

## CONSULTING SERVICES AGREEMENT

This Consulting Services Agreement (the “**Agreement**”) is made as of \_\_\_\_\_ (the “**Effective Date**”), and is by and between YOUR COMPANY, a \_\_\_\_\_, including its affiliates and subsidiaries, with offices at YOUR ADDRESS (“**Client**”) and \_\_\_\_\_, a \_\_\_\_\_ with offices at \_\_\_\_\_ (“**Consultant**”). This Agreement includes one or more separately executed Statements of Work, (which may be in the form of Exhibit A hereto or such other form as agreed upon by the parties), which are numbered sequentially as they are executed (e.g. SOW #1, SOW #2 etc.), reference this Agreement and describe the services to be performed hereunder and other matters relating to such services (each a “**Statement of Work**” or “**SOW**”).

### *Recitals*

**WHEREAS**, Client desires to obtain certain consulting services from Consultant as set forth in and on the terms set forth below; and

**WHEREAS**, Consultant is willing to provide such services to Client as set forth in and on the terms set forth below.

**NOW, THEREFORE**, for and in consideration of the terms and conditions hereinafter set forth and other good and valuable consideration, the receipt and legal sufficiency of which are hereby expressly acknowledged, the parties hereto agree as follows:

#### **1. TERM**

This Agreement shall commence on the Effective Date and shall continue thereafter until completion or expiration of the last Statement of Work under this Agreement, unless earlier terminated as permitted herein (the “**Term**”).

#### **2. CONSULTING SERVICES**

2.1 The Consulting Services. Client hereby retains Consultant to provide the consulting services set forth in the Statement(s) of Work (the “**Consulting Services**”).

2.2 Performance. Consultant shall perform the Consulting Services in a professional, workmanlike manner and as set forth in, and subject to, this Agreement and the Statement(s) of Work. Without limiting the generality of the forgoing, Consultant shall use best efforts, and shall devote such amounts of its time, personnel and resources as are necessary or appropriate to achieve the objectives set forth in the Statement of Work, including completion of tasks and creation of deliverables within the time frames, all as set forth therein. The Consulting Services shall be performed at the offices of Client or such other sites as mutually agreed upon by the parties. Except as otherwise specifically provided in a Statement of Work, Consultant shall be responsible for providing all resources and personnel necessary to provide the Consulting Services.

2.3 Change Procedures. Client may modify the scope of the Consulting Services, at any time during the Term, by notifying Consultant of the requested change in writing (a “**Change Request**”). Consultant will, at its own expense, respond by written notice to Client within five (5) business days following receipt of a Change Request, outlining in good faith all impacts of the requested change on the Statement of Work, including deliverables, delivery dates and pricing (collectively, the “**Change Request Response**”). Client shall accept, reject or propose modifications to each such Change Request Response as soon as reasonably possible after receipt. Additional modifications proposed by Client as part of such response will be handled as set forth above. Upon acceptance by Client of a Change Request Response and its corresponding Change Request, the Statement of Work shall be adjusted as necessary to accommodate the changes so accepted by way of a written, jointly executed amendment. Consultant may not decline to accept any Change Request that reduces the cost of performance. Consultant further may not decline any Change Request that increases the cost or magnitude of performance, provided that (i) the changes are reasonable in scope and (ii) Consultant has sufficient resources available to complete, within the time period required by Client, all additional work necessary to implement the Change Request.

2.4 Other Services. In the event that the parties mutually agree upon performance of additional consulting services, such additional services shall be described in separate Statements of Work and performed pursuant to the terms and conditions of this Agreement and such Statements of Work. This Agreement governs the Consulting Services specified in the Statement(s) of Work only. However, if any services, activities or responsibilities are not specifically described in a Statement of Work but are required for the proper performance and provision of the Consulting Services, they shall be deemed to be included with the Consulting Services to the same extent and in the same manner as if specifically described in the applicable Statement of Work.

