**CONSULTANT WORK-FOR-HIRE AGREEMENT**

This agreement (the “Agreement”) is entered into by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_ corporation, whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (“Company”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Consultant”).

WITNESSETH:

WHEREAS, Company desires to retain the services of Consultant to develop certain artwork/computer programming to be used by Company in a project that it is developing entitled \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Project”) as described in greater detail in Schedule ‘A’ attached hereto; and

WHEREAS, Consultant is willing and able to provide such services to and develop such artwork/programming for Company in accordance with the terms recited herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. RETENTION OF CONSULTANT

A. Company hereby retains the services of Consultant to provide certain art and/or programming related services for Company in connection with the Project, including the creation and development of ideas, artwork, designs, plans, software programs, documents, concepts, inventions, devices, samples, prototypes, and improvements (the “Work”).

B. Consultant is an independent contractor and not an employee of Company. Nothing contained herein shall be construed to create a partnership, joint venture, principal-agent or employer-employee relationship between the parties. It is the intent of the parties that Consultant shall in no manner be considered an employee of Company (statutory, common law, leased or otherwise) for any purpose, including, but not limited to, wages, benefits, rights and privileges afforded to employees under any federal or state statutes, regulations, or administrative rulings in any jurisdiction. Unless otherwise expressly agreed to in writing, Consultant shall not be entitled to or eligible for any benefits or programs otherwise given by Company to its employees, including, but not limited to, vacation and holiday pay, overtime pay, leaves of absence, health and welfare benefits, including coverage for medical, dental, vision, accidental death and disability, long-term or short-term disability, or life insurance, severance benefits, retirement benefits, including pension or thrift plan contributions, and/or any other benefits of any kind or nature provided by Company to its employees.

C. Consultant hereby warrants to Company that Consultant is engaged in an independent business enterprise, and that Consultant has complied with all business requirements necessary to operate Contractor’s business, if any, such as licensing, tax and other business operation requirements.  Consultant shall be solely and entirely responsible for Consultant’s own acts and omissions relative to the performance of services under this Agreement, and Consultant shall determine the manner and method of performing such services, and shall set Consultant’s own hours in which to perform and complete such services.  The parties hereto understand and agree that Consultant is free to perform work in any capacity for other clients of Consultant in Consultant’s sole discretion as Consultant sees fit, except as may otherwise be prohibited by the non-solicitation and/or confidentiality provisions set forth below.

2. TERM OF THE AGREEMENT

A. This Agreement shall commence on \_\_\_\_\_\_\_\_\_\_\_\_\_\_ and extend through and including \_\_\_\_\_\_\_\_\_\_ (“Term”) unless sooner terminated as pro­vided herein.

B. Company shall have the option of renewing the subject Agreement for an additional \_\_\_-month period (“Extended Term”) on the same terms and conditions as provided for herein by providing Consultant written notice of its intention to renew this Agreement at least \_\_\_ days prior to the expiration of the Term.

 OR

* 1. *This Agreement shall be effective for the period commencing on Consultant’s execution of this Agreement, and will continue in effect until acceptance and approval (which shall not be unreasonably withheld) by Company of all the Deliverable Items described in Schedule “A” (“Term”) unless sooner terminated as pro­vided herein.*
	2. *Any additional work must be separately negotiated for in good faith. Company shall not be liable for payment for any such additional work performed until it has executed a separate agreement for such work in writing.*

3. RESPONSIBILITIES OF CONSULTANT

Consultant agrees to create, develop, and provide Work to Company in accordance with the Delivery Schedule provided for in Schedule A attached hereto. This is a material provision of this Agreement. Time is of the essence. Company may at any time require Consultant to deliver Company or its designee any or all Work, including without limitation any and all source code, in whatever state of completion and whether or not otherwise delivered as a part of a milestone. Upon receipt of Company’s written request therefore, Consultant shall deliver to Company or its designee within five (5) business days such originals or copies of such Work as Company shall have indicated in such request.

