

# CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (this "Agreement"), made and entered into this [ ] day of [ ], [ ] by and between [ ], a [ ] corporation, having a principal place of business at [ ] (hereinafter "Client"), and TeamEXtension, a Connecticut Limited Liability Company, having a principal place of business at 11 Rolling Hills Dr, Seymour, CT 06483 (hereinafter "Consultant"; collectively, the "Parties").

## Section 1. TERM AND TERMINATION

- 1.1. Term. The term of this Agreement shall commence on the date set forth above and shall remain in force until terminated.
- 1.2. Termination. This Agreement may be terminated by either party after the initial 3 month period and upon thirty (30) days prior written notice. Consultant shall be paid for all work performed by the consultant on or before the date of termination.
- 1.3. Either party may terminate this agreement forthwith without notice, in the event (i) other party ceases or threatens to carry on its business, or (ii) Client fails to pay to Consultant all fees and other amounts due pursuant to this agreement when such amount becomes due and payable; or (iii) other party breaches this agreement and fails to cure such breach within thirty (30) days of the date of a notice of such breach by the non-defaulting party.
- 1.4. Upon termination of this agreement for any reason whatsoever, Client shall immediately pay to Consultant all unpaid fees and amounts, irrespective to the fact that such amount has been invoiced or not.
- 1.5. Survival. In the event of any termination of this Agreement, Sections 5, 6, and 7 hereof shall survive and continue in effect.

## Section 2. INDEPENDENT CONTRACTOR

- 2.1. Intention of Parties. It is the intention of the Parties that Consultant be an independent contractor and not an employee, agent, or partner of Client. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between Client and either Consultant or any employee or agent of Consultant.
- 2.2. Nonexclusive. Consultant shall retain the right to perform work for others during the terms of this Agreement. Client shall retain the right to cause work of the same or a different kind to be performed by its own personnel or other contractors during the term of this Agreement.

## Section 3. CONSULTING SERVICES

- 3.1. Services. Consultant agrees to provide, and Client agrees to accept, the consulting services described in Exhibit A hereto.
- 3.2. Conduct of Services. All work shall be performed in a workmanlike and professional manner.
- 3.3. Method of Performing Services. Consultant shall have the right to determine the method, details, and means of performing the work to be performed for Client. Client shall, however, be entitled to exercise general power of supervision and control over the results of work performed by Consultant to assure satisfactory performance, including the right to inspect, the right to make suggestions or recommendations as to the details of the work, and the right to propose modifications to the work.

- 3.4. Assignment of Personnel. Client may interview the personnel Consultant assigns to Client's work. If Client in its reasonable opinion determines that such personnel are not appropriate for the work based on their specific or general skills or their background and experience, Consultant shall make a reasonable effort to assign other qualified personnel.
- 3.5. Scheduling. Consultant will try to accommodate work schedule requests of Client to the extent possible. Should any personnel of Consultant be unable to perform scheduled services because of illness, resignation, or other causes beyond Consultant's reasonable control, Consultant will attempt to replace such personnel within a reasonable time, but Consultant shall not be liable for failure if it is unable to do so, giving due regard to its other commitments and priorities.
- 3.6. Reporting. Client and Consultant shall develop appropriate administrative procedures for coordinating with each other and reporting progress. Client shall periodically provide Consultant with evaluations of Consultant's performance.
- 3.7. Place of Work. Consultant will perform its work for Client primarily at Consultant's locations except when such projects or tasks require Consultant to travel off site or to Client. Consultant's personnel who are required to visit Client's off site location or Client's place of business will be reimbursed within 10 days by Client for all travel and food expenses.
- 3.8. In the event that the performance of Consultant under this agreement is delayed due to the failure of Client to provide appropriate information or resources, reasonably necessary for Consultant's performance, appropriate adjustments to the delivery schedule shall be made and any costs or expenses incurred by Consultant as a result of such delay shall be payable by Client.

