

CONSULTING AGREEMENT

This **CONSULTING AGREEMENT** (the "Agreement"), dated as of _____, 2008, (the "Effective Date") by and between _____, a _____ corporation, having a principal place of business at _____ ("Consultant") and **XYZ LLC**, having a principal place of business at 100 Main Street, New York, NY 10023 ("XYZ"). This Agreement may refer to Consultant or to XYZ as a "Party" or Consultant and XYZ together as "Parties" to this Agreement.

WHEREAS, Consultant is in the business of _____;

WHEREAS, XYZ wishes to engage the services of Consultant to perform certain efforts as described in one or more Statements of Work, as may be agreed upon from time to time in writing and are set forth in Exhibit A hereto, as it may be amended (the "Services"); and

WHEREAS, Consultant wishes to provide the Services in accordance with the terms and conditions hereof.

In consideration of the mutual covenants contained herein, XYZ and Consultant hereby agree as follows:

ARTICLE I

Statement of Work

XYZ hereby retains Consultant to perform the Services, and Consultant agrees to perform the Services in conformity with the Statements of Work set forth on Exhibit "A" ("Statement of Work") to this Agreement, subject to the terms and conditions of this Agreement and all applicable local, state, and federal laws. Consultant will devote such time, efforts and resources to the performance of the Services as are reasonably necessary to accomplish the tasks specified in the Statements of Work. The Statements of Work shall identify the following:

- (a) This Agreement and the date as of which the provisions of the Statement of Work will be effective;
- (b) The nature and objectives of the Services, the Services to be performed and the obligations to be discharged by Consultant;
- (c) The deliverables to be provided by Consultant to XYZ in connection with the Services (the "Deliverables");
- (d) Functional and/or technical specifications (standards or guidelines) for the Deliverables (the "Specifications");

- (e) Completion and acceptance criteria for the Deliverables;
- (f) A time schedule for performance of Services by Consultant and a related task plan;
- (g) The specific resources to be provided by Consultant and the project roles of Consultant's personnel; and
- (h) The payments to be made to Consultant for Services under the Statement of Work.

XYZ may reduce the scope of work in a Statement of Work at any time by written notification to Consultant and the scope of work in a Statement of Work may otherwise be amended or enlarged from time to time by mutual written agreement of XYZ and Consultant. Consultant may not decline to accept any changes to the scope of work in a Statement of Work requested by XYZ that reduce the cost of performance, provided that an equitable adjustment in compensation is made for the out-of-pocket costs of any performance or preparation already undertaken by Consultant. Consultant further may not decline any changes to the scope of work in a Statement of Work requested by XYZ that increase the cost or magnitude of performance, provided that the changes do not significantly increase the scope of work and a commensurate increase in compensation is fixed. Consultant shall furnish such written reports, analyses and documentation in connection with the performance of Consultant's duties under this Agreement as XYZ shall request from time to time.

ARTICLE II

Term

A. This Agreement shall commence as of the Effective Date and remain in force and effect for a period of two (2) years, unless terminated earlier in accordance with the provisions of this Article. Each Statement of Work executed prior to the effective date of the termination shall, unless terminated in accordance with this Article II, remain in full force and effect in accordance with its terms, including the terms and conditions of this Agreement, which are by this reference incorporated into and made a part of each Statement of Work.

B. XYZ shall have the right to terminate this Agreement or any Statement of Work for its convenience at any time by providing thirty (30) days prior written notice to Consultant. Upon such termination, or at the expiration of this Agreement, Consultant shall be paid for the Services satisfactorily completed and performed by Consultant on or before the date of termination that have not previously been paid or reimbursed by XYZ.

C. If either Party materially breaches the terms of a Statement of Work and such breach is not cured within 30 days after written notice is given to the breaching Party, then the

other Party may, by giving written notice to the breaching Party, terminate this Agreement and/or the applicable Statement of Work as of the end of such 30 day period or such later date as is specified in the notice of termination.

