CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (this "Agreement") is dated _____ 20 ____, ("Effective Date"), and is by and between _____ ("Client") and _____ ("Consultant").

RECITAL

WHEREAS, Consultant is a specialist or has particular expertise in the field or area of Consulting Services contemplated herein; and

WHEREAS, upon the terms and conditions set forth herein, Client desires to engage Consultant to provide the Consulting Services set forth herein, and Consultant desires to perform same.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows.

1. <u>Description of Consulting Services; Scope</u>. Upon the terms and conditions set forth herein, Client hereby engages Consultant to perform the following consulting services (the "Consulting Services"), and Consultant agrees to perform and render same:
_____
_____
_____
_____
_____
_____

If applicable, the scope of Consulting Services hereunder expressly excludes the following:
_____
_____
_____
_____

2. <u>Term</u>. The term of this Agreement ("Term") shall commence on _____, and shall terminate as follows:

☐ This Agreement shall be on a month-to-month basis, terminable by either party on ____ days advance notice to the other party.

☐ This Agreement shall automatically end on the following date: _____.

☐ This Agreement shall automatically end when the Consulting Services are completed.

☐   Other. Describe: _____

3.   <u>Compensation</u>. Client agrees to pay Consultant the following compensation ("<u>Compensation</u>") for the Services:

<u>Check box, as applicable</u>:

☐   Hourly rate of $_____ per hour

☐   Fixed fee of $_____ for the full project contemplated herein

☐   Success Fee. Describe: _____

☐   Other. Describe: _____

<u>Check box, as applicable</u>:

☐   A retainer payment of $_____ shall be paid to Consultant before commencement of the Consulting Services.

☐   No retainer payment shall be required.

4.   <u>Payment Terms</u>. Compensation shall be payable as follows:

☐   When invoiced to Client. Payable within ____ days of receipt of invoice.

☐   Daily

☐   Weekly

☐   Bi-Weekly

☐   Upon completion of the Services

☐   Other. Describe milestones: _____

_____
_____
_____

Consultant shall provide Client with a detailed description of its work rendered and, if applicable, the amount of time spent on each work item. This detailed description shall be provided in connection with each payment of compensation hereunder or as otherwise agreed by the parties.

5.   <u>Professional Licenses</u>. Consultant represents and warrants to Client that Consultant possesses all valid and current licenses, permits, and approvals to perform the Consulting Services

contemplated herein if any are required. Consultant shall comply with the policies, rules, and standards of the Client, as may be amended from time to time, and shall perform the Consulting Services in a professional manner, faithfully, diligently, in good faith and commercial reasonableness, and in furtherance of the best interests of the Client. In the performance of the Consulting Services, Consultant shall comply with all applicable laws, rules, and regulations. Client shall communicate to Consultant any special requirements as may be applicable to the project as contemplated herein.

6.   Confidentiality and Nondisclosure. In the performance of the Consulting Services, Consultant may become privy to, or otherwise observe or learn about confidential or proprietary information related to the Client's or other parties' business and plans (hereinafter collectively, the "Confidential Information"). Consultant acknowledges and agrees that the Confidential Information constitutes valuable assets of the Client or others, and that except for disclosures required by applicable law, and information which is a matter of public record, Consultant shall maintain as confidential, and shall not, during the Term of this Agreement or any time after the termination of this Agreement, disclose any Confidential Information to any person or use any Confidential Information for the benefit of Consultant or any other person, except with the prior written consent of the Client. Prior to any disclosure of Confidential Information, Consultant shall notify the Client of the intended disclosure, and shall cooperate with the Client in seeking and obtaining a protective order or other means of protection relating to such prospective disclosure.

7.   Noncompetition.

Check box, as applicable:

☐ Consultant hereby agrees to the following non-competition covenant:

Throughout the Term, Consultant will not (whether alone or with another partner and/or business entity) begin or engage in a competing business with Client which offers for sale or solicits the sale of services and/or products substantially similar to those sold or provided by Client. Consultant will not in any way use Client's database, information, or files for Consultant's purposes outside of the scope of this Agreement. Throughout the Term, Consultant will not work for a competitor of Client, whether as an employee or independent contractor. Consultant agrees that the foregoing covenant is reasonable and is necessary to protect the legitimate business interests of Client.

☐   The noncompetition covenant shall not apply.

8.   Taxes. Consultant shall be solely responsible for and shall timely pay when due all withholding taxes, Social Security, state unemployment, and other taxes and impositions of any kind or nature relating to Consultant and Consultant's business, employees, agents, and permitted subcontractors. Consultant shall timely pay when due all applicable sales and use taxes on the labor provided and materials furnished or otherwise required by law in connection with the

Consulting Services hereunder. Consultant acknowledges and understands that Client shall not remit tax withholdings on Consultant's behalf.

