

## SERVICES AGREEMENT

This Services Agreement (“Agreement”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (“Effective Date”), by and between Company Inc., a Delaware corporation having a principle place of business at \_\_\_\_\_ (“Company”), and \_\_\_\_\_, a \_\_\_\_\_ (state of incorporation) \_\_\_\_\_ (corporation) (“Consultant”). Company desires to retain Consultant as an independent contractor to perform consulting services for Company and Consultant is willing to perform such services, on terms set forth more fully below. In consideration of the mutual promises contained herein, the parties agree as follows:

1. **Statements of Work.** From time to time, Company and Consultant may agree on certain services to be performed under this Agreement, and in that case, shall prepare a statement of work in a form as the parties may agree (“Statement of Work” or “SOW”). Each Statement of Work, upon execution by both of the parties hereto, will be incorporated into, and subject to this Agreement, and each SOW shall refer to this Agreement, specifically. In the event of a conflict between the terms of this Agreement and the terms of an SOW, the terms of the SOW shall govern, but only with respect to the subject matter of that SOW.
2. **Services and Compensation.** Consultant shall perform for Company the services (“Services”) described in each Statement of Work. Company shall pay Consultant the compensation set forth in the applicable Statement of Work for the performance of the Services. Such fees may be on a time and materials basis, or on a milestone basis, or otherwise as agreed by the parties. Company will reimburse Consultant for reasonable travel, administrative, equipment, and out-of-pocket expenses without mark-up of any kind, provided such expenses are incurred in conjunction with the Services that have been pre-approved by Company in writing, and are made consistent with Company’s travel policy.
3. **Reports.** Consultant also agrees that Consultant will, from time to time during the term of this Agreement or any extension thereof, keep Company advised as to Consultant’s progress in performing the Services under this Agreement.
4. **Invoices.** All invoices for Company are to be sent to the address stated on Company’s Purchase Order or e-mailed to \_\_\_\_\_. Our preferred method of delivery of invoices is by e-mail. Consultant will submit invoices showing the following information: purchase order number, description of item or service, each applicable tax, extended totals and any other information specified elsewhere herein. The Company purchase order number must appear on the invoice. Where required by country law, invoices must state “Tax Invoice” and the respective Tax ID before it will be accepted by Company.
5. **Payment Terms.** Payment terms are net forty-five (45) days from receipt of a correct invoice. Payments are subject to acceptance of deliverables by Company. As a normal course of business, Company does not make prepayment. Should a prepayment be required, the Consultant will be required to submit a preliminary invoice showing the P.O. number, cost, quantity and scheduled ship date (if applicable) to Company’s A/P

department. No additional charges of any kind will be allowed unless specifically agreed to in writing in advance.

6. **Term.** This Agreement will commence on the Effective Date and will continue until the earlier of: (a) the two (2) year anniversary of the Effective Date or (b) termination as provided below.
7. **Termination.** Either party may terminate this Agreement without cause upon giving thirty (30) days prior written notice thereof to the other party. If a party terminates this Agreement under the prior sentence, Consultant shall complete the Services still pending under an active SOW, and such SOW the Agreement shall survive until such Services have been completed or such SOW has expired or terminated. Company may terminate a Statement of Work without cause upon giving ten (10) days prior written notice thereof to Consultant. In the event of such a termination, Company shall pay to Consultant the fees for any Services performed before the effective date of termination on a time and materials basis. If the fees for the applicable Statement of Work are paid on a milestone basis, such fees will not exceed the amount associated with the next uncompleted milestone. Notwithstanding the above, Company shall have the right to terminate this Agreement at any time for a material breach of the terms. In any such event, this Agreement and the consulting relationship shall be deemed effectively terminated as of the time of giving of such notice of termination. Upon any termination, Company shall pay, within forty-five (45) days after the effective date of termination, all amounts owing to Consultant for Services completed and accepted by Company prior to the termination date and related expenses, if any.
8. **Warranty Specifications.** Consultant warrants that the work or services performed hereunder will be performed in a good and workmanlike manner consistent with generally accepted industry practices. Consultant further warrants that (i) it has all right, title and interest in any content or intellectual property it supplies in connection with this Agreement, (ii) the performance of its obligations will not violate any other agreement to which Consultant is a party and (iii) Consultant will comply with all applicable federal, state and local laws.
9. **Cancellation.** Company reserves the right to cancel all – or any part of the undelivered portion – of this order if Consultant does not make deliveries as specified or if Consultant breaches any of the terms hereof including, without limitation, the warranties of Consultant.
10. **Confidentiality.** All information furnished by Company will be treated by Consultant as Company confidential information; Consultant will not disclose such information to any third party, nor use the information for any purpose except to deliver the services hereunder. Company confidential information will remain Company's property and Consultant shall return all such information to Company upon request. In addition, this Agreement does not authorize the Consultant to use the name of or make reference to Company for any purpose in any releases for public or private dissemination.