D. If this Agreement or a Statement of Work is terminated by XYZ under Section II.C, XYZ shall be entitled, without prejudice to any other rights or remedies available to it, to cause the completion of any pending projects by, at its option, either (i) requesting Consultant to complete the projects, in which case Consultant shall be paid for the Services requested by XYZ that have been satisfactorily completed and performed by Consultant and that have not previously been paid or reimbursed by XYZ, or (ii) causing such Services to be completed in whatever manner it deems expedient (whether by engaging the services of any third party or otherwise) and to credit the reasonable costs and expenses so incurred against any amount due or to become due to Consultant under this Agreement. XYZ shall use reasonable care to mitigate the amount of excess costs for which Consultant may be liable hereunder. If, after termination, it is determined for any reason whatsoever that Consultant did not materially breach this Agreement; or that such breach was excusable as a matter of law, the rights and obligations of the parties shall be the same as if XYZ had terminated the Agreement in accordance with Section II.B of this Agreement.

E. Within thirty (30) days of the termination date of any termination notice, Consultant shall deliver to XYZ all Deliverables, writings, documents, tangible work product and copies thereof prepared by Consultant in connection with this Agreement.

ARTICLE III

Compensation

A. Consultant shall be compensated at the rates and upon the terms set forth in the payment section of Exhibit A, but in no event shall Consultant's fee exceed the fee schedule attached as Exhibit "B" to this Agreement. In addition, Consultant shall be reimbursed for reasonable expenses approved by XYZ prior to being incurred in connection with the performance of this Agreement. **Unless otherwise expressly indicated in a Statement of Work, Consultant shall submit, at least monthly, statements for Services rendered and expenses incurred in such form and detail as XYZ shall require, by the 15th day of the following month.**

B. For a period of three (3) years after the expiration or termination of this Agreement, Consultant shall maintain complete and accurate records to substantiate Consultant's charges. To the extent Consultant keeps such records in the normal course of its business, such records shall include, but not be limited to, time cards, job cards, attendance cards, job summaries, travel and expense reports, and records of any other supporting documentation for all amounts billable and payments made to it under this Agreement. Either XYZ, or an independent third party on behalf of XYZ, shall have the right to inspect, copy, verify and audit such books and records at any time upon two (2) weeks prior written notice to Consultant. Consultant will cooperate fully with XYZ or its designees in connection with the audit, and assist XYZ, or its

designees, as is reasonably required. Consultant will reimburse XYZ for any expenses incurred by XYZ in connection with any audit, which results in the correction of a billing error by Consultant in an amount greater than 5% of the charges that were subject to such audit for the period audited.

ARTICLE IV

Ownership of Work Product

A. Consultant shall make prompt written disclosure to XYZ of all inventions, improvements, discoveries, software (including firmware), and other forms of technology or intellectual property made or conceived or actually or constructively reduced to practice during the term of this Agreement, whether solely or jointly with others, and which are suggested by, or derive or result from any Services which Consultant may do pursuant to this Agreement, or from any information obtained by Consultant from XYZ or in discussions and meetings with employees of XYZ or its affiliates ("Work Product"). Subject to Section B below, all Work Product and Deliverables are and shall be considered a work made for hire for XYZ as such term is defined in Section 101 of the Copyright Act of 1976, as amended, and that as such XYZ owns and shall continue to own all right, title and interest in and to the Work Product and Deliverables and the results and proceeds of Consultant's Services rendered in connection therewith, including, but not limited to all copyrights and renewals and extensions of copyright therein. If and to the extent that the Work Product and Deliverables (or any portion thereof) are not deemed to be a work made for hire, Consultant shall, and hereby does, exclusively and irrevocably assign, transfer and otherwise convey to XYZ all right, title, and interest in and to the Work Product and the Deliverables, including all rights of copyright or other intellectual property rights pertaining thereto. Consultant hereby agrees to assist XYZ, upon XYZ's request and at XYZ's expense, to protect and enforce XYZ's intellectual property rights conferred in this Article IV. Consultant hereby waives any and all claims that Consultant may have now or may hereafter have in any jurisdiction to so-called "rental rights," "moral rights" and all rights of "droit moral" with respect to the Deliverables and to the results and proceeds thereof. Consultant agrees to take all appropriate action and to execute any and all documents, necessary or reasonably requested by XYZ to establish, perfect, effectuate, and preserve XYZ's rights in such Work Product and Deliverables.