#### **Section 4. COMPENSATION**

- 4.1. Fees. In consideration of the services to be performed by Consultant, Consultant shall be entitled to compensation as described in Exhibit B hereto. Compensation is due on a monthly period, and compensation that accrues in each period is due ten (10) days after the last day of such period.
- 4.2. Payment Method. For security purposes, full payment will be made on or before the due date via bank to bank wire transfer. Consultant will provide its bank details to the Client at the time of signature of this agreement.
- 4.3. Retainer. Client will pay Consultant a one (1) month, non-refundable retainer of USD in advance used to pay for the last month of service, which is due and payable upon the execution of this Agreement.
- 4.4. Reimbursement of Expenses. In addition to the foregoing, Client shall pay Consultant its actual out-of-pocket expenses as reasonably incurred by Consultant in furtherance of its performance hereunder. Consultant agrees to provide Client with access to such receipts, ledgers, and other records as may be reasonably appropriate for Client or its accountants to verify the amount and nature of any such expenses. Some examples of expenses that Client will reimburse to the consultant include, but are not limited to, meals, lodging, travel expenses, etc., incurred by Consultant or its personnel, related to client's work, Consultant will submit invoices, as and when such expenses arises, relating to such expenses, which shall be reimbursed within ten (10) days after receipt of Consultant's invoice.
- 4.5. Interest. A delayed payment charge of one percent (1%) of the invoice amount will be paid by Client for each 30-day period (or part thereof) of delay in payment beyond the payment due date.

#### **Section 5. CONSULTANT'S PERSONNEL**

- 5.1 Compensation of Consultant's Personnel. Consultant shall bear sole responsibility for payment of compensation to its personnel. Consultant shall pay and report, for all personnel assigned to Client's work, federal and state income tax withholding, social

- security taxes, and unemployment insurance applicable to such personnel of Consultant. Consultant shall bear sole responsibility for any health or disability insurance, retirement benefits, or other welfare or pension benefits, if any, to which such personnel may be entitled. Consultant agrees to defend, indemnify, and hold harmless Client, Client's officers, directors, employees and agents, and the administrators of Client's benefit plans, from and against any claims, liabilities, or expenses relating to such compensation, tax, insurance, or benefit matters; provided that Client shall (1) promptly notify Consultant of each such claim when and as it comes to Client's attention; (2) cooperate with Consultant in the defense and resolution of such claim; and (3) not settle or otherwise dispose of such claim without Consultant's prior written consent, such consent not to be unreasonably withheld.
- 5.2 Consultant's Agreements With Personnel. Consultant shall obtain and maintain in effect written agreements with each of its personnel who participate in any of Client's work. Such agreements shall contain terms sufficient for Consultant to comply with all provisions of this Agreement, and shall confirm that such personnel shall have no status as employees of Client and no claim under any Client benefit plan.
- 5.3 State and Federal Taxes. As neither Consultant nor its personnel are Client's employees, Client shall not take any action or provide Consultant's personnel with any benefits or commitments inconsistent with any of such undertakings by Consultant.

## **Section 6. INTELLECTUAL PROPERTY RIGHTS**

- 6.1 Confidentiality. Consultant shall maintain in strict confidence, and shall use and disclose only as authorized by Client, all information of a competitively sensitive or proprietary nature that it receives in connection with the work performed for Client. Consultant shall restrict access of any confidential information to such of its personnel, who need to know it for the purpose of execution and will require of such personnel that they agree to do be bound by terms of similar import as mentioned herein. Client shall take reasonable steps to identify for the benefit of Consultant and its personnel any information of a competitively sensitive or proprietary nature, including by using confidentiality notices in written material where appropriate. These restrictions shall not be construed to apply to (1) information generally available to the public; (2) information released by Client generally without restriction; (3) information independently developed or acquired by Consultant or its personnel without reliance in any way on other protected information of Client; or (4) information approved for the use and disclosure of Consultant or its personnel without restriction. Notwithstanding the foregoing restrictions, Consultant and its personnel may use and disclose any information (1) to the extent required by an order of any court or other governmental authority or (2) as necessary for it or them to protect their interest in this Agreement, but in each case only after Client has been so notified and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.
- 6.2 Ownership of Work Product. All copyrights, patents, trade secrets, or other intellectual property rights associated with any ideas, concepts, techniques, inventions, processes, or works of authorship developed or created by Consultant or its personnel relating to Client's work (collectively, the "Work Product") shall belong exclusively to Client and shall, to the extent possible, be considered a work made for hire for Client within the meaning of Title 17 of the United States Code (in relation to United States copyright laws). Consultant automatically assigns, and shall cause its personnel automatically to assign, at the time of creation of the Work Product, without any requirement of further consideration, any right, title, or interest it or they may have in such Work Product, including any copyrights or other intellectual property rights pertaining thereto. Upon request of Client, Consultant shall take such further actions, and shall cause its personnel to take such further actions, including execution and delivery of instruments of conveyance, as may be appropriate to give full and proper effect to such assignment.

- 6.3 Residual Rights of Personnel. Notwithstanding anything to the contrary herein, Consultant and its personnel shall be free to use and employ its and their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of any assignment, so long as it or they acquire and apply such information without disclosure of any confidential or proprietary information of Client and without any unauthorized use or disclosure of Work Product. Nothing in this agreement shall be construed to negate or limit the proprietary rights of Client or Consultant under this agreement.

