

**PROTOTYPAL, INC.**  
**CONSULTING AGREEMENT**

This Consulting Agreement (the “Agreement”) is entered into as of March 28, 2019 (the “Effective Date”), by and between Timothy Jon McEwen Jr., an independent consultant (“Consultant”), on the one hand, and Prototypal, Inc. (together with its parent and subsidiary corporations and their affiliates, the “Company” or “Prototypal”), on the other hand (collectively, the “Parties”).

In consideration of the promises and mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the Parties agree as follows:

**1. CONSULTING ENGAGEMENT.**

a. General. The Company and Consultant agree that, effective as of March 28, 2019, Consultant will become an independent consultant to the Company in accordance with the terms and conditions set forth in this Agreement.

b. Duties. Consultant agrees to consult with the Company and each of its affiliates from time to time at the Company’s reasonable request during the term of this Agreement with respect to the Company’s business, including, without limitation, aiding in the development, design, and architecture of subcontracted software development tasks for clients of Prototypal. It is anticipated that, due to the nature of the consulting services to be performed pursuant to this Agreement, which may be enumerated further without limitation in Exhibit A hereto, Consultant shall be available to consult with the Company on a full-time basis as scheduled by the Company, or as otherwise instructed by Prototypal.

c. Independence. Nothing in this Agreement shall be construed to constitute the parties hereto as partners, joint venturers or employer and employee. Consultant acknowledges and agrees that the services rendered to the Company pursuant to this Agreement are pursuant to a independent contractor relationship and not an employer/employee relationship and Consultant is, and shall be treated as, an independent contractor and Consultant shall not be eligible for, or entitled to, any benefits under any and all of the Company’s or its affiliates’ welfare, benefit, retirement, 401(k), pension, incentive compensation, vacation, severance, or any other, plan, policy or program applicable to the Company’s or its affiliates’ employees.

**2. TERM OF AGREEMENT.** Unless earlier terminated in accordance with Section 3 of this Agreement or extended by mutual agreement of the Parties in writing, the term of this Agreement will commence on March 28, 2019 and shall terminate on the termination of this Agreement, in accordance with Section 3 herein (the “Term”).

**3. TERMINATION.** This Agreement shall automatically terminate without any continuing obligation (except for any consulting services performed through the date of such termination) upon the delivery of written notice of such termination to the other Party, and may

be terminated at any time without cause by either Party hereto.

**4. CONSULTING FEE AND OTHER MATTERS.**

a. Consulting Fee. Consultant's consulting fee under this Agreement shall be in the amount of \$30/hour ("Consulting Fee"). No taxes or other withholdings shall be deducted from the Consulting Fee, and the Company shall issue a Form 1099 to Consultant for the consulting services rendered under this Agreement. Consultant shall be solely responsible for all taxes and withholdings required by applicable law respect to any and all Consulting Fees the Consultant receives pursuant to this Agreement. Consultant shall issue written invoices to the Company each week for such consulting services rendered during the prior month (or on such more or less frequent intervals as Consultant may submit to the Company) and such invoices will be promptly paid in accordance with the Company's normal policies and procedures governing vendor invoices in an electronic payment made to Consultant.

b. Tax Issues. Consultant acknowledges and agrees that the Company has made no representations to them regarding the tax consequences of any amounts received by him pursuant to this Agreement and that the Consulting Fees may be considered taxable income and subject to disclosure to the appropriate taxing authorities. Consultant agrees to pay federal or state taxes which are required by law to be paid with respect to the Consulting Fees and all other payments under this Agreement. Consultant further agrees to indemnify and hold the Company harmless from any claims, demands, deficiencies, levies, assessments, executions, judgments or recoveries by any governmental entity against the Company for any amounts claimed due on account of this Agreement or pursuant to claims made under any federal or state tax laws, and any costs, expenses or damages sustained by the Company by reason of any such claims, including any amounts paid by the Company as taxes, deficiencies, levies, assessments, fines, penalties, interest or otherwise.

**5. NO DISPARAGEMENTS.** During the Term and thereafter, Consultant shall not make any oral or written statements that are disparaging of the Company or its parent or subsidiary corporations, their affiliates, or any of their respective present or former officers, directors, agents, employees and successors or assigns or successors and assigns. The Company agrees that it shall not make any oral or written statements that are disparaging of Consultant.

