersede and cancel all previous negotiations, agreements or commitments by the parties, whether oral or written. This Agreement may not be released, canceled, abandoned, amended or modified in any manner except by an instrument in writing duly signed by each of the parties hereto.
8. **Disputes** — The parties agree that prior to bringing any legal action upon any dispute or controversy between the parties arising under or in connection with this Agreement ("Dispute") they will attempt to settle such matter through good faith negotiations. Failing such efforts, the parties agree and consent to exclusive venue and jurisdiction in the State and Federal courts of {state}, {jurisdiction}, and each party waives any defense of inconvenient forum in connection with such proceedings. The parties acknowledge and agree that the foregoing shall not prevent a party hereto from seeking or obtaining injunctive, preliminary or provisional relief to enforce a party's rights or to prevent immediate or irreparable harm to a party, including but not limited to the rights set forth in Sections 6 and 7 of this Agreement.
9. **Counterparts** — This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one agreement. To evidence the fact that it has executed this Agreement, a party may send a copy of its executed counterpart to the other party by electronic transmission and the signature transmitted by such transmission shall be deemed to be that party's original signature for all purposes.
10. **Acknowledgement** — The parties acknowledge that they have read and understand this Agreement, and agree to be bound by its terms and conditions in their entirety.

This Agreement is duly executed by the duly authorized representatives of the parties as set forth below: [CONSULTANT NAME]

[CLIENT COMPANY]

Owner Name Contractor Name

Owner Signature Contractor Signature