2.5 Inability to Perform Due to a Client Delay. A Statement of Work may contain a description of certain Client responsibilities. In the event of (i) Client’s failure or inability to perform a Client responsibility as expressly set forth in any Statement of Work hereunder or (ii) Client’s refusal to grant access to Consultant to any Client facility as set forth in Section 3.4 (collectively, a “**Client Delay**”), and such Client Delay actually impedes Consultant’s ability to perform the Consulting Services, including meeting any delivery or milestone date, then, notwithstanding any provision in this Agreement or a Statement of Work to the contrary, Consultant’s performance of the Consulting Services shall be deemed postponed for an equivalent period provided that Consultant has provided the notice set forth in the following sentence. If Consultant believes that a Client Delay has occurred, Consultant shall provide Client prompt written notice specifying such alleged Client Delay no later than five (5) days following the occurrence of such alleged Client Delay. The failure to provide such notice shall be deemed to be a waiver of such Client Delay as an excuse for Consultant’s non-performance of the Consulting Services in a timely fashion.

### 3. RESOURCES

3.1 Core Consultant Personnel. Throughout the Term, but subject to normal attrition, the Consultant personnel identified in the Statement of Work (including Consultant's Project Manager, as defined below), either by name or by skill and experience level, will perform the Consulting Services hereunder on Consultant's behalf (the "**Core Consultant Personnel**"). Upon Client's request, Consultant shall provide Client with a resume, and such other information regarding any Core Consultant Personnel as Client may reasonably request and permit Client to interview any or all such personnel prior to such personnel performing any Consulting Services hereunder. Any removal, transfer, reassignment or other changes in the Core Consultant Personnel (other than attrition) shall be subject to Client's prior written approval, which may be withheld in Client's sole but reasonable discretion. Consultant agrees that it will, within three (3) business days, replace any Core Consultant Personnel whom Client deems to be ineffectively or inadequately performing his/her functions for the Consulting Services under this Agreement or is otherwise removed or denied permission to work pursuant to Sections 3.4 or 3.5 below.

3.2 Project Managers. With respect to each Statement of Work, each party shall select and list in the Statement of Work, a qualified staff member as its project manager (each, a "**Project Manager**"), who has or is hereby granted authority to: (i) submit material and information requests to the other party; (ii) provide access to its staff to provide information and answer questions that relate specifically to the Consulting Services; (iii) provide schedules and plans that relate to the Consulting Service; (iv) make binding decisions for such party with respect to this Agreement; and (v) amend this Agreement on such party's behalf in the manner provided herein. Consultant agrees that it will promptly replace its Project Manager in the event Client reasonably believes such Project Manager is ineffectively or inadequately performing his/her functions under this Agreement, or is otherwise removed or denied permission to work pursuant to Sections 3.4 or 3.5 below, and will not otherwise replace its Project Manager without the prior written consent of Client, which consent may not be unreasonably withheld or delayed.

3.3 Subcontractors. Consultant will not subcontract or otherwise permit third parties ("**Subcontractor(s)**") to perform any Consulting Services without Client's specific prior written consent, which may be withheld in Client's sole discretion or otherwise conditioned, including a condition that the Subcontractor have, maintain and provide proof of, adequate insurance in type and amount determined by Client and listing Client as an additional insured. Any Subcontractor authorized by Client to perform services in connection with this Agreement, and Consultant, shall first sign a subcontracting agreement in a form provided by Client before the Subcontractor shall begin performing any work for Client. Once engaged, a Subcontractor shall not be replaced by Consultant without the prior written consent of Client. If Client is unsatisfied with any Subcontractor's performance, or the Subcontractor is otherwise removed or denied permission to work pursuant to Sections 3.4 or 3.5 below, following written notification by Client, Consultant shall promptly replace such Subcontractor with another qualified Subcontractor or Consultant employee having equivalent credentials and shall arrange for any new Subcontractor and Consultant to sign a subcontracting agreement

as referred to above. Consultant shall be responsible for all Consulting Services under this Agreement, whether performed by a Subcontractor or Consultant itself, and Consultant guarantees its Subcontractor's fulfillment of the applicable obligations imposed on Consultant by this Agreement.