4. COMPENSATION

A. In full consideration for the services performed by Consultant under the terms of this Agreement, Company agrees to compensate Consultant as provided for in Schedule A.

B. Consultant’s agreed-to compensation as provided for in Schedule A will be full payment for any Work Consultant generates, and Consultant will not be entitled to any royalties or proceeds received by Company from the commercialization in any manner of Work or Project.

C. With respect to the payments described in this Section 4, it is understood and agreed that Consultant is solely responsible for federal, state, and/or local income, self-employment or payroll taxes, interest, assessments and penalties, if any, that are or will become due and payable in connection with the performance of the Work and the payments to be made by Company under this Agreement. Company makes no representations or warranties regarding Consultant’s tax obligations or liabilities concerning these payments. Consultant hereby agrees to indemnify, defend (at Company’s option) and hold Company harmless from and against all liabilities, losses, costs, expenses, interest, payments and penalties which may result from Consultant’s receipt of the payments from Company in the event any such payments are later determined to be taxable wages.

5. OWNERSHIP RIGHTS

A. It is understood and agreed that Work is being developed by Consultant for the sole and exclusive use of Company and/or a client of Company (‘Client’) and that Company and/or Client shall be deemed to be the sole and exclusive owner of all right, title, and interest therein, including all copyright and proprietary rights relating thereto. All work performed by Consultant on Projects and all Work generated in connection therewith is and shall be considered as ‘Works Made for Hire’ (as defined under the U.S. Copyright Laws) and, as such, shall be owned by and for the benefit of Company and/or Client.

B. Subject only to Company’s payment of all fees owed to Consultant as provided herein, Company and/or Client have the right to use or not use Work and to use, reproduce, re-use, alter, modify, edit, or change Work as it sees fit and for any purpose. Consultant hereby waives any moral rights Consultant may have in the Work against Company and Client.

C. In the event that it should be determined that any of such Work does not qualify as a Work Made for Hire, Consultant will and hereby does assign to Company and/or Client all right, title, and interest that it may possess in such Work including, but not limited to, all copyright and proprietary rights relating thereto. Upon request, Consultant will take such steps as are necessary to enable Company and/or Client to record such assignment, at Company’s expense.

D. Consultant will sign, upon request, any documents needed to confirm that any specific Work is a Work Made for Hire and to effectuate the assignment of its rights to Company and/or Client.

E. Both during the Term of this Agreement and thereafter, Consultant will assist Company, Client and/or their agents, upon request, in preparing U.S. and foreign copyright, trademark, and/or patent applications covering Project and/or Work. Consultant will sign any such applications, upon request, and deliver them to Company and/or Client. Company and/or Client will bear all expenses that it causes to be incurred in connection with such copyright, trademark, and/or patent protection.

OPTIONAL

*F. CONSULTANT’S PROPRIETARY MATERIALS. Notwithstanding the provisions of Subsections 5A through 5C above, it is understood and agreed that Consultant may in its sole discretion use its proprietary software programs, trade secrets, applets, templates, forms, graphics and/or other proprietary information in providing the Work. If Consultant uses any such proprietary software programs, trade secrets, applets, templates, forms, graphics and/or other proprietary information and so notifies Company, Company shall not acquire any proprietary rights to such programs, trade secrets, applets, templates, forms, graphics or other proprietary information. Consultant grants to Company as of the date of acceptance, and payment all applicable fees due hereunder by Company to Consultant, a nonexclusive, non-transferable license to use all such materials in the form included in the completed Work and/or Project in perpetuity, including the right to create derivative works based thereon.*

6. REPRESENTATIONS AND WARRANTIES

A. Consultant represents and warrants to Company that it is free to enter into this Agreement and that its performance thereunder will not conflict with any other Agreement to which Consultant may be a party.

B. Consultant represents and warrants to Company that all Work is unique and original, is clear of any claims or encumbrances, and does not infringe on the rights of any third parties.

