

Professional Services Agreement

This Professional Services Agreement (“**Agreement**”), dated _____ (the “**Effective Date**”), is by and between _____ (“**Company**”), and _____ (“**Consultant**”).

1. SERVICES.

Consultant agrees to provide the services set forth on Exhibit A Statement of Work, attached hereto and incorporated herein by reference, to Company. In providing services, Consultant agrees to provide Consultant’s own equipment and other materials at Consultant’s own expense; however, Company will make its facilities and equipment available to Consultant when necessary. Consultant agrees to exercise the highest degree of professionalism and utilize Consultant’s best efforts, expertise and creative talents in performing these services. Consultant’s compensation for these services shall be limited to the compensation set forth on Exhibit A hereto. Consultant may not subcontract or otherwise delegate its obligations under this Agreement without Company’s prior written consent.

2. RELATIONSHIP OF PARTIES.

Consultant’s relationship with Company will be that of an independent contractor, and nothing in this Agreement should be construed to create a partnership, joint venture, or employer-employee relationship. Consultant is not the agent or representative of Company (except as specifically set forth in this Agreement); is not authorized to make any representation, contract or commitment on behalf of Company; will not be entitled to any of the benefits that Company makes available to its employees, such as group insurance, profit-sharing or retirement benefits (and waives the right to receive any such benefits); and will be solely responsible for all tax returns and payments required to be filed with or made to any U.S. federal, state, or local tax authority with respect to Consultant’s performance of services and receipt of fees under this Agreement. If applicable, Company will report amounts paid to Consultant by filing

Form 1099-MISC with the Internal Revenue Service, as required by law. Consultant agrees to accept exclusive liability for complying with all applicable state and federal laws, including laws governing self-employed individuals, if applicable, such as laws related to payment of taxes, social security, disability, and other contributions based on fees paid to Consultant under this Agreement. Company will not withhold or make payments for taxes, social security, unemployment insurance or disability insurance contributions, or obtain workers’ compensation insurance on Consultant’s behalf. Consultant hereby agrees to indemnify and defend Company against any and all such taxes or contributions, including penalties and interest. Consultant agrees to provide proof of payment of appropriate taxes on any fees paid to Consultant under this Agreement upon reasonable request of Company.

3. PAYMENTS.

3.1 Compensation. In consideration of the services to be rendered pursuant to each Statement of Work, Consultant shall be paid as set forth in the applicable Statement of Work. Unless otherwise agreed by the parties, payment for services, if reasonably satisfactory to Company, shall be due thirty (30) days from receipt by Company of Consultant’s invoice therefor.

3.2 Expenses. Consultant shall be responsible for all expenses incurred in performing the services under this Agreement.

4. CONFIDENTIAL INFORMATION.

4.1 Nondisclosure; Recognition of Company’s Rights. At all times during and after Consultant’s engagement, Consultant will hold in confidence and will not disclose, use, lecture upon, or publish any of Company’s Confidential Information (defined below), except as may be required in connection with Consultant’s services for Company, or as expressly authorized in writing by the Chief Executive Officer (the “**CEO**”) or any Managers (the “**Managers**” and together with the CEO, each an “**Authorizing Person**” and collective

the “**Authorizing Persons**”) of Company. Consultant hereby assigns to Company any rights Consultant may have or acquire in any and all Confidential Information and recognizes that all Confidential Information shall be the sole and exclusive property of Company and its assigns.

4.2 Confidential Information.

Consultant understands that its work for Company will involve access to confidential, proprietary and trade secret information and materials of Company (or its affiliates, licensors, suppliers, vendors or customers) (collectively, “**Confidential Information**”). Confidential Information includes, without limitation, any and all confidential knowledge, data or information related to Company’s business or its actual or demonstrably anticipated research or development, including without limitation (a) trade secrets, inventions, ideas, processes, computer source and object code, data, formulae, programs, other works of authorship, know-how, improvements, discoveries, developments, designs, and techniques; (b) information regarding products, services, plans for research and development, marketing and business plans, budgets, financial statements, contracts, prices, suppliers, and customers; (c) information regarding the skills and compensation of Company’s employees, contractors, and any other service providers of Company; or (d) the existence of any business discussions, negotiations, or agreements between Company and any third party.