3.4 Access to and Use of Client Facilities and Equipment. During the Term, Client will provide Consultant's personnel and approved Subcontractors with access to Client facilities as is reasonably necessary to enable Consultant to perform the Consulting Services. Client shall provide Consultant with a copy of any written Client workplace policies, and Consultant shall be responsible for its employees and Subcontractors' adherence to such policies. Client shall have the right to immediately remove from Client's premises any Consultant employee or Subcontractor who violates any such workplace policies, and shall provide prompt notice to Consultant of any such removal and the reasons therefor. Consultant agrees that it will not use Client facilities (including any Client communications facilities such as the telephone or Internet) and/or any Client equipment (including any non-transient equipment owned, leased or rented by Consultant for performing its obligations under this Agreement and physically located on Client's premises) to perform services for any person or entity other than Client, without Client's prior written consent. In the event either party provides the other party with equipment for use in connection with the Consulting Services, each party agrees to assume any and all risk of loss for all such equipment while in such party's care, custody or control. Each such party shall take all commercially reasonable precautions to protect the other party's equipment against loss, damage, theft or disappearance while in such party's care, custody or control. In addition, neither party shall take actions that affect the other party's title or interest in such equipment.

3.5 Criminal Background Checks. Client, at its sole discretion, may conduct criminal conviction background checks on any employee or Subcontractor of Consultant who performs work at Client's facilities. Upon request, Consultant shall provide the names of such individuals and any other information necessary for conducting background checks. Client may refuse permission to work at Client facilities (or may remove), or may grant permission to work but restrict access to buildings and areas, to any person who fails the background check (as determined by Client) or who refuses to cooperate with the background check process.

#### **4. PAYMENT**

4.1 Fees and Expenses. Except for Disputed Amounts (defined below), Client shall pay to Consultant the fees and expenses in the manner, amount and/or in accordance with the payment schedule set forth in the applicable Statement of Work (but in no event no more than once monthly), within thirty (30) days from receipt of a correct invoice; provided that, where Consulting Services are performed on a time and materials basis, all Consultant invoices shall include a detailed description of the Consulting Services, and expenses relating to Consultant's performance of the Consulting Services, during the applicable period, including without limitation, a list of the persons providing such Consulting Services, the number of hours of Consulting Services provided by each such person by date and the hourly rates therefor and other

information as reasonably necessary for Client to verify the accuracy of the invoice amounts. Client shall reimburse Consultant for direct, out-of-pocket expenses incurred by Consultant in connection with its performance of the Consulting Services which have been pre-approved as to amount and/or or type or category, subject to Client's then standard expense policies, unless agreement has been made to include the expenses as a percentage of the hourly rate. Where Consulting Services are performed on a time and materials basis, in no event shall Client be liable for any fees or expenses invoiced more than sixty (60) days after the end of the month in which the Consulting Services to which such fees relate were performed or expenses were incurred.

4.2 Disputed Amounts. As used herein, "**Disputed Amounts**" means any amounts that are subject to a bona fide dispute raised by Client in writing. Notwithstanding anything herein to the contrary, failure of Client to pay any Disputed Amounts on a timely basis will not be considered a late payment or a breach of this Agreement; provided (i) Client has notified Consultant of such Disputed Amount as set forth herein, (ii) all undisputed amounts are paid in a timely fashion, (iii) appropriate personnel of Client make themselves available to resolve the dispute and (iv) all Disputed Amounts that Client subsequently agrees in writing to pay or that are required to be paid pursuant to a proper court order or award from any mutually submitted arbitration shall be paid within fifteen (15) days from the date of such agreement or determination ("**Dispute Provisions**"). Notwithstanding any provision in this Agreement to the contrary, so long as Client complies with the Dispute Provisions with respect to any Disputed Amount, Client shall not be responsible for Consultant's attorneys' fees or court costs, regardless of the outcome of the dispute.

4.3 Taxes & Benefits. Client shall be responsible for payment of all federal, state and local excise, value-added, sales, use and similar taxes applicable to the performance of the Consulting Services, other than Consultant Obligations (as defined below) (collectively, "**Client Taxes**"), and any listing of Consultant's fees or rates shall be exclusive of any such Client Taxes. If Consultant shall be required to pay any such Client Taxes, Client shall promptly reimburse Consultant for all such Client Taxes. Consultant shall be responsible for all of Consultant's federal and state income taxes, and for the payment of all compensation, benefits and employment related taxes relating to its personnel and/or Subcontractors, including withholding; social security; insurance; health, disability and retirement benefits; workers' and unemployment compensation; paid vacations and holidays; and pensions (collectively, "**Consultant Obligations**"). If Client shall be required to pay any such Consultant Obligations, Consultant shall promptly reimburse Client for all such Consultant Obligations.