## **Section 7. ASSURANCES**

- 7.1 Additional Value From Hiring. Client acknowledges that Consultant provides a valuable service by identifying and assigning personnel for Client's work. Client further acknowledges that Client would receive substantial additional value, and Consultant would be deprived of the benefits of its work force, if Client were to directly hire Consultant's personnel after they have been introduced to Client by Consultant.
- 7.2 No Hiring Without Prior Consent. Without the prior written consent of Consultant, Client shall not recruit or hire any personnel of Consultant who are or have been assigned to perform work until two (2) years after the completion of the last services performed by Consultant.
- 7.3 Hiring Fee. In the event that Client hires any personnel of Consultant who are or have been assigned to perform work for Client, Client shall pay Consultant, within one (1) years of the date of such hiring, an amount equal to fifty percent (50%) of the total first-year compensation Client pays such personnel as a fee for the additional benefit obtained by Client.

## **Section 8. LIMITATIONS**

- 8.1 Disclaimer. CONSULTANT DOES NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES RENDERED BY ITS PERSONNEL OR THE RESULTS OBTAINED FROM THEIR WORK, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL CONSULTANT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR INDIRECT DAMAGES, OR FOR ACTS OF NEGLIGENCE THAT ARE NOT INTENTIONAL OR RECKLESS IN NATURE, REGARDLESS OF WHETHER IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 8.2 Total Liability. Both Parties agree that the other party's liability hereunder for damages, regardless of the form of action, shall not exceed the total amount paid or recieved for services under the applicable estimate or in the authorization for the particular service if no estimate is provided.
- 8.3 Force Majeure. Consultant shall not be liable to Client for any failure or delay caused by events beyond Consultant's control, including, without limitation, Client's failure to furnish necessary information, sabotage, failures or delays in transportation or communication, failures or substitutions of equipment, labor disputes, accidents, shortages of labor, fuel, raw materials, or equipment, or technical failures.

## **Section 9. GENERAL PROVISIONS**

- 9.1 Notices. Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed to the Parties at the addresses appearing in the introductory paragraph of this Agreement, but each party may change such address by written notice in accordance with this paragraph. Notices delivered

- personally will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated as of two business days after mailing.
- 9.2 No Discrimination. Consultant agrees that in the performance of this Agreement it will not discriminate or permit discrimination against any person or group of persons on the grounds of sex, race, color, religion, or natural origin in any manner prohibited by the laws of the United States.
- 9.3 Entire Agreement of the Parties. This Agreement supersedes any and all agreements, either oral or written, between the Parties hereto with respect to the rendering of services by Consultant for Client and contains all the covenants and agreements between the Parties with respect to the rendering of such services in any manner whatsoever. Each party to this agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, that are not embodied herein, and that no other agreement, statement, or promise not contained in this agreement shall be valid or binding. Any modification of this agreement will be effective only if it is in writing signed by a duly authorized representative of each party.
- 9.4 Severability. If any provision in this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision in this Agreement is invalid or unenforceable, parties will negotiate in good faith to replace the invalidated provision with a legally enforceable and valid provision that is as similar in tenor to the invalidated provision as is legally possible.
- 9.5 Parties in Interest. This Agreement is enforceable only by Consultant and Client. The terms of this Agreement are not a contract or assurance regarding compensation, continued employment, or benefit of any kind to any of Consultant's personnel assigned to Client's work, or any beneficiary of any such personnel, and no such personnel, or any beneficiary thereof, shall be a third-party beneficiary under or pursuant to the terms of this Agreement.
- 9.6 Governing Law. This agreement shall be interpreted and enforced in accordance with the laws of the State of Connecticut. The parties agree that no action by one party against the other may be brought in any court, in any jurisdiction, except according to the terms of this paragraph. The Parties shall first use mediation to resolve and dispose of any disputes, differences or claims arising out of this Agreement, or the interpretation or performance thereof. If a resolution cannot be achieved through mediation between the Parties within thirty (30) Calendar Days, either Party may serve upon the other a written notice that the mediation has reached an impasse and the dispute shall be resolved in accordance with Clause 9.7 below.
- 9.7 Binding Arbitration. All disputes arising out of or relating to this agreement or its subject matter--including disputes as to validity, performance, breach, or termination--which cannot be settled by mediation, shall be resolved exclusively by binding arbitration between the parties before one arbitrator selected, according to and applying the rules of the American Arbitration Association. The parties agree to venue and exclusive jurisdiction in New Haven, Connecticut. No termination or expiration of this agreement shall affect the right to arbitrate disputes. The award rendered by the arbitrator shall be final and binding upon the Parties. The award shall state the reasons upon which it is based. Judgment on the award may be entered in any court of competent jurisdiction. The referral of a dispute, difference or claim to arbitration shall not relieve either party from their obligations under this agreement.
- 9.8 Successors. This Agreement shall inure to the benefit of, and be binding upon, Consultant and Client, their successors and assigns.
- 9.9 Indemnification. Client shall defend, indemnify and hold harmless Consultant from and against all claims, liability, losses, damages and expenses (including attorneys' fees and court costs) arising from or in connection with the use or application of Consultant's work by Client or any direct or indirect purchaser or licensee of Client.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives, on the date and year first above written.