4.3 Third Party Information.

Consultant understands that Company has received and in the future will receive from third parties confidential or proprietary information (“**Third Party Information**”), subject to a duty on Company’s or its affiliates’ part to maintain the confidentiality of such information and to use it only for certain limited purposes. During and after the term of Consultant’s engagement, Consultant will hold Third Party Information in strict confidence and will not disclose to anyone (other than Company personnel who need to know such information in connection with their work for Company), or use Third Party Information, except in connection with Consultant’s services for Company or unless

expressly authorized by an Authorizing Person in writing.

4.4 No Improper Use of Information of Prior Employers.

Consultant represents that Consultant’s engagement by Company does not and will not breach any agreement with any former employer or other third party, including any non-compete agreement or any agreement to keep in confidence or refrain from using information acquired by Consultant prior to Consultant’s engagement by Company. Consultant further represents that Consultant has not entered into, and agrees that Consultant will not enter into, any agreement, either written or oral, in conflict with Consultant’s obligations under this Agreement or to the Company, unless expressed approved by an Authorizing Person. During Consultant’s engagement by Company, Consultant will not improperly make use of, or disclose, any information or trade secrets of any former employer or other third party, nor will Consultant bring onto the premises of Company or use any unpublished documents or any property belonging to any former employer or other third party, in violation of any lawful agreements with that former employer or third party.

5. TERM AND TERMINATION.

5.1 This Agreement shall commence on the Effective Date and continue until the earlier of (a) the end of the term, if any, set forth in the last Statement of Work or (b) termination by either party in accordance with this Section Term and Termination.. This Agreement may be renewed by mutual written agreement of the parties.

1. Termination. Company may terminate this Agreement without cause at any time upon seven (7) days’ prior written notice to Consultant. Consultant may terminate this Agreement without cause at any time upon seven (7) days’ prior written notice to Company. Either party may terminate this Agreement immediately in the event that the other party has materially breached the Agreement.

5.2 Effect of Termination. Upon termination of this Agreement, Consultant shall immediately cease performing the services. If

this Agreement is terminated by Company, Company agrees to pay Consultant the compensation due for the period up to the date of termination Sections Confidential Information., Return of Company Property, and Business Relationships shall survive termination of this Agreement.

5.3 Return of Company Property.

Upon termination of this Agreement, or at any time Company so requests, Consultant shall deliver immediately to Company all property belonging to Company, whether given to Consultant by Company or prepared by Consultant in the course of rendering the services, including all work product then in progress and all material in Consultant's possession containing Confidential Information and any copies thereof, whether prepared by Consultant or others. Following termination, Consultant shall not retain any written or other tangible (including machine-readable) material containing any Confidential Information.

6. BUSINESS RELATIONSHIPS.

Consultant acknowledges that Company's relationships with its employees, customers, and vendors are valuable business assets. Consultant agrees that, during the term of this Agreement and for one (1) year thereafter, Consultant shall not, (a) either directly or indirectly, solicit or attempt to solicit any employee of the Company to terminate his, her, or its relationship with Company to become an employee, consultant, or independent contractor to or for any other person or entity, or (b) directly or indirectly, through or on behalf of any other individual or entity, use any information that constitutes a "trade secret" within the meaning of the Uniform Trade Secrets Act ("UTSA") to solicit, entice, or induce any business from any of Company's clients (including actively sought prospective clients) or vendors. Further, Consultant agrees that, during the term of this Agreement, Consultant shall not, without the Company's express written consent, engage in any business activity that is competitive with, or would otherwise conflict with his or her relationship with the Company.

7. LIMITATION OF LIABILITY.

To the extent permitted by applicable law: (a) in no event shall Company be liable under any legal theory for any special, indirect, consequential, exemplary or incidental damages, however caused, arising out of or relating to this Agreement, even if Company has been advised of the possibility of such damages; and (b) in no event shall Company's aggregate liability arising out of or relating to this Agreement (regardless of the form of action giving rise to such liability, whether in contract, tort or otherwise) exceed the fees payable by Company hereunder.