 C. For a period of one year immediately after termination of this Agreement, Company shall not interfere with Consultant’s business by soliciting any employee to leave Consultant’s employ, by inducing any third party consultant to sever that consultant’s relationship with Consultant, or by soliciting business from any of Consultant’s customers or clients without the express written consent of Consultant.

7. CONFIDENTIALITY

Consultant recognizes that during the course of its work with Company, Consultant may have occasion to conceive, create, develop, review, or receive information which is considered by Company to be confidential or proprietary, including information relating to inventions, patent, trademark and copyright applications, improvements, know‑how, specifications, drawings, cost data, process flow diagrams, customer and supplier lists, bills, ideas, and/or any other written material referring to same (‘Confidential Information’). Both during the Term of this Agreement and thereafter:

 a. Consultant agrees to maintain in confidence such Confidential Information unless or until: (1) it shall have been made public by an act or omission of a party other than itself; or (2) Consultant receives such Confidential Information from an unrelated third party on a nonconfidential basis.

 b. Consultant further agrees to use all reasonable precautions to ensure that all such Confidential Information is properly protected and kept from unauthorized persons or disclosure.

 c. If requested by Company, Consultant agrees to promptly return to Company all materials, writings, equipment, models, mechanisms, and the like obtained from or through Company including, but not limited to, all Confidential Information, all of which Consultant recognizes is the sole and exclusive property of Company.

 d. Consultant agrees that it will not, without first obtaining the prior written permission of Company: (1) directly or indirectly utilize such Confidential Information in its own business; (2) manufacture and/or sell any product that is based in whole or in part on such Confidential Information; or (3) disclose such Confidential Information to any third party.

8. INDEMNIFICATION

 A. Consultant agrees to defend, indemnify, and hold Company, its officers, directors, agents, and employees, harmless against all costs, expenses, and losses (including reasonable attorney fees and costs) incurred through claims of third parties against Company based on a breach by Consultant of any representation and warranty made in this Agreement.

 B. Company agrees to defend, indemnify, and hold Consultant, its officers, directors, agents, and employees, harmless against all costs, expenses, and losses (including reasonable attorney fees and costs) incurred through claims of third parties against Consultant based on any act or omission of Company, any breach by Company of any representation and warranty made in this Agreement as well as any claim that any material provided by Company to Consultant, including any source material upon which the Work is to be based, infringes upon the intellectual property rights of that third party. The provisions of this Section shall not apply to any claim which arises as a result of a breach of any representation or warranty made by Consultant herein.

9. INFRINGEMENTS

 A. Company shall have the right, in its sole discretion, to prosecute lawsuits against third parties for infringement of its rights in the Work. Any lawsuit shall be prosecuted solely at Company’s expense and all sums recovered shall be retained by Company.

 B. Consultant agrees to fully cooperate with Company in the prosecution of any such suit, and Company shall reimburse Consultant for any previously approved expenses that it might incur as a result of such cooperation.

10. TERMINATION

 A. Company shall have the absolute right to terminate this Agreement on no notice to Consultant should Consultant fail to deliver the Work to Company in a form acceptable to Company on or before the dates recited in the Delivery Schedule.

or

 *A. Company shall have the absolute right to terminate this Agreement in its sole discretion for any reason, with our without cause, at any time, subject to applicable provisions of this Agreement with regards to Company’s payment obligations. Consultant shall have the right to terminate this Agreement in its sole discretion for any reason, with or without cause, at any time, by providing Company thirty (30) days written notice and by delivering a copy of all Work, whether completed or in progress, at the time of Termination.*

 B. Either party may terminate this Agreement on thirty (30) days’ written notice to the other party in the event of a breach of any provision of this Agreement by the other party, provided that, during the thirty-day period, the breaching party fails to cure such breach.

 C. In the event that this Agreement is terminated as a result of a breach of this Agreement by Consultant, Company shall have the right, in addition to any other claims that it might otherwise have against Consultant, to complete Work either itself or through the services of a third-party Consultant and charge back to Consultant any costs incurred.