**6. RETURN OF THE COMPANY'S DOCUMENTS AND PROPERTY.** Upon the expiration of the Term (or sooner if requested/demanded by the Company in writing), Consultant shall return all records, documents, proposals, notes, lists (including all lists of customers, business prospects, and/or suppliers and price lists), files and any and all other materials including, without limitations, computerized and/or electronic information, that refers, relates or otherwise pertains to the Company, its parent and subsidiary corporations, their affiliates, and/or each of their respective officers, directors, shareholders, agents, employees, and successors or assigns, and any and all business dealings of said persons and entities (the "Company Documents"), to the Company by delivering, via Federal Express or United Parcel Service Next Day Delivery, the Company Documents to the Company's offices in San Francisco,

CA. In addition, upon the expiration of the Term (or sooner if requested/demanded by the Company in writing), Consultant shall return to the Company all property and equipment that they have been issued during the course of this relationship or which they otherwise then-possesses, including, but not limited to, any passes, keys or identification, laptop computers, cellular phones, pagers, corporate vehicle(s), and credit, charge or calling cards (the "Company Property") by delivering, via Federal Express or United Parcel Service Next Day Delivery, the Company Property to the Company's offices in Mountain View, CA. At the end of the Term, Consultant shall not retain any copies or duplicates of any of the Company Documents, nor shall he retain any Company Property. Consultant agrees that, upon and concurrently with their delivery of the Company Documents and Company Property to the Company, Consultant shall execute and deliver the Termination Certification in the form attached hereto and incorporated herein as Exhibit B.

**7. CONFIDENTIAL INFORMATION.** Consultant understands that, by virtue of Consultant's consulting relationship with the Company, Consultant has been and will be exposed to Proprietary Information. "Proprietary Information" includes all ideas, information and materials, tangible or intangible, not generally known to the public, relating in any manner to the business of the Company, its personnel (including its officers, directors, agents, employees and contractors), its customers, clients, vendors, suppliers, business prospects, distributors, consultants, and all others with whom it does business that Consultant learned or acquired during the period of Consultant's consulting relationship with the Company and during the Term of this Agreement. Proprietary Information includes, but is not limited to, manuals, documents, computer programs, compilations of technical, financial or other data, lists of actual or prospective customers and clients, names of vendors, suppliers, distributors and consultants, specifications, designs, business, sales and marketing plans, forecasts, financial information, pricing information, work in progress, and other technical or business information.

a. During the Term and at all times thereafter, Consultant agrees to hold in trust and confidence all Proprietary Information they learned or acquired during the Term. Consultant shall not disclose any Proprietary Information to anyone outside the Company without the written approval of an authorized officer of the Company or use any Proprietary Information for any purpose other than for the benefit of the Company as required by Consultant's performance of their services under this Agreement. At all times during the Term, Consultant shall comply with all of the Company's policies or regulations relating to the protection and confidentiality of Proprietary Information. Upon termination of this consulting relationship, (1) Consultant shall not use Proprietary Information, or disclose Proprietary Information to anyone, for any purpose, unless expressly requested to do so in writing by an authorized officer of the Company, (2) Consultant shall not retain or take with Consultant any Proprietary Information in a Tangible Form (defined below), and (3) Consultant shall immediately deliver to the Company any Proprietary Information in a Tangible Form that Consultant may then or thereafter hold or control, as well as all other property, equipment, documents or things that Consultant was issued or otherwise received or obtained during Consultant's employment with the Company or during the Term. Consultant agrees to confirm Consultant's compliance with this paragraph 7 upon termination of this consulting relationship by immediately executing the Termination Certification that is set forth and incorporated in this

Agreement as Exhibit B. "Tangible Form" includes ideas, information or materials in written or graphic form, on a computer disc or other medium, or otherwise stored in or available through electronic, magnetic, videotape or other form.

b. Consultant acknowledges the following matters. The Company is engaged, without limitation, in the business of software, software development and software design (the "Business"). The market for the Business covers the entire world (its "Market"); and (3) during the Term, Consultant will be exposed to Proprietary Information that relates directly to the Company's Business. Consultant further acknowledges that because of the nature of Consultant's work at the Company, Consultant's engaging in similar work for another company that, directly or indirectly, engages in the Business anywhere in its Market will necessarily and inevitably involve or lead to Consultant's unauthorized use or disclosure of Proprietary Information. Accordingly, during the Term, Consultant shall not, directly or indirectly, become employed by or provide any services to or for any company or business that is engaged in the Business anywhere in its Market.