8. INDEMNIFICATION. Consultant will indemnify and hold harmless Company and its affiliates, employees, and agents from and against any and all liabilities, losses, damages, costs, and other expenses (including attorneys' and expert witnesses' costs and fees) arising from or relating to any breach of any representation, warranty, covenant, or obligation of Consultant in this Agreement or any intentional misconduct or negligence by Consultant or any of Consultant's agents or subcontractors in performing the services. In the event of any third-party claim, demand, suit, or action (a "Claim") for which Company (or any of its affiliates, employees, or agents) is or may be entitled to indemnification hereunder, Company may, at its option, require Consultant to defend such Claim at Consultant's sole expense. Consultant may not agree to settle any such Claim without Company's express prior written consent.

9. NOTIFICATION OF NEW EMPLOYER OR ANY THIRD PARTY. Upon termination of Consultant's engagement, Consultant consents to the notification of Consultant's subsequent employer or any third party of Consultant's rights and obligations under this Agreement, by Company providing a copy of this Agreement or otherwise.

10. MISCELLANEOUS.

10.1 Assignment. Neither party shall assign, sell, transfer, delegate or otherwise dispose of, by operation of law or otherwise, this Agreement or any or its rights or obligations under this Agreement; provided, however

Company may assign, sell, transfer, delegate or otherwise dispose of this Agreement or any of its rights and obligations hereunder as part of a merger, consolidation, corporate reorganization, sale of all or substantially all of Company's assets of the business to which Consultant's services relate, sale of stock, change of name or like event. Any purported assignment, sale, transfer, delegation or other disposition, except as permitted herein, shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns.

10.2 Notices. Any notice, request, demand or other communication required or permitted hereunder shall be in writing, shall reference this Agreement and shall be deemed to be properly given: (a) when delivered personally; (b) when sent by facsimile, with written confirmation of receipt by the sending facsimile machine; (c) five (5) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) two (2) business days after deposit with an express courier, with written confirmation of receipt. All notices shall be sent to the address set forth on the signature page of this Agreement and to the notice of the person executing this Agreement (or to such other address or person as may be designated by a party by giving written notice to the other party).

10.3 Severability. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

10.4 Waiver. The waiver by either party of a breach of or a default under any provision of this Agreement shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any such right or remedy.

10.5 Governing Law and Venue. This Agreement and any action related thereto will be governed and interpreted by and under the laws of the State of California, without giving effect to any conflicts of laws principles that require the application of the law of a different state. Consultant hereby expressly consents to personal jurisdiction and venue in the state and federal courts for the county in which Company's principal place of business is located for any lawsuit filed which arises from or relates to this Agreement.

10.6 Headings. The headings used in this Agreement are for convenience only and shall not be considered in construing or interpreting this Agreement.

10.7 Entire Agreement. This Agreement (including the Exhibits attached hereto, which are incorporated herein by reference) is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior or contemporaneous proposals, discussions, negotiations, understandings, promises, representations, conditions, communications and agreements, whether written or oral, between the parties with respect to such subject matter and all past courses of dealing or industry custom.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

COMPANY:

CONSULTANT:

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

ADDRESS: _____

ADDRESS: _____

EXHIBIT A
FORM STATEMENT OF WORK

This Statement of Work is incorporated into the Professional Services Agreement dated _____ by and between COMPANY and CONSULTANT (for the purposes of this Statement of Work, the (“**Agreement**”). This Statement of Work describes services and deliverables to be performed and provided by Consultant pursuant to the Agreement. If any item in this Statement of Work is inconsistent with the Agreement prior to such incorporation, the terms of this Statement of Work will control, but only with respect to the Services to be performed under this Statement of Work. All capitalized terms used and not expressly defined in this Statement of Work will have the meanings given to them in the Agreement.

1. Scope of Services:

2. Fees. In full consideration for Consultant’s timely and satisfactory performance of the services and providing of the deliverables, Consultant will be compensated as follows:

Company

Signed: _____

Name: _____

Title: _____

Dated: _____

Consultant

Signed: _____

Name: _____

Title: _____

Dated: _____