B. To the extent that any materials owned by or licensed from third parties (the "Third Party Materials") are included in the Deliverables, Consultant shall obtain for XYZ, at Consultant's sole cost and expense, a perpetual, irrevocable, worldwide license to (i) use, reproduce, distribute, publicly perform, publicly display, modify and prepare derivative works of such Third Party Materials and (ii) sublicense any of the foregoing rights.

C. XYZ acknowledges that Consultant may have developed materials prior to entering into this Agreement, and may own other patent, trade secret and proprietary rights in techniques and concepts that were not conceived or first produced by Consultant in the

performance of this Agreement (collectively “Consultant IP”). Consultant IP is proprietary to Consultant and shall remain Consultant's exclusive property. Consultant grants XYZ a perpetual, worldwide, royalty free, paid-up, irrevocable, non-exclusive, transferable, sub-licensable license to Consultant's IP to the extent it is incorporated in any Work Product or Deliverable delivered to XYZ by Consultant hereunder.

D. Consultant agrees that the obligations under this Article are continuing and shall survive the termination of this Agreement.

ARTICLE V

Delivery and Acceptance

Consultant shall deliver each Deliverable at the times and in the manner specified in Exhibit “A”. Upon the delivery of each Deliverable, XYZ shall have thirty (30) days to inspect and test such Deliverable to determine whether it is acceptable. In the event that XYZ notifies Consultant in writing that such Deliverable is unacceptable, Consultant shall, within thirty (30) days following receipt of such notice, remedy such failure and re-deliver such Deliverable to XYZ. The foregoing process shall continue until the Deliverable shall have been approved in writing by XYZ; provided that XYZ shall have the right at any time to (a) deem any non-conformity to be a material breach of this Agreement; or (b) accept the Deliverable as a nonconforming deliverable (in which case XYZ may, in its sole discretion, either (i) recover from Consultant XYZ's out-of-pocket costs (which may include amounts paid to affiliates of XYZ) incurred in correcting, modifying or otherwise adapting the Deliverable to conform to the Specifications; or (ii) withhold (or be refunded) an amount of the fees payable or (paid) to Consultant to reflect the value of the Deliverable actually received relative to the value of the Deliverable had it conformed to the Specifications). Each Deliverable shall be deemed accepted (“Acceptance”) when XYZ shall have notified Consultant of its determination (i) that the Deliverable conforms to the Specifications or (ii) to accept the Deliverable as a non-conforming Deliverable. All warranties made by Consultant under this Agreement shall survive Acceptance of the Deliverables.

ARTICLE VI

Confidential and Proprietary Information

A. All information furnished to Consultant by XYZ and its designated representatives, whether orally or by means of written material, including without limitation plans, specifications, financial or business data or projections, or any other forms of business information: (a) shall be deemed proprietary and shall be held by Consultant in strict confidence; (b) shall not be disclosed or revealed or shared with any other person except those individuals or entities specifically authorized by XYZ in advance; and (c) shall not be used other

than for purposes of, and in connection with, the performance of Consultant's Services under this Agreement.

B. All written material provided to Consultant by XYZ shall be and at all times remain the exclusive property of XYZ. All such material and any copies thereof shall be promptly returned upon request of any designated representative of XYZ, and in any event shall be returned by Consultant within thirty (30) days of notice of termination of this Agreement.

C. If Consultant should receive any legal request or process in any form seeking disclosure of, or if Consultant should be advised by counsel of any obligation to disclose, such information, Consultant shall provide XYZ with prompt prior notice of such request or advice so that XYZ may seek a protective order or pursue other appropriate remedies to protect the confidentiality of the information. If such protective order or other remedy is not obtained, Consultant agrees to furnish only that portion of the information which is legally required to be furnished and, in connection with XYZ, to use all reasonable efforts to assure that the information is maintained in confidence by the party to whom it is furnished.

D. Consultant shall not, without prior written consent of XYZ, reveal or disclose to any person the existence of this Agreement, the nature of the projects performed or Services contemplated hereunder, of the status of Consultant's work or analysis except in connection with and to the extent reasonably necessary to the performance of Consultant's undertakings pursuant to this Agreement.

E. In the event of breach of any of the provisions of this article by Consultant, XYZ shall be entitled to equitable relief, including in the form of injunctions and orders for specific performance, in addition to all other remedies available at law or equity.

F. Consultant agrees that the obligations under this Article are continuing and shall survive the termination of this Agreement.

