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*Carlton Fields practices law in California through Carlton Fields Jorden Burt, LLP*

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**CONSULTING Agreement**

CONSULTANT’S NAME:

This Independent Consultant Agreement (“Agreement”) is entered into on the date(s) indicated below the signatures to this Agreement, by and between the individual/company whose name appears above (“Consultant”), and [INSERT COMPANY NAME] (“Company”). Company and Consultant are hereinafter referred to collectively as the “Parties”.

**Recitals**

A. The Company engages in the business of [INSERT DESCRIPTION OF BUSINESS] (the “Business”).

B. The Consultant is an individual/entity who has been retained as an independent contractor and consultant to assist the Company with Company-related Business.

C. The Company has asked the Consultant to make certain contractual commitments protecting the Company’s information systems, computer hardware, software and related technology, trade secrets, and proprietary information. The Consultant is willing to make the promises requested by the Company. Consultant’s commitments are set forth below in writing. The Company and Consultant agree to complete a Statement of Work in a form substantially similar to the one attached hereto as Exhibit 1 for each project. Each and every Statement of Work is bound by the terms of this Agreement.

**Terms and Conditions**

In consideration of the retention of the Consultant by the Company, and the mutual promises set forth in this Agreement, the Consultant and the Company agree as follows:

# **Protective Covenants**.

## Consultant’s Acknowledgements. The Consultant acknowledges that:

### the continued success of the Company depends upon the use and protection of confidential and proprietary information, and the Consultant will have access to some or all of this information, and that such information, described more fully below as Protected Information, constitutes valuable, special and unique property of the Company;

### the Company has developed unique business systems and procedures, that are very different from those of its competitors, and the Company has a legitimate need to protect those business systems;

### the Company does business throughout the world, and under such circumstances, the geographic scope of the restrictive covenants should be world-wide in application;

### the restrictions set forth below are reasonable and appropriate for the Consultant, who will have strong relationships with the information systems staff of the Company, and who will become very knowledgeable regarding the Protected Information, as defined below;

### it is reasonable and appropriate for each of the commitments in Sections 1(c) and 1(d) to have the temporal scope set forth in those covenants;

### the Consultant is willing to be bound by this Agreement as a condition of work for the Company as a contractor;

### there are trade secrets and confidential information involving the operations of the Company which derive economic value, actual or potential, from not being generally known to, and not readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use (including, without limitation, (A) Company technology and product development information, applications engineering information, design work, computer programming, computer hardware and software, and systems analysis; (B) lists of actual or potential customers, price lists and other pricing information (including estimates and bids); (C) marketing methods and techniques, current and anticipated customer requirements and needs, customer, vendor and supplier information (including email addresses), market studies and business plans; (D) historical financial statements, financial projections and budgets, historical and projected revenues and expenses, and any financial information relating to the Company’s owners; (E) any information that is marked “confidential” or in some comparable manner, and any other information or material that is a trade secret, under applicable law, pertaining to the Company’s business operations; and, finally, (F) any information that is otherwise confidential or proprietary information) (all of such trade secrets and confidential or proprietary information is collectively referred to in this Agreement as “Protected Information”); and

### each of the Recitals and Acknowledgements above is true and correct.

## Trade Secrets: Confidentiality Commitments. Consultant covenants that:

### Consultant will not use Protected Information to the detriment of the Company (or any customer of the Company); and

### Consultant will hold the Protected Information in strict confidence, and without limiting the foregoing, will never disclose the Protected Information, or any portion of the Protected Information, to anyone at any time or times, except as authorized by the Company, and will return any hard copy or computerized documents containing Protected Information to the Company in the event of termination of the Consultant’s work relationship with the Company.

It is also agreed that the agreements in Section 1(b)(i) and (ii) will not apply to the extent that the Consultant can demonstrate either: (A) that the same information is currently publicly available or becomes publicly available and that such public availability did not result from the disclosure of such information by the Consultant either (1) by improper means of Consultant or from acts or omissions of another person that Consultant knows, or should have reason to know, misappropriated or improperly disclosed such information or utilized improper means to acquire it or acquired it under circumstances giving rise to a duty to maintain its secrecy or limit its use, or (2) by accident or mistake; or (B) that such Protected Information is legally required by law to be disclosed, in which event such Protected Information may be disclosed only in accordance with the next sentence. Protected Information described in clause (B) immediately above may be disclosed only to the extent such disclosure is legally required, and after giving the Company notice of such legally required disclosure so that the Company may seek a protective order or other similar or appropriate relief. Consultant shall also undertake in good faith to have such disclosed information treated confidentially consistent with the terms of this Agreement. Without limiting the preceding covenants in this Section 1(b), any trade secret within the Protected Information will also be entitled to all of the protections and benefits under any applicable law. If a court of competent jurisdiction determines that any information which the Company deems to be a trade secret is not a trade secret, then such information will be considered confidential or proprietary information for purposes of this Section 1(b).