4.4 Records & Audit. Consultant shall keep all usual and proper records related to its activities under this Agreement ("**Records**"). During the Term and for a period of five (5) years thereafter, Client shall have the right, upon seven (7) days' written notice, to audit Consultant's Records as is reasonable for the purpose of verifying Consultant's compliance with the terms of this Agreement and Client's concerns with such compliance, provided that any such audits shall be conducted during Consultant's normal business hours and in such a manner as to not unreasonably interfere with the normal business operations of Consultant. Any such

audit shall be paid for by Client unless Material Discrepancies are disclosed. “**Material Discrepancies**” mean an overpayment of three percent (3%) or higher between amounts billed to Client and Consultant’s Records. If Material Discrepancies are discovered, Consultant agrees to (i) reimburse Client for the costs associated with the audit, (ii) promptly correct any deficiencies detected in the audit, (iii) pay interest on the amount of any overpayment from the date of payment was originally due at the rate of twelve percent (12%) per annum and (iv) promptly refund any overpayments discovered by such audit, or Client may, at Client’s election, set off any such overpayment against any money subsequently due by Client to Consultant.

## 5. WARRANTIES

5.1 By Consultant. Consultant warrants, represents and agrees that:

5.1.1 It has the full and exclusive right and power to enter into and perform according to this Agreement, and such performance will not violate any other agreement, covenant or obligation of Consultant with or to any third party;

5.1.2 The Consulting Services provided by Consultant, including any portion performed by any Subcontractor, will be in compliance with all applicable laws and regulations, including laws and regulations relating to employment and those promulgated by the Occupational Safety and Health Administration;

5.1.3 The Work Product (as defined in Section 6 below), the Prior Works (as defined in Section 6 below) and the Consulting Services provided by Consultant, including any portion performed by any Subcontractor, (i) are and will be original to Consultant and have been or will be created by Consultant employees within the scope of their employment or engagement, or by Subcontractors pursuant to agreements where all intellectual property and other rights to the Work Product created by such Subcontractors are assigned to Consultant or directly to Client, and no additional third party approvals or permissions are needed for Client to exercise the rights granted to it under this Agreement; (ii) do not and will not infringe any intellectual property rights held by any third party, and (iii) will be in substantial compliance with all written requirements, specifications, criteria and representations therefor set forth in the applicable Statement of Work and other written documents of Consultant;

5.1.4 It has the necessary equipment, expertise and trained personnel to properly perform the Consulting Services and deliver the Work Product consistent with standard industry practices and that it will perform the Consulting Services and deliver the Work Product consistent with standard industry practices and in a professional and workmanlike manner.

5.2 By Client. Client represents, warrants and agrees that it has the full power to enter into and perform according to this Agreement, and such performance will not violate any other agreement, covenant or obligation of Client with or to any third party.

5.3 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, EACH PARTY SPECIFICALLY DISCLAIMS ANY WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## 6. OWNERSHIP

6.1 Work Product. Ownership of all work product, deliverables and documentation developed by Consultant under this Agreement, including without limitation, any expression of Consultant's findings, reports, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, methodology, processes, templates and other similar information and documentation, and all intellectual property and other rights and interests embodied therein (collectively, the "**Work Product**"), have been specially ordered or commissioned by Client and shall be considered "works made for hire" (as such term is defined under U.S. copyright law) with Client being the author thereof. In the event that the Work Product is not, under applicable law, deemed to be a "work made for hire," or any intellectual property rights in the Work Product are not deemed to be owned by Client on creation, then Consultant hereby assigns to Client, and hereafter agrees to assign to Client, any and all intellectual property and other rights and interests in and to the Work Product, including copyright, patent rights and trade secret rights. Consultant shall execute and deliver to Client such additional instruments, and take such other actions, as Client may reasonably request to confirm, evidence or carry out the assignment of rights contemplated by this Section 6.1. Consultant's obligations under this Section 6.1 will apply both during and indefinitely after the term of Consultant's engagement under this Agreement. Consultant hereby appoints Client (and its duly authorized officers and agents) as Consultant's agent and attorney-in-fact, to act in Consultant's stead, to execute and deliver any such additional instrument and take such other actions, with the same legal force and effect as if done by Consultant, should Consultant for any reason whatsoever fail to promptly execute or deliver any such instrument or take such other actions to effect any such assignment of rights to Client described in this Section 6.1. Consultant acknowledges and agrees that this appointment constitutes a right coupled with an interest and is irrevocable.

