

SOFTWARE CONSULTING AGREEMENT

This Software Consulting Agreement ("Agreement") is entered into this ____ day of _____, _____ by and between _____, a corporation organized and existing under the laws of _____ and having a principal place of business at _____ ("Client"), and _____, a corporation organized and existing under the laws of _____ and having a principal place of business at _____ ("Consultant").

1. Performance by Consultant

Consultant agrees to provide consulting and software development services (the "Services") specified in the Statement of Work attached hereto as Exhibit A, as amended from time to time by Supplemental Statements of Work.

2. Payment for Services

- a. Fees, Price Protection. Client agrees to pay Consultant for the Services in accordance with the Fee Schedule set forth in the Statement of Work. The fees specified in the Statement of Work are the total fees and charges for the Services and will not be increased during the term of this Agreement except as the parties may agree in writing. Consultant represents that the price stated for the Services performed hereunder is at least as favorable as that charged to any other customer for the same or similar services.
- b. Out-of-Pocket Expenses. Consultant shall be reimbursed for all reasonable out-of-pocket expenses not exceeding a monthly allotment of \$_____ per month incurred in performance of the Services. Consultant shall obtain the written approval of Client before incurring expenses in excess of the monthly allotment.
- c. Invoices. Consultant shall invoice Client monthly for Services rendered during the preceding monthly period. The invoice will detail the work performed during such period. Client will pay the invoices within thirty (30) days after receipt.

3. Obligations of Consultant

- a. Work on Client's Premises. Consultant will ensure that its employees and agents will, whenever on Client's premises, obey all reasonable instructions and directions issued by Client.
- b. Key Person. The parties agree that _____ is essential to the Services offered pursuant to this Agreement and should this person no longer be active on Client's account or be employed by Consultant for whatever reason, Client shall have the right to terminate this Agreement on thirty (30) days' written notice.
- c. Consultations, Reports. Consultant agrees to make available Consultant's representative, who shall be mutually agreed upon by Consultant and Client, for monthly meetings to review the progress of all work under this Agreement. Consultant also shall prepare and submit to Client each month a written report setting forth the status of such work in a format to be mutually agreed upon by Consultant and Client.
- d. Regeneration of Lost or Damaged Data. With respect to any data which Consultant has lost or damaged, Consultant shall, at its own expense, promptly replace or regenerate such data from Client's machine-readable supporting material, or obtain, at Consultant's own expense, a new machine-readable copy of lost or damaged data from Client's data sources.

4. Obligations of Client

Client agrees to make available to Consultant, upon reasonable notice, computer programs, data and documentation required by Consultant to complete the Services.

5. Statements of Work

- a. In General. When required by Client, the parties shall in good faith negotiate Supplemental Statements of Work ("Supplements"), each of which upon signing shall be deemed a part of this Agreement. Supplements, which shall be entered into as required by Client, shall be substantially in the form of Appendix B hereto. Unless otherwise agreed in a Supplement, the following provisions shall govern Supplements generally:
- i. Term. In the absence of an express provision for the duration or early termination of a Supplement, such agreements shall be terminable on thirty (30) days written notice of either party without cause.
 - ii. Payment. Supplements may call for lump sum or periodic payment, or payment against performance milestones, and for compensation based on time and materials or on a fixed price.
 - iii. Specifications. Supplements shall include written specifications for any computer programs and documentation to be provided thereunder.
 - iv. Costs of Negotiating. In the event that the parties do not conclude negotiations for a specific Supplement, each party shall bear its respective costs relating to the negotiations unless otherwise agreed, and the progress of such efforts and discussions shall not obligate either party to the other.
 - v. Other. Each Supplement may contain such additional terms and conditions as may be mutually agreed to by the parties, including by way of example and not limitation, automatic renewal terms, required supplementary documentation, further specifications or the like.
- b. Installation and Testing. Consultant shall provide reasonable assistance to Client to facilitate Client's installation and testing of all computer programs developed under the Statement of Work or Supplements (i) against previously prepared specifications and (ii) for systems integration ("Acceptance Testing"). Acceptance Testing shall be commenced within ten (10) days of delivery and installation by Consultant of any computer program and such computer program shall be deemed accepted when it has operated in conformity with specifications for a period of thirty (30) consecutive days ("Acceptance"). In the event that the computer program does not so perform, the period shall be extended on a day-by-day basis until such performance is achieved for thirty (30) consecutive days. If, at any time following sixty (60) days after commencement of Acceptance Testing, the computer program has not met Acceptance Testing standards, Client may terminate the Supplement.

THIS IS A 10-PAGE FORM.