c. Consultant acknowledges that, because of the nature of Consultant's work for the Company, Consultant's solicitation of or serving the Company's customers, clients and vendors would necessarily involve the unauthorized use or disclosure of Proprietary Information, and the proprietary relationships and goodwill of the Company. Accordingly, during the Term and for three months thereafter, Consultant shall not, directly or indirectly, solicit, induce, or interfere with, or attempt to solicit, induce or otherwise interfere with, any person or entity then known to be a customer or client or vendor of the Company (a "Restricted Customer/Client/Vendor") to terminate his or her or its relationship with the Company for any purpose, including the purpose of associating with or becoming a customer, client or vendor, whether or not exclusive, of Consultant or any entity of which Consultant is or becomes an officer, director, member, agent, employee or consultant, or otherwise solicit, induce, interfere with, or attempt to solicit, induce or interfere with, any Restricted Customer/Client/Vendor to terminate his or her or its relationship with the Company for any other purpose or no purpose.

d. During the Term and for 12 months thereafter, Consultant shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce, any person known to Consultant to be an employee of the Company (each such person, a "Company Person") to terminate his or her employment or other relationship with the Company for the purpose of associating with (1) any entity that engages in the Business of which Consultant is or becomes an officer, director, member, partner, principal, agent, employee or consultant, or (2) any competitor of the Company in the Business, or otherwise encourage any Company Person to terminate his or her employment or other relationship with the Company for any other purpose or no purpose.

e. All time periods in this Agreement shall be computed by excluding from such computation any time during which Consultant is in violation of any provision of this Agreement and any time during which there is pending in any court of competent jurisdiction any action (including any appeal from any final judgment) brought by any person, whether or not a party to this Agreement, in which action the Company seeks to enforce the agreements and covenants in this Agreement or in which any person contests the validity of such agreements and

covenants or their enforceability or seeks to avoid their performance or enforcement.

f. Consultant understands that the provisions in this Section 7 have been carefully designed to restrict Consultant's activities to the minimum extent that is consistent with law and to protect the Company's legitimate business interests regarding the protection of its Proprietary Information including, principally, its trade secrets. Consultant has carefully considered these restrictions, and Consultant confirms that they will not unduly restrict Consultant's ability to obtain or pursue a livelihood and will not impair Consultant's ability to engage in their chosen business, trade or profession whatsoever. Consultant has heretofore engaged in businesses other than the Business. BEFORE SIGNING THIS AGREEMENT, CONSULTANT HAS HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT AND ALL OF ITS TERMS WITH AN ATTORNEY AND CONSULTANT KNOWINGLY AND VOLUNTARILY HAS AGREED TO THESE PROVISIONS.

g. It is the intent of the Parties that the provisions in this Section 7 shall be valid and enforceable in all respects. Consultant understands and agrees that their full compliance with the provisions of this Section 7 is mutually dependent upon the obligations of the Company to pay Consultant the Consulting Fee. Consultant further understands and agrees that in the event that any of provisions of this Section 7 are rendered void, invalid, illegal or otherwise unenforceable, in whole or in substantial part, the Company, in its sole discretion, may terminate this Agreement along with its obligations to pay Consultant the Consulting Fee without any continuing liability thereafter.

h. If Consultant or the Company breaches, or threatens to commit a breach of, any of the provisions of this Agreement, either Party shall have the following rights and remedies, each of which shall be independent of the others and severally enforceable (although, in the case of a threatened breach, the remedy hereunder shall be limited to injunctive relief and/or specific performance), and each of which shall be in addition to, and not in lieu of, any other rights or remedies available to the Company or its affiliates, successors or assigns at law or in equity under the Agreement or otherwise:

(1) As a provisional remedy in aid of arbitration, the right and remedy to have each and every one of the covenants in this Agreement specifically enforced and the right and remedy to obtain injunctive relief, it being agreed that any breach or threatened breach of any of the restrictive covenants in this Agreement would cause irreparable injury to the Company and its affiliates, successors or assigns and that money damages would not provide an adequate remedy to the Company and its subsidiaries, affiliates, successors or assigns.

(2) Consultant acknowledges and agrees that the covenants and agreements contained herein are reasonable and valid in geographic, subject matter and temporal scope and in all other respects. If, however, any court or arbitrator subsequently determines that any of such covenants or agreements, or any part thereof, is invalid or unenforceable, the remainder of such covenants and agreements shall not thereby be affected and shall be given full effect without regard to the invalid portions.

(3) If any court or arbitrator determines that any of the

covenants and agreements, or any part thereof, is unenforceable because of the subject matter, duration or geographic scope of such provision, such court or arbitrator shall have the power to reduce the scope of such provision (but only to the extent necessary to make such provision enforceable), and, in its reduced form, such provision shall then be enforceable to the maximum extent permitted by applicable law.