6.2 Consultant's Prior Works. Notwithstanding the provisions of Section 6.1 above, Consultant shall retain title to all know-how, methodology, techniques, processes and templates conceived, developed or reduced to practice by Consultant prior to its performance of the Consulting Services hereunder and set forth on Exhibit B attached hereto (collectively, the "**Prior Works**"), and Client shall have no ownership interest therein. Consultant hereby grants to Client a non-exclusive, royalty-free, perpetual, irrevocable license, with the right to sublicense, to use such Prior Works (i) to the extent that any such Prior Works is embodied in the Work Product and/or (ii) in, and in connection with, creating any tangible property or expression based on or which embodies such Work Product.

## 7. CONFIDENTIAL INFORMATION

7.1 Confidentiality. During the course of Consultant performing Consulting Services for Client, Consultant may be given access to or otherwise obtain non-public information (in hardcopy and/or electronic form, or received verbally or through visual or other means) regarding Client's past, present and future business activities, products, services research, development and technical infrastructure ("**Confidential Information**"). Without limiting the generality of the foregoing, Confidential Information includes information regarding Client's unique systems and technology environment, any information relating to Client's customers or policy holders and/or their non-public medical and financial information and any other non-public information regarding Client's business which a reasonable person would consider as confidential. In connection with Confidential Information, the following subsections shall apply:

7.1.1 The Confidential Information may only be used or copied by Consultant to the extent strictly necessary for Consultant to perform the Consulting Services;

7.1.2 Consultant agrees to protect the confidentiality of the Confidential Information in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall Consultant exercise less than reasonable care in protecting the Confidential Information. Access to, and disclosure of, the Confidential Information shall be restricted to Consultant personnel or permitted Subcontractors engaged in a use permitted hereby and bound in writing to maintain the confidentiality thereof;

7.1.3 All Confidential Information, including all copies thereof, shall be returned or destroyed upon the (i) completion of the Consulting Services or (ii) request by Client at any time;

7.1.4 Nothing in this Agreement shall prohibit or limit Consultant's use of information which Consultant can establish with reasonably competent evidence is (i) previously known to it without an obligation of confidence, (ii) independently developed by or for it, (iii) acquired by it from a third party which is not under an obligation of confidence to Client, or (iv) which is or becomes publicly available through no breach of this Agreement;

7.1.5 If Consultant receives a subpoena or other validly issued administrative or judicial process demanding disclosure of the Confidential Information, it shall promptly notify Client of such receipt and tender to it the defense of such demand. After providing such notification, Consultant shall be entitled to comply with such subpoena or other process to the extent required by law.

7.2 Public Statements. Neither party shall (i) issue press releases or publicity or make any public statements that in any way relate to this Agreement, (ii) refer to the other party in any brochures, client listings, advertisements or other similar materials, or (iii) otherwise use the name, logo or other identifying information of the other party outside of its own organization, without the prior written approval of the other party in each instance.

## 8. LIMITATION OF LIABILITY

EXCEPT FOR (i) BREACHES OF CONSULTANT'S CONFIDENTIALITY OBLIGATIONS UNDER SECTION 7, (ii) EITHER PARTY'S INDEMNITY OBLIGATIONS UNDER SECTION 9, AND (iii) WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING FROM THE SUBJECT MATTER OF THIS AGREEMENT, REGARDLESS OF THE TYPE OF CLAIM AND EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, SUCH AS, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS.