ARTICLE VII

Independent Contractor Relationship

A. XYZ and Consultant acknowledge that in providing the Services under this Agreement, Consultant is acting solely as an independent contractor and not as an agent of XYZ. Neither Party has the authority to bind the other to any third person or otherwise to act in any way as the representative of the other unless otherwise expressly agreed to in writing signed by both parties. Nothing contained in this Agreement is intended to give rise to a partnership or joint venture between the Parties or to impose upon the Parties any of the duties or responsibilities of partners or joint venturers. Except as so authorized, Consultant agrees to indicate to any third party vendor or customer who is or may be doing business with XYZ, as appropriate, that Consultant has no authority to bind XYZ.

B. Persons furnished by Consultant shall be solely the employees or agents of Consultant and shall be under the sole and exclusive direction and control of Consultant. XYZ and Consultant understand and agree, for purposes of federal and state law, that Consultant will not be treated as an employee with respect to Consultant's Services to XYZ as set forth herein; rather, Consultant is to be treated as an independent contractor.

C. Each Party shall be responsible for compliance with all laws, rules and regulations applicable to it. Consultant understands and agrees that Consultant alone shall be responsible to pay Consultant's appropriate share of state, federal and local taxes, including all required prepayments of estimated taxes. Consultant further agrees that Consultant shall indemnify and hold harmless XYZ for any failure to make said payments.

D. Consultant understands and agrees the Consultant is responsible for making the appropriate deductions and payments to the State Unemployment Insurance Agency and to the State Workers' Compensation Agency. Consultant further understands that Consultant alone is responsible of obtaining Workers' Compensation Insurance.

E. XYZ retains the right to require Consultant to produce proof of Consultant's compliance with state and federal laws concerning required payroll deductions from earnings.

ARTICLE VIII

Exclusive Services

Consultant shall not, during the period in which this Agreement is in effect, provide similar or like Services on behalf of any other entity which is an actual or prospective competitor of XYZ, including companies or entities in the business of providing _____ services. Consultant agrees not to retain copies of the Deliverables, furnish any other person copies of the Deliverables, or use the Deliverables on other projects or for any purpose other than in the performance of this Agreement without the prior written consent of XYZ, with the exception of publicly available data.

ARTICLE IX

Publicity and Publications

No publicity releases (including news releases and advertising or solicitation materials) or other public statement relating to this Agreement or the Services to be performed hereunder shall be issued or made by Consultant without the prior written approval of XYZ. No technical paper, article, or documentary or oral or visual presentation by Consultant concerning any aspect of XYZ's business shall be presented or disclosed by Consultant to any person without the prior consent and approval of XYZ.

ARTICLE X

Warranty and Indemnification

A. Consultant represents and warrants to XYZ that: (a) Consultant has the right to enter into this Agreement and to perform its obligations hereunder; (b) the Deliverables and the Work Product (other than the Third Party Materials) and all work prepared by Consultant hereunder will be the original work of Consultant and that the Consultant has all rights necessary to convey to XYZ the unencumbered ownership of the Work Product and Deliverables and to license the Third Party Materials as provided herein; (c) the Deliverables and Work Product and all materials and methodologies used by Consultant in performing the Services will not (i) invade the right of privacy or publicity of any third person, (ii) contain any libelous, obscene, indecent or otherwise unlawful material, or (iii) infringe any patent, copyright, trademark, trade secret or other proprietary right in any jurisdiction or otherwise contravene any rights of any third person; (d) all Services to be rendered by Consultant hereunder shall be performed in a diligent, efficient, workmanlike and professional manner by qualified personnel; (e) that, when delivered, the Deliverables, if applicable, will be free of bugs, viruses, defects, design flaws or any disabling code or other devices that may cause the Deliverables or any portion thereof to become erased or inoperable or incapable of performing as intended or affect the operations of other systems; (f) for a period of six (6) months following the launch thereof, the Deliverables will be (i) free from defects in material and workmanship under normal use and (ii) will function as intended in accordance with the Specifications; and (g) Consultant will, in performing its obligations hereunder, strictly comply with all applicable laws.