## Covenant not to Solicit the Company’s Employees. During the two (2) year period after the date of termination of the Consultant’s work relationship with the Company (the “Restricted Period”), the Consultant will not, directly or indirectly, solicit any employee of the Company to leave Company employment, unless permitted by the Company in writing. This covenant shall not prohibit the placement of advertising in media of general circulation which is not targeted at Company employees.

## No Personal Use of Works Made for Hire by the Consultant. In connection with the performance of the Consultant’s work for the Company, the Consultant acknowledges and agrees that the scope of Consultant’s work may include the preparation of written materials and other works relating to the Company that are subject to protection under the Copyright Act (“Works”). The Consultant agrees that regardless of whether such Works are authored by the Consultant during normal working hours, off of the Company’s premises, outside the United States, or utilizing the Consultant’s or a third party’s equipment, all Works authored, in whole or in part, by the Consultant while employed by the Company, which relate in any way to the Consultant’s Company assignments or projects, shall be “Works Made for Hire” such that all right, title, and interest worldwide in and to such Works shall vest solely, exclusively, and irrevocably in the Company. The Consultant agrees that any Works Made for Hire for the Company may not be used by the Consultant for personal purposes. Accordingly, the original and copies of any Works Made for Hire may not be included within the Consultant’s personal portfolio, or used on a personal web site by the Consultant, without the Company’s written consent, signed by an authorized Company representative, which may be withheld by the Company in its sole discretion. Works Made for Hire are the property of the Company, not the Consultant.

## Use of Works Not Made for Hire by Consultant Impermissible in Certain Circumstances. The Consultant agrees that to the extent Works authored in whole or in part by the Consultant, while working for the Company, are not Works Made for Hire, the Consultant agrees, *as long as the Works relate in some way to the Consultant’s Company assignments, Company projects, or to the Company’s customers,* that (a) all such Works shall be deemed Works Made for Hire and deemed assigned to the Company as of the moment of fixation, (b) the Consultant shall take no position adverse to the Company with respect to any such Works either during or after employment, (c) all copies of all such Works (including without limitation all public relations and marketing materials) shall be the exclusive property of the Company and shall be delivered to the Company upon termination of employment or upon request of the Company even if such request is made after the employment relationship has terminated, and (d) upon request by the Company, even if such request is made after termination of employment and for any reason whatsoever, without further payment of any kind, the Consultant shall execute all assignments, copyright applications, and other written documents as the Company may reasonably request to secure, document, evidence, record and perfect the Company’s ownership of and interest in all such Works.

## Inventions. For purposes of this Agreement, “Inventions” shall be defined as discoveries, improvements and ideas, whether or not patentable, relating to any activities of the Company which the Consultant solely or jointly with others conceives or first actually reduces to practice either (i) as a result of any work which the Consultant performs for the Company, (ii) with the use of the time, material or facilities of the Company, or (iii) which relate to the business or Protected Information of the Company or to the Company’s actual or demonstrably anticipated research or development activities. The Consultant, with respect to all Inventions, shall promptly and fully inform the Company in writing of such Inventions. All Inventions shall be the property of the Company whether or not the Company seeks patent protection for them. The Consultant agrees to assign (and does hereby assign) to the Company all of the Consultant’s rights to such Inventions, and to the applications for letters patent and to letters patent granted upon such Inventions. In the event that any Invention specifically relating to a field of activity of the Company, and not released to the Consultant in writing by the Company, is made the subject of a patent application filed by the Consultant within one year after the Consultant has left the Company, such Invention shall be presumed to have been conceived or to have resulted from developments made during the period of the Consultant’s employment by the Company, and the Consultant agrees that any such Invention shall belong to the Company. The Consultant agrees to acknowledge and deliver promptly to the Company (at its expense) such written instruments and do such other acts as may be necessary in the opinion of the Company to obtain and maintain letters patent to such Inventions and to vest the entire right and title to them. If, after submission to the Company of a full written disclosure of any such Invention, the Company determines that it has no interest in that Invention, the Consultant may obtain from the Company a written release that releases to the Consultant any rights that the Company may otherwise have to that Invention.

## Tolling of Covenant Periods. If the Consultant is in violation of any of the covenants in Sections 1(c), then the time period in such violated Section will be automatically extended for the period of such violation.