(4) If the courts or arbitrators of any one or more jurisdictions hold any such covenant or agreement in this Section 7 to be void, illegal, invalid or otherwise unenforceable by reason of the breadth or scope or otherwise, it is the intention of the Parties that such determination shall not bar or in any way affect the Company's or any of its affiliates', successors' or assigns' right to the relief provided about in any other jurisdiction, as to breaches of such covenants and agreements in such other respective jurisdictions, such covenants and agreements as they relate to each jurisdiction being, for this purpose, severable into diverse and independent covenants and agreements.

## **8. INVENTIONS.**

a. Inventions Retained and Licensed. Contractor has attached hereto, as Exhibit B, a list describing with particularity all inventions, original works of authorship, developments, improvements, and trade secrets which were made by Contractor prior to the commencement of the Relationship (collectively referred to as "Prior Inventions"), which belong solely to Contractor or belong to the Contractor jointly with another, which relate in any way to any of the Company's proposed businesses, products or research and development, and which are not assigned to the Company hereunder; or, if no such list is attached, the Contractor represents that there are no such Prior Inventions. If, in the course of the Relationship with the Company, the Contractor incorporates into a Company product, process or machine a Prior Invention owned by them or in which they have an interest, the Company is hereby granted and shall have a non-exclusive, royalty-free, irrevocable, perpetual, worldwide license (with the right to sublicense) to make, have made, copy, modify, make derivative works of, use, sell and otherwise distribute such Prior Invention as part of or in connection with such product, process or machine.

b. Assignment of Inventions. The Contractor agrees that Consultant will promptly make full written disclosure to the Company, will hold in trust for the sole right and benefit of Prototypal, and hereby assign to Prototypal, or its designee, all her rights, titles and interests throughout the world in and to any and all inventions, original works of authorship, developments, concepts, know-how, improvements or trade secrets, whether or not patentable or registrable under copyright or similar laws, which Contractor may solely or jointly conceive or develop or reduce to practice, or cause to be conceived or developed or reduced to practice, during the period of time in which they are a consultant of the Company (collectively referred to as "Inventions"), except as provided in Section 8(e) below. Contractor further acknowledges that all inventions, original works of authorship, developments, concepts, know-how, improvements or trade secrets which are made by them (solely or jointly with others) within the scope of and during the period of the Relationship with the Company are "works made for hire" (to the

greatest extent permitted by applicable law) and are compensated by such amounts paid to Contractor under any applicable consulting agreement or consulting arrangements.

c. Maintenance of Records. Contractor agrees to keep and maintain adequate and current written records of all Inventions made by Consultant (solely or jointly with others) during the term of the Relationship with the Company. The records may be in the form of notes, sketches, drawings, flow charts, electronic data or recordings, laboratory notebooks, and any other format. The records will be available to and remain the sole property of the Company at all times. Contractors agree not to remove such records from the Company's place of business except as expressly permitted by Company policy which may, from time to time, be revised at the sole election of the Company for the purpose of furthering the Company's business. Contractor agrees to return all such records (including any copies thereof) to Prototypal at the time of termination of the Relationship with the Company as provided for in Section 6.

d. Patent and Copyright Rights. Contractor agrees to assist Prototypal, or its designee, at its expense, in every proper way to secure Prototypal, or its designee's, rights in the Inventions and any copyrights, patents, trademarks, mask work rights, moral rights, or other intellectual property rights relating thereto in any and all countries, including the disclosure to Prototypal or its designee of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments, recordations, and all other instruments which Prototypal or its designee shall deem necessary in order to apply for, obtain, maintain and transfer such rights and in order to assign and convey to Prototypal or its designee, and any successors, assigns and nominees the sole and exclusive rights, title and interest in and to such Inventions, and any copyrights, patents, mask work rights or other intellectual property rights relating thereto. Contractor further agrees that their obligation to execute or cause to be executed, when it is in their power to do so, any such instrument or papers shall continue after the termination of this Agreement until the expiration of the last such intellectual property right to expire in any country of the world. If Prototypal or its designee is unable because of Contractor's mental or physical incapacity or unavailability or for any other reason to secure their signature to apply for or to pursue any application for any United States or foreign patents, copyright, mask works or other registrations covering Inventions or original works of authorship assigned to Prototypal or its designee as above, then Contractor hereby irrevocably designate and appoint Prototypal and its duly authorized officers and agents as their agent and attorney in fact, to act for and in their behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the application for, prosecution, issuance, maintenance or transfer of letters patent, copyright or other registrations thereon with the same legal force and effect as if originally executed by Contractor. Contractor hereby waive and irrevocably quitclaim to Prototypal or its designee any and all claims, of any nature whatsoever, which he now or hereafter has for infringement of any and all proprietary rights assigned to Prototypal or such designee.