## 9. INDEMNIFICATION

9.1 By Each Party. Each party (the "**Indemnifying Party**") agrees to defend the other party and/or the subsidiaries, affiliates, directors, officers, employees, agents, subcontractors and assigns thereof (collectively, the "**Indemnified Party(ies)**"), from and against any and all third party (including employees of the Indemnified Party) claims, suits, actions, demands or proceedings, threatened, asserted or filed against any Indemnified Party(ies) (collectively, "**Indemnification Claims**"), and to indemnify and hold harmless such Indemnified Party(ies) from and against any and all expenses, penalties assessed by government entities, liabilities and/or damages of any kind awarded or paid in settlement or incurred in the defense of such Indemnification Claims (including but not limited to reasonable attorneys' fees incurred and/or those necessary to successfully establish the right to indemnification), to the extent that such Indemnification Claims arise out of, relate to or, if true, would constitute (i) any breach or alleged breach of any warranties and representations made by the Indemnifying Party in this Agreement, including without limitation, under Section 5 hereof, (ii) any claims of Indemnifying Party's employees or Subcontractors for any compensation or benefits of any nature or kind, (iii) the negligence or willful misconduct of the Indemnifying Party, or any of its employees or agents (including Subcontractors), or (iv) claims of personal injury, or damage to tangible personal property that arise out of or relate to performance of this Agreement.

9.2 Further Obligations of Consultant. Notwithstanding anything in this Section to the contrary, should any of the Work Product (or any portion thereof) be held to constitute an infringement and use of such Work Product as contemplated by this Agreement be enjoined, Consultant shall (in addition to its foregoing indemnification obligation) notify Client and at Consultant's expense immediately: (i) procure for Client the right to continue to use such Work Product (or any portion thereof) under this Agreement; or (ii) replace or modify such Work Product (or any portion thereof) under this Agreement such that it is non-infringing, provided that the replacement or modification meets the requirements of this Agreement to Client's reasonable satisfaction. If (i) or (ii) cannot be promptly accomplished by Consultant, in addition to any damages or expenses paid or reimbursed under Section 9.1, Client shall have the right to immediately terminate this Agreement and Consultant shall refund all amounts

paid by Client to Consultant hereunder with respect to that portion of such Work Product which is no longer usable by Client (which may include portions which are not themselves infringing), based on the amount invoiced to Client for such portion or other reasonable method of calculation.

9.3 Indemnification Procedures. The Indemnified Party(ies) shall: (i) provide the Indemnifying Party reasonably prompt notice in writing of any Indemnification Claim and permit the Indemnifying Party, through counsel mutually acceptable to both parties, to answer and defend such Indemnification Claim and (ii) provide the Indemnifying Party information and reasonable assistance, at the Indemnifying Party's expense, to help the Indemnifying Party to defend or settle such claim or action. The Indemnified Party(ies) shall have the right to employ separate counsel and participate in the defense of any claim or action, at its own expense. The Indemnifying Party may not settle or compromise any Indemnification Claim on the Indemnified Party(ies)' behalf without first obtaining the Indemnified Party(ies)' written permission, which permission will not be unreasonably withheld, unless such settlement or compromise requires only the payment of money damages to the claimant which is paid in full by the Indemnifying Party. If the Indemnifying Party does not notify the Indemnified Party(ies) in writing within ten (10) days of notice referred to in (i) above, that it will defend the Indemnification Claim, or thereafter does not diligently defend and/or take action to settle the Indemnification Claim, the Indemnified Party(ies) may defend the Indemnification Claim with its own attorneys and/or act to settle or compromise the Indemnification Claim, subject to the indemnification provided for in Section 9.1.

## **10. TERMINATION**

### **10.1 Termination For Cause.**

10.1.1 Due to Breach. Either party may terminate this Agreement or any or all Statement(s) of Work upon written notice to the other party at any time if the other party (i) is in material breach of any of the representations, warranties, covenants or agreements set forth in this Agreement or a Statement of Work and (ii) fails to remedy such breach within thirty (30) days after the receipt of written notice thereof. During the cure period specified above (or elsewhere in this Section 10.1), each of the parties shall continue to perform their obligations under this Agreement.