B. Consultant shall indemnify and hold harmless XYZ and its respective affiliates from and against all claims, cost, liabilities, judgments, expenses or damages owed to third parties (including amounts paid in settlement and reasonable attorneys' fees) (collectively, "Losses") arising out of or in connection with (i) Consultant's breach (or alleged breach) of any covenants, warranties or representations made herein or (ii) with respect to any Third Party Materials.

C. Consultant agrees that the obligations under this Article are continuing and shall survive the termination of this Agreement.

ARTICLE XI

Notices

All notices under this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered or mailed or registered or certified mail, postage prepaid, to the following or to such other person at such other address or may be designated by the parties hereto in writing and notice thereof duly given:

If to XYZ:

XYZ LLC
100 Main Street
New York, New York 10023
Attn: Law Department

If to Consultant:

ARTICLE XII

Consent of Waiver

No consent or waiver by XYZ with respect to any provision of this Agreement shall be valid effective unless made by a duly authorized officer of XYZ.

ARTICLE XIII

Assignment

No undertaking or rights of Consultant pursuant to this Agreement may be assigned by Consultant to any third party without the express, written consent of XYZ in advance. This Agreement shall insure to the benefit of XYZ, its affiliates, successors and assigns.

ARTICLE XIV

Severability

If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement; rather, the entire Agreement shall be construed as if not containing the invalid or unenforceable provision, and the rights and obligations of each party shall be construed and enforced accordingly.

ARTICLE XV

Governing Law; Disputes

This Agreement, and any dispute concerning this Agreement or arising hereunder, shall be governed by and resolved in accordance with the Laws of the Commonwealth of Virginia. Each Party hereby consents and agrees to the sole and exclusive jurisdiction of the State and Federal courts in Fairfax County, Virginia.

ARTICLE XVI

Entire Agreement

This Agreement constitutes the entire agreement between XYZ and Consultant. The Agreement supersedes all prior communications, representations or agreements, oral or written, with respect to the subject matter hereof and has been induced by no representations, statements or agreements other than those herein expressed. No agreement hereafter made between the parties shall be binding on either party unless reduced to writing and signed by an authorized officer of the party sought to be bound thereby.

ARTICLE XVII

Insurance Obligations

A. Without limiting Consultant's indemnification obligations pursuant to Section X.C. above, Consultant shall provide and maintain at its sole cost and expense during the term of this Agreement, and as provided in Section XVII.B below, the insurance coverage described in this Article XVII covering its operations hereunder. Evidence of such coverage reasonably satisfactory to XYZ shall be delivered to XYZ upon request therefor. Such insurance shall (i) be issued by reputable and financially sound insurance companies reasonably acceptable to XYZ (ii) specifically identify this Agreement and (iii) contain the express condition that XYZ is to be given written notice at least thirty (30) days in advance of any modification, termination or non-renewal of any such insurance.

B. Such insurance shall be primary and without right of contribution from any insurance maintained by XYZ, shall name XYZ as an additional insured except for subsection (b) below, and shall include, but not be limited to:

- (a) **Commercial General Liability** insurance endorsed for Premises-Operations, Products/Completed Operations, Contractual, Broad Form Property Damage, and Personal Injury with a combined single limit of not less than One Million Dollars

(\$1,000,000) per occurrence and written on an occurrence form coverage basis; and

- (b) **Statutory workers compensation** insurance in the state(s) or jurisdictions in which Consultant's employees perform services for XYZ, and employer's liability insurance with limits of not less than \$500,000: (i) for each accident; and (ii) for each employee for occupational disease; and (iii) policy limit for disease; and
- (c) Umbrella/excess Liability insurance with minimum limits such that (i) when added to the per occurrence coverages of Sections XVII.B (a)-(b) above, the per occurrence coverages equal \$2,000,000 and written on an occurrence form coverage basis, and (ii) general aggregate coverage of \$2,000,000.
- (d) **Errors and Omissions insurance** with minimum limits such that (i) the per occurrence coverages equal **\$1,000,000**, and (ii) general aggregate coverage of \$1,000,000.

Coverage is to be effective as of the Effective Date of this Agreement and is to continue in force for a period of at least one (1) year after the expiration or termination for any reason of this Agreement.

Consultant

By: _____
Name: _____
Title: _____

XYZ LLC

By: _____
Name: _____
Title: _____

EXHIBIT "A"

Statement of Work

EXHIBIT "B"

Schedule of Fees