# **Non-Disparagement**. During Consultant’s employment and after Consultant’s termination of employment for any reason, Consultant will not make any disparaging or defamatory statements, whether written or oral, regarding the Company or any of its employees, owners or independent contractors.

# **Independent Agreements**. The covenants and commitments set forth in Section 1 (and in each portion thereof) are and will be construed as separate and independent agreements completely apart from any other contractual or legal obligations owed by the parties to each other. Accordingly, the existence of any claim by the Consultant against the Company will not bar or limit enforcement of this Agreement by injunctive relief or otherwise. If any provision of Section 1 is held invalid, void or unenforceable, it will in no way render invalid, void or unenforceable any other provision of Section 1 not declared invalid, void or unenforceable, and this Agreement will in that case be construed and enforced as if the void, invalid or unenforceable provision was omitted from this Agreement.

# **Remedies**. The Consultant agrees that any violation by Consultant of any covenant or commitment in Sections 1 or 2 will result in irreparable damage and harm to the Company and that the Company will be without an adequate remedy at law in the event of any such violation. The Consultant agrees, therefore, that if the Consultant violates any portion of Sections 1 or 2, then the Company may seek injunctive relief and such other remedies as may be appropriate under applicable law. The Company will not, by seeking or obtaining any particular relief, be deemed to have precluded itself from obtaining any other relief to which it may be entitled.

# **Independent Contractor.** The Parties intend that the relationship between them created under this Agreement is that of an independent contractor only. Consultant is not to be considered an agent or employee of Company for any purpose whatsoever. Company is interested only in the results obtained under this Agreement and the manner and means of performing the services required to be performed hereunder are subject to Consultant’s reasonable discretion and control. Consultant shall be responsible for all state, federal and local taxes, including estimates taxes, social security, worker’s compensation insurance, disability insurance, if any, and any other similar forms of payment, as well as all employment reporting, for Consultant and/or any of Consultant’s employees or agents, if any. The provisions of this Section shall expressly survive the termination or expiration of this Agreement. Consultant has no authority to bind Company to contracts, or to act as an agent of Company in any way.

# **Indemnification of Company.** Consultant represents and warrants that (i) the work performed by the Consultant does not in any way infringe, invade, or violate the intellectual property rights or personal rights of any third party; (ii) Consultant is free to enter into and to perform as set forth in this Agreement; and (iii) all works created or furnished by Consultant under this Agreement will be unpublished, wholly original, and not copied from any sources, except the public domain or material furnished by the Company. Consultant agrees to indemnify, defend, and hold the Company, and its respective successors, assigns, agents, attorneys, distributors, licensees, past and present officers, directors and employees harmless against any and all claims, suits, actions, proceedings, judgments, liabilities, loses, damages, costs and expenses (including reasonable attorneys fees and legal costs) arising from or in connection with its (i) breach of its representations, warranties, or obligations hereunder, including, without limitation, those contained in this paragraph; and (ii) negligent or intentional acts or omissions.

# **Termination.** This Agreement may be terminated for any reason (i) by Consultant upon thirty (30) days prior written notice to Company, or (ii) by Company at any time by written notice delivered to Consultant. The covenants set forth in Section 1 and 2 will survive the termination of this Agreement.

# **Notice to Others**. The terms of this Agreement are not confidential, and the Company may disclose the provisions of this Agreement, without any liability whatsoever, to anyone at all, including, without limitation, one that is engaged in a business relationship with the Consultant, and may indicate that it is believed that the Consultant is in violation of this Agreement.

# **Parties Bound by Agreement; Assignment; Affiliates**. The Parties to this Agreement agree that this Agreement is a valid, binding and enforceable contract. This Agreement binds Consultant, as well as its officers, directors, successors, assigns, parents, subsidiaries, affiliates, related companies, predecessors-in-interest, and each of its present and former officers, directors, agents, employees, and all other persons and entities acting or purporting to act for it or on its behalf, including but not limited to any corporation, partnership, proprietorship or entity of any type that is in any way affiliated or associated with Consultant. The Agreement accrues to the benefit of the Company, its agents, successors, assigns, and parent and subsidiary corporations. No assignment or delegation may be made by the Consultant of any of the Consultant’s rights or obligations under this Agreement, except with the prior written consent of the Company, which may be granted or withheld in the sole and absolute discretion of the Company. The Company may assign or delegate any or all of its rights and obligations under this Agreement to any person or business. The Consultant agrees that the covenants of this Agreement shall be enforceable against the Consultant by the assigns and successors of the Company. The Consultant also agrees that the covenants of this Agreement shall apply to any Affiliates of the Company, and shall be enforceable against the Consultant by those Affiliates, just as if each covenant was, by its terms, expressly applicable to such Affiliates (the term “Affiliate,” as used in this Agreement, means any corporation or other entity that, directly or indirectly, controls, is controlled by, or is under common control with, the Company).