 D. If Consultant’s services are terminated prior to the completion of all deliverables described in Schedule A, Consultant shall be paid up and through the most recently approved deliverable subject to Section 10C above. In the event Consultant’s services are terminated without cause, Consultant shall be entitled to full payment for any completed work delivered to Company prior to review and acceptance, and a pro-rata payment for any work materially in progress but not delivered at the time of termination (however, payment is subject to delivery of such in-progress work).

 E. The provisions of Paragraphs 5, 6, 7, 8, and 12-17 shall survive any termination of this Agreement.

11. NOTICES

 Any notice required to be given pursuant to this Agreement shall be in writing and mailed by certified or registered mail, return receipt requested, or delivered by a national overnight express service such as Federal Express, or by facsimile communication with an acknowledgment by the recipient.

12. JURISDICTION AND DISPUTES

 A. This Agreement shall be governed by the laws of the State of California.

 B. All disputes hereunder shall be resolved in the applicable state or federal courts of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The parties consent to the jurisdiction of such courts, agree to accept service of process by mail, and waive any jurisdictional or venue defenses otherwise available.

13. AGREEMENT BINDING ON SUCCESSORS.

 This Agreement shall be binding on and shall inure to the benefit of the parties hereto, and their heirs, administrators, successors, and assigns.

14. WAIVER

 No waiver by either party of any default shall be deemed as a waiver of any prior or subsequent default of the same or other provisions of this Agreement.

15. SEVERABILITY

 If any provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision and such invalid provision shall be deemed to be severed from the Agreement.

16. ASSIGNABILITY

 This Agreement and the rights and obligations thereunder with respect to Consultant are personal to Consultant and may not be assigned by any act of Consultant or by operation of law without the prior written consent of Company. Company shall have the unfettered right to assign this Agreement to any party in its sole discretion.

17. INTEGRATION

 This Agreement constitutes the entire understanding of the parties, and revokes and supersedes all prior agreements between the parties and is intended as a final expression of their Agreement. It shall not be modified or amended except in writing signed by the parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents that may be in conflict therewith.

 IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have each executed this Agreement on the date indicated.

[COMPANY NAME] [CONSULTANT NAME]

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

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SCHEDULE A

TO

AGREEMENT BETWEEN

[Company]

AND

[Consultant]

DATED [date]

Project(s):

TITLE: [name] Project

TASK

Provide \_\_\_\_\_\_\_ services for its [name] Project.

SCHEDULE

Preliminary artwork to be submitted by [date] with final artwork to be submitted by [date].

FEE

Flat fee of ..... Dollars ($....) payable as follows:

  ..... Dollars ($....) upon execution of this Agreement

  ..... Dollars ($....) upon approval by Company of the preliminary artwork

  ..... Dollars ($....) upon approval by Company of the final artwork

### CREDITS/PORTFOLIO RIGHTS

Consultant shall receive appropriate credit for its efforts in the form of either its name or logo on a splash screen and/or within credit sections of any commercially released Project in which Consultant’s Work is utilized, in any credit sections of any documentation included with such a Project, as well as on all marketing materials and press releases, whether print or electronic. Logo and/or credit placement shall be of size and placement as Company may chose in its sole discretion. Consultant hereby grants Company a worldwide, royalty-free, non-exclusive, perpetual license to use Consultant’s name, trademarks and logos in connection with the Project(s) and the credit provisions set forth in this Agreement. In addition, Consultant shall have the right to display all Work as part of Consultant’s professional portfolio, including on Consultant’s web site and other marketing materials, following the commercial release of the Project and subject to Company and/or the Client’s express written approval, not to be unreasonably withheld. Company and/or Client shall grant Consultant a worldwide, royalty-free, non-exclusive, perpetual license to use Company and/or Client’s name, trademarks and logos in connection with the Project(s) and the uses set forth above.

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