9.   Satisfaction by Client. Unless otherwise agreed, no Compensation shall be paid to Consultant until due hereunder and the Consulting Services have been inspected, reviewed, and approved by Client in Client's sole discretion, acting reasonably. If Client determines that Consultant's Services are deficient, defective, or incomplete in any fashion (any of the foregoing, a "Deficiency"), Client shall have the right, in addition to all other rights that may be available to Client whether at law or in equity, to elect, at its sole discretion to: (a) notify Consultant of the Deficiency, in which event Consultant shall promptly correct such Deficiency; or (b) retain a third party or undertake to perform the cure of the Deficiency itself, in which event the Compensation associated with such deficient Consulting Services shall be deemed not earned by Consultant and shall be retained by Client and not paid to Consultant.

10.   Time is of the Essence. Consultant acknowledges that time is of the essence in the performance of all Consulting Services hereunder. Consultant shall promptly commence performance of the Services on the schedule agreed upon between Consultant and Client and shall diligently perform and complete same in accordance with the requirements hereof. If Consultant is delayed or anticipates being delayed in the commencement or completion of the Consulting Services, Consultant shall promptly notify the Client of same.

11.   Independent Contractor Relationship. Consultant acknowledges that Consultant is an independent contractor and is not an agent, partner, joint venturer, or employee of Client. Consultant shall have no authority to bind or otherwise obligate the Client in any manner, nor shall Consultant represent to any third party that it has a right to do so. Consultant further agrees that in the event the Client suffers any loss or damage due to violation of this provision, Consultant shall indemnify and hold harmless the Client from any such loss or damage. Upon request by the Client, the Consultant shall provide all applicable and valid documentation required by the Client including but, not limited to, a Form W-9, this Agreement duly executed by Consultant, and a current Certificate of Insurance evidencing Consultant's maintenance of the required coverages herein, if any.

12.   Insurance.

Check box, as applicable:

☐   Proof of Insurance Required. Throughout the Term of this Agreement, Consultant shall maintain customary business owner's insurance at levels and with insurers reasonably satisfactory to the Client, including coverage for professional liability/errors and omissions, general liability, business interruption, vehicle coverage, worker's compensation, and crime, as applicable. If requested, the professional liability/errors and omissions policy and the general liability policy shall name the Client as an additional insured. Consultant shall provide the Client with appropriate certificates of insurance, evidencing Consultant's insurance coverage hereunder.

☐   Proof of Insurance Not Required.

13.   <u>Return of Documents</u>. Consultant acknowledges and agrees that all originals and copies (including electronic copies), and any summaries or notes thereof, of records, reports, documents, lists, plans, memoranda, notes, and other documentation related to the business of the Client or its clients, or containing any Confidential Information, are and shall be the sole and exclusive property of the Client. To the extent Consultant comes into possession of any such items, Consultant shall promptly return same to the Client upon demand, and in any event shall return same upon the termination or expiration of this Agreement.

14.   <u>Assignment; Delegation of Duties</u>. Consultant shall not assign its rights under this Agreement or delegate any of its duties hereunder, unless any such assignment or delegation is approved in advance in writing by the Client.

15.   <u>Indemnity.</u> Consultant shall indemnify, defend and hold Client harmless from any breach by Consultant of this Agreement, and for any loss, claim, demand, or liability caused by or resulting from the Consulting Services, unless to the extent attributable to the fault, negligence, or willful misconduct of Client.

16.   <u>Additional Terms and Conditions</u>. The parties hereby agree to the following additional terms and conditions: _____
_____
_____
_____
_____
_____

17.   <u>Miscellaneous.</u>

     a.   The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns.

     b.   In the event of a default under this Agreement, the defaulting party shall reimburse the non-defaulting party for all costs and expenses reasonably incurred by the non-defaulting party in connection with the default, including without limitation, reasonable attorney's fees and costs. Any dispute hereunder shall be resolved through binding arbitration, pursuant to the commercial arbitration rules of the American Arbitration Association. The prevailing party in any such action or proceeding shall be entitled to recovery of all costs and fees incurred in connection with such action or proceeding.

     c.   No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

d.   This Agreement shall be governed by and shall be construed in accordance with the laws of the State of _____.

e.   This Agreement constitutes the entire agreement between the parties pertaining to its subject matter hereof and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all parties.

f.   Any notice or other communication hereunder may be sent by SMS text, email, or US mail to the intended recipient thereof, to the addresses and/or other contact information set forth below, and shall be deemed delivered and received upon confirmation of receipt (in the case of email or SMS text), or three business days after posting to US mail (in the case of mail).

Client Contact Information: _____
_____
_____

Consultant Contact Information: _____
_____
_____

IN WITNESS WHEREOF, the parties execute this Agreement and agree to be bound by the terms hereof.

Client Signature:_____

Name: _____

Date: _____

Consultant Signature:_____

Name: _____

Date: _____