11. **Notices.** Any notice, reports or communications required under this Agreement or by law must be in writing and must be (a) delivered in person, (b) sent by first class registered mail, or air mail, as appropriate, or (c) sent by overnight air courier, in each case properly posted and fully prepaid to the addresses as set forth above, or to such other address as may be given by a party with notice in accordance with this section. Notices will be deemed given at the time of actual delivery in person, three (3) business days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service. A “business day” shall mean any day other than Saturday, Sunday or a US public holiday.
12. **Company Logo.** If Company supplies Consultant with any Company trademarks or logos or other Company content for use in connection with any services provided by Consultant hereunder, such Company trademarks, logos or content shall be used by Consultant solely in accordance with any usage guidelines supplied by Company. Company hereby grants to Consultant a non-exclusive, non-transferable, royalty-free right and license to use, reproduce and display its “Corporate Logo” solely for the purpose of fulfilling its obligations under this Agreement for the term of the Agreement, and subject to Consultant’s compliance with Company’s Corporate Identity Usage Guidelines. Consultant’s use of Company’s Corporate Logo in any manner not authorized under this Agreement shall be considered a material breach of this Agreement. Company retains all rights, title and interest in and to the trademarks, names, designs and/or any materials it supplies to Consultant under this Agreement, and Company reserves all rights not expressly granted herein.
13. **Intellectual Property / Work Product.** Any copyright, trademark, trade secret, software, data idea, concept, process, formula, invention, system, report or other intellectual property right resulting from any Consultant work performed for an Order shall be the sole property of Company. Consultant agrees to assign and hereby assigns to Company any interest Consultant may have in such intellectual property right conceived by Consultant and/or reduced to practice by Consultant using funds provided by Company.
14. **Independent Contractor.** This Agreement does not create any joint venture, agency, or employment relationship between the parties. Consultant and Company are independent contractors with respect to one another under the terms of this Agreement. Neither party shall have the authority to legally bind the other party to any contract, proposal, or commitment or to incur any debt or create any liability on behalf of the other.
15. **Indemnity.** Consultant agrees to indemnify and hold harmless Company and its directors, officers and employees from and against all taxes, losses, damages, liabilities, costs and expenses, including attorneys’ fees and other legal expenses, arising directly or indirectly from or in connection with (i) any negligent, reckless or intentionally wrongful act of Consultant or Consultant’s assistants, employees or agents, (ii) a determination by a court or agency that the Consultant or any of Consultant’s assistants, employees or agents is not an independent contractor with respect to Company, (iii) any breach by the Consultant or Consultant’s assistants, employees or agents of any of the terms of this

Agreement, (iv) any failure of Consultant to perform the Services in accordance with all applicable laws, rules and regulations, or (v) any violation or claimed violation of a third party's rights resulting in whole or in part from Company's use of the work product of Consultant under this Agreement.

16. **WAIVER OF CONSEQUENTIAL DAMAGES AND LIMITATION OF LIABILITY.** Company SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, EVEN IF Company HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE MAXIMUM CUMULATIVE AND AGGREGATE LIABILITY OF Company FOR ALL COSTS, LOSSES OR DAMAGES FROM CLAIMS ARISING UNDER OR RELATED IN ANY WAY TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED AN AMOUNT EQUAL TO THE TOTAL FEES PAYABLE BY Company TO CONSULTANT.
17. **Insurance.** Consultant agrees to obtain and maintain throughout the Term, insurance of such types and in such amounts as a reasonably prudent company in its industry would obtain and, upon request, agrees to provide Company with evidence of such insurance.
18. **Entire Agreement.** This Agreement together with all Statements of Work and agreements referenced herein or attached hereto contain the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter. This Agreement may not be amended, except by a writing signed by both parties.
19. **Waiver.** The failure of Company to enforce at any time any of the provisions of this Agreement, to exercise any election or option provided herein or to require at any time the performance by Consultant of any of the provisions herein will not in any way be construed to be a waiver of such provisions.
20. **Assignment.** No right or obligation under this Agreement may be assigned by Consultant without the prior written consent of Company and any purported assignment without such consent will be void. Company may assign this Agreement at any time in connection with a sale of Company's assets or a transfer of its obligations.
21. **Governing Law.** This Agreement will be governed by the laws of the State of California, without regard to conflict of law principles, subject to the exclusive jurisdiction of the state and federal courts located in the counties of San Mateo and Santa Clara, California.

Each person signing below represents that he/she has read the Agreement in its entirety; understands the terms; is duly authorized to execute this Agreement on behalf of the party indicated below by his or her name; and agrees on behalf of such party that such party will be bound by those terms.

**Consultant**

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

Print Name: \_\_\_\_\_

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

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

**Company Inc.**

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

Print Name: \_\_\_\_\_

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

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

**STATEMENT OF WORK**

This Statement of Work (“SOW”) shall be governed by the Services Agreement dated \_\_\_\_\_ (“Agreement”), in effect between Company Inc. and \_\_\_\_\_ (“Consultant”). Defined terms used herein shall have the means ascribed to them in the Agreement. In the event of any conflict between the terms of the Agreement and the terms of this SOW, the terms of this SOW shall govern, but only with respect to the Services that are the subject matter of this SOW.

Services to be performed by Consultant:

**Compensation of Consultant: (rate, fee, etc. – and invoice schedule)**

**Expenses authorized for reimbursement by Company:**

Maximum amount chargeable under this SOW, including all items listed above is

Assignment of Copyright: For good and valuable consideration, the undersigned sells, assigns and transfers to Company, a Delaware corporation, and its successors and assigns, the copyright in and to the above work(s) which were created by the undersigned and all right title and interest of the undersigned, vested and contingent therein and thereto.

**Agreed and Accepted:**

**Consultant**

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

Print Name: \_\_\_\_\_

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

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

**Company Inc.**

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

Print Name: \_\_\_\_\_

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

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