10.1.2 Due to Force Majeure Event. If either party is unable to perform under this Agreement due to any act of God, act of governmental authority, act of public enemy, or due to war, riot, flood, civil commotion, insurrection or severe weather conditions, or any other cause beyond the reasonable control of either party, as the case may be, such failure shall not be construed as a breach of this Agreement; provided that if such inability continues for a period of thirty (30) days or more, the other party shall have the right, upon written notice to such party, to terminate this Agreement or any affected Consulting Services, which termination shall be effective upon such party's receipt of such notice.

10.1.3 Due to Bankruptcy or Insolvency. Either party may terminate this Agreement at any time after sixty (60) days' prior written notice to the other party in the event of any insolvency, bankruptcy, liquidation or similar meritorious proceedings of such other party or if such other party admits in writing its inability to pay its debts when due, or makes an assignment for the benefit of its creditors.

10.2 Termination Without Cause. Client may terminate this Agreement or any Statement of Work at any time without cause or occurrence of default, effective upon at least three (3) business days' prior written notice to Consultant. Upon the date specified in any such termination notice, Consultant shall use reasonable efforts to discontinue and promptly wind down the applicable Consulting Services and deliver to Client all Work Product, whether complete or in-process, prepared as of the effective date of termination as set forth below. Upon termination by Client pursuant to this Section, (i) with respect to Consulting Services performed on a time and materials basis, Client shall pay for such time and materials (including expenses) performed through the termination date; and (ii) with respect to any Consulting Services performed on a fixed fee (or milestone) basis, Consultant shall, in good faith, inform Client of the extent to which performance has been completed (the "Percentage of Completion"), and Client shall pay to Consultant a pro-rata portion of the fees due under the Statement of Work (or, if applicable, a pro-rata portion of the fees which would be due upon completion of the particular milestone), based on the Percentage of Completion, less the amount of any payment already made to Consultant, an plus expenses and taxes as provided for herein.

10.3 Effect of Termination. In the event of termination or expiration of this Agreement for any reason, Sections 4.3, 4.4, 5, 6, 7, 8, 9, 10.3 and 11 shall survive. Neither party shall be liable to the other for damages of any sort resulting solely from terminating this Agreement in accordance with the terms hereof. The rights and remedies provided in this Section 10 shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement. Subject to and in accordance with the foregoing provisions of this Section 10, Client will pay for all Consulting Services performed by Consultant prior to the date of termination, subject to Consultant's delivery to Client of all Work Product prepared as of the effective date of termination and Client claims for breach of this Agreement.

## 11. GENERAL

11.1 Notices. All notices, requests, consents, approvals, or authorizations in connection with this Agreement (collectively, "**Notices**") must be given in writing, sent by messenger, overnight delivery service, facsimile transmission to the fax number set forth below, or the United States of America mails, postage prepaid, certified or registered, return receipt requested, and addressed (or sent to the facsimile number) as follows:

NOTICES TO CONSULTANT:

Attn:  
Address:

Telephone:  
Fax:

Copy to:

Fax:

NOTICES TO CLIENT:

Attn: General Counsel  
Address:

Telephone:  
Fax:

Separate Copies to: [name of Client Project Manager], and Director of Procurement and Contracts, at the address set forth above.

All Notices sent in accordance with the foregoing shall be deemed received by the intended recipient (a) upon personal delivery, (b) one (1) business day following deposit with an overnight courier services, (c) upon sending of the facsimile (but only if (i) the fax is sent during the business hours of a business day of the recipient, (ii) the receiving fax device immediately generates a message, printed by the sending fax device, that confirms successful transmission, and (iii) a copy of the notice is contemporaneously sent by regular mail) or (d) two (2) business days after deposit in the US mails.

11.2 Independent Contractors. Consultant is an independent contractor for Client, and nothing in this Agreement will be construed to mean that any party is appointed or in any way authorized to act as an agent of the other party, and without limiting the generality of the foregoing, neither party will make any representation or warranty to third parties on the other party's behalf. This Agreement does not create any employer-employee relationship, joint venture, partnership or formal business entity or organization of any kind. Employees of Consultant performing any of the Consulting Services shall at all times during such assignment be and remain employees of Consultant and not of Client. Consultant shall be solely responsible for paying its employees' and any Subcontractor's entire compensation earned in connection with the subject matter of this Agreement and any related taxes, expenses, holidays, sick time, vacations, and benefits and shall indemnify and hold Client