# **Attorney’s Fees**. In the event of a dispute between or among the parties with respect to this Agreement, the prevailing party shall be entitled to recover such party’s reasonable attorneys’ fees and costs, whether incurred during trial, on appeal or in bankruptcy proceedings.

# **General**. This Agreement contains the entire understanding of the parties relating to the subject matter contained herein and supersedes all prior written or oral and all contemporaneous oral agreements and understandings relating to the subject matter hereof. This Agreement cannot be modified or amended except in writing signed by the party against which or whom enforcement is sought. This Agreement shall be governed by, and construed and interpreted in accordance with, the substantive laws of the State of Florida, without giving effect to any conflict-of-laws rule or principle that might result in the application of the laws of another jurisdiction.

# **Counterpart Execution and Signatures**. This Agreement may be executed in one or more counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same instrument. A signature transmitted by facsimile or in a .pdf file shall have the same effect as an original signature. Each Party represents and warrants that the representatives signing this Agreement on its behalf has all right and authority to bind and commit that Party to the terms and conditions of this Agreement.

The parties have executed this Agreement as indicated below by their signatures.

**Company: Consultant:**

By: By:

Printed Name: Printed Name:

Title: Title:

Date: Date:

**EXHIBIT 1**

**STATEMENT OF WORK**

**PROJECT DESCRIPTION:**

During the term of this Agreement, Consultant will provide the following consulting services (the “Services”):

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Consultant represents that Consultant is qualified and has the requisite experience to perform these Services and if applicable, is properly licensed to perform the Services. Consultant agrees to use Consultant’s best efforts to perform the Services and shall devote at least [\_\_\_\_\_% of Consultant’s time/\_\_\_\_\_ hours per week] to perform the Services.

**PROJECT COMPLETE DATE:**

**PROJECT COST/PAYMENT TERMS:**

[SELECT ONE OR MORE OF THE FOLLOWING AND DELETE THE REST]

The Company shall pay Consultant at the rate of $\_\_\_\_ per hour, payable \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Unless otherwise agreed to in writing by the Company, the maximum cost for all Services performed during the term of this Agreement shall not exceed $\_\_\_\_\_\_\_\_\_\_\_\_.

Consultant shall be paid $\_\_\_\_\_\_\_\_\_\_\_\_ upon the execution of this Agreement and $\_\_\_\_\_\_\_\_\_\_\_\_ upon completion of the Services identified in this Statement of Work.

The Company will recommend to the Board that the Board grant a non-qualified option to purchase \_\_\_\_\_\_\_ shares of the Company’s Common Stock, at an exercise price of \_\_\_\_\_\_\_\_\_\_\_, and which will vest and become exercisable as follows:

Other:

**EXPENSES:**

Company will only reimburse Consultant for expenses incurred by Consultant while performing the Services if the expense is expressly authorized by the Company in writing. To the extent the expenses is authorized, Consultant must provide reasonable evidence of the amount incurred and how it was necessary to perform the Services in order to obtain reimbursement.

**\*\*** Consultant represents and warrants that (i) the work performed by the Consultant pursuant to this Statement of Work does not in any way infringe, invade, or violate the intellectual property rights or personal rights of any third party; (ii) Consultant is free to enter into and to perform as set forth in this Agreement; and (iii) all works created or furnished by Consultant under this Agreement will be unpublished, wholly original, and not copied from any sources, except the public domain or material furnished by the Company. Consultant agrees to indemnify, defend, and hold the Company, and its respective successors, assigns, agents, attorneys, distributors, licensees, past and present officers, directors and employees harmless against any and all claims, suits, actions, proceedings, judgments, liabilities, loses, damages, costs and expenses (including reasonable attorneys fees and legal costs) arising from or in connection with its (i) breach of its representations, warranties, or obligations hereunder, including, without limitation, those contained in this paragraph; and (ii) negligent or intentional acts or omissions.

\*\* No taxes shall be withheld from Consultant’s fees; however, monies paid to Consultant shall be reported to the Internal Revenue Service and Consultant shall be issued 1099 forms as required by law. Consultant assumes all responsibility for paying any taxes due on fees received from Company.

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| --- | --- |
| **Company**  By:  Name:  Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: | **Consultant**  By:  Name:  Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: |
|  |  |