Client:

Consultant: TeamEXtension, LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Name:

Title:

Title:

Date:

Date:

## Exhibit A

### Consulting Services

Consultant will provide following services to the Client:

1. An application development team composed of two (2) Java/J2EE developers and one (1) shared IT project manager after the execution of the agreement. This team will provide the following services:
  - a. **Application Development.** Consultant will provide dedicated software development services to Client. The primary programming language used will be Java. Other programming language can be used as per the specific need that arises.
  - b. **Maintenance & Support.** Consultant will maintain and enhance existing Client systems. This includes bug fixing, debugging, integrating, upgrading, and improving Client systems. Consultant will also provide application support needed to keep the Client systems up and running.
  - c. **Project Management.** Consultant will provide IT management for application development and maintenance. This includes both people and project management. Weekly reports will be provided to the Client to keep track of individual performance and project status.
  - d. **Strategic Consulting.** Consultant will provide Client with IT information, options, and recommendations on both current and future IT initiatives. Consultant will act as a business advisor with regards to technology.
  - e. **Secondary Services.** Consultant will provide the following services to Client as needed: Business Continuity Planning, Server Monitoring, Automated Backups, Website Testing, Workstation Support, Security Audits, Web Analytics, Reputation Management, Link & Spell Checking, Web Usability Testing, Blacklist Monitoring, Website Validation, IT Purchasing and Referral services. Client can host intranet and non-critical websites on Consultant's web servers at no cost. Consultant's in-house SEO expert will do search engine optimization for Client's website, four (4) hours a week in exchange for a powered by footer section.
2. **Tools & Applications.** Consultant will provide the following tools and applications as needed: Online Storage, Online Documentation, Online Project Management, Secure Messaging, Source Code Management, Spam Filtering, Remote Access, Software Libraries and Source Code Libraries.
3. **QA.** If Client adds a QA person to the team, Consultant will provide dedicated software testing services. This includes test planning, development, execution and reporting.
4. **SEO.** If Client adds a SEO person to the team, Consultant will provide a dedicated SEO services. This includes on-site and off-site page optimization, keyword research, paid search campaign management, conversion tracking, and trend research.

## Exhibit B

### Fees

Client shall pay Consultant fees at the following rates for availing the services of respective team members who will be working on client's projects:

1. Programmer. For every one (1) programmer Client shall pay \$49.95 per hour as consulting rate. Each Programmer assigned to the Client's Project will be working for 8 hours per day, 5 days per week. If a programmer works over 9 hours per day it will be considered overtime and Client shall pay \$49.95 per hour as consulting rate. Client shall give prior written authorisation for any overtime to be done by a Programmer working on the Client's projects.
2. Manager. One (1) manager will be assigned for every team, who will work 1 to 1.5 hours per day for every day one (1) Programmer works. The manager will work 1 hour per day for every day one (1) QA or SEO works. These hours will be non-billable and will be used for people and project management, and project and strategic planning. If a Manager, who is working on Client's Project, works over the above mentioned number of hours allotted for the whole team, it will be considered overtime and Client shall pay \$150 per hour as consulting rate of the Manager. Client shall give prior written authorisation for any overtime to be done by a Manager working on the Client's projects.
3. QA (Optional). If Client avails the services of a QA, Client shall pay \$49.95 per hour as consulting rate for one (1) QA. Each QA assigned to the Client's Project will be working 8 hours per day, 5 days per week. If a QA works over 9 hours per day it will be considered overtime and Client shall pay \$49.95 per hour as consulting rate. Client shall give prior written authorisation for any overtime to be done by a QA working on the Client's projects.
4. SEO (Optional). If Client avails the services of a SEO, Client shall pay \$39.95 per hour as consulting rate for one (1) SEO. Each SEO assigned to the Client's Project will be working 8 hours per day, 5 days per week. If a SEO works over 9 hours per day it will be considered overtime and Client shall pay \$39.95 per hour as consulting rate. Client shall give prior written authorisation for any overtime to be done by a SEO working on the Client's projects.