e. Exception to Assignments. Contractor understands that the provisions of this Agreement requiring assignment of Inventions to Prototypal does not apply to any invention that Contractor develops entirely on their own time without using the Company's

equipment, supplies, facilities, or trade secret information except for those inventions that either: (1) relate at the time of conception or reduction to practice of the invention to the Company's business, or actual or demonstrably anticipated research or development of the Company; or (2) result from any work performed by Contractor for the Company. Contractor will advise the Company promptly in writing of any inventions that he believe meet such provisions and are not otherwise disclosed on Exhibit A.

**9. BINDING EFFECT.** This Agreement shall be binding upon the Parties and their respective heirs, administrators, representatives, executors, successors and assigns, and shall insure to the benefit of the Parties and their respective heirs, administrators, representatives, executors, successors and assigns.

**10. SEVERABILITY.** While the provisions contained in this Agreement are considered by the Parties to be reasonable in all circumstances, it is recognized that some provision may fail to technical reasons. Accordingly, it is hereby agreed and declared that if any one or more of such provisions shall, either by itself or themselves or take with others, be adjudged to be invalid as exceeding what is reasonable in all circumstances for the protection of the interest of the Company, but would be valid if any particular restrictions or provisions were deleted or restricted or limited in a particular manner, then the said provisions shall apply with any such deletions, restrictions, limitations, reductions, curtailments, or modifications as may be necessary to make them valid and effective and the remaining provisions shall be unaffected thereby.

**11. ENTIRE AGREEMENT; MODIFICATION; GOVERNING LAW.** This Agreement, including Exhibits A and B, constitutes the entire understanding among the Parties and may not be modified without the express written consent of the Parties. Except as otherwise provided herein, this Agreement supersedes all prior written and/or oral and all contemporaneous oral agreements, understandings and negotiations regarding the subject matter hereof. This Agreement shall be governed by and construed and enforced pursuant to the laws of the State of California applicable to contracts made and entirely to be performed therein.

**13. VOLUNTARY AGREEMENT; NO INDUCEMENTS.** Each Party to this Agreement acknowledges and represents that they or it (a) has fully and carefully read this Agreement prior to signing it, (b) has been, or has had the opportunity to be, advised by independent legal counsel of their or its own choice as to the legal effect and meaning of each of the terms and conditions of this Agreement, and (c) is signing and entering into this Agreement as a free and voluntary act without duress or undue pressure or influence of any kind or nature whatsoever and has not relied on any promises, representations or warranties regarding the subject matter hereof other than as set forth in this Agreement.

**14. JURISDICTION.** In any action to enforce any of the provisions of this Agreement or otherwise arising in any manner out of this Agreement or the services provided hereunder, whether in tort or contract, jurisdiction shall be exclusively vested in the courts located within in the United States District Court for the Northern District of California. This Agreement shall be governed by the laws of the State of California.





**IN WITNESS WHEREOF**, the Parties have signed this Agreement below.

CONSULTANT:

Signature: \_\_\_\_\_

Name:

Dated:

Address:

Prototypal, Inc.

Signature: \_\_\_\_\_

By:  
Erik Brynjolfsson  
President

Dated:

EXHIBIT A

JOB DESCRIPTION

Various software development tasks

**EXHIBIT B**

**LIST OF PRIOR INVENTIONS  
AND ORIGINAL WORKS OF AUTHORSHIP  
EXCLUDED UNDER SECTION 8**

<u>Title</u>	<u>Date</u>	<u>Identifying Number or Brief Description</u>
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\_\_\_ No inventions or improvements

\_\_\_ Additional Sheets Attached

Signature of Consultant:

Print Name of Consultant:

Date:

## TERMINATION CERTIFICATION

This is to certify that I do not have in my possession, nor have I failed to return, any devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, laboratory notebooks, flow charts, materials, equipment, other documents or property, or copies or reproductions of any aforementioned items belonging to Prototypal, Inc., its subsidiaries, affiliates, successors or assigns (together the "Company").

I further certify that I have complied and will comply with all the terms of the Consulting Agreement executed by me on \_\_\_\_\_, which Agreement is reaffirmed in its entirety and is incorporated herein, including but not limited to the return of Company Documents and Company Property as defined in that Agreement, and the reporting of any inventions and original works of authorship (as defined therein), conceived or made by me (solely or jointly with others) covered by that Agreement.

Date:

NAME

\_\_\_\_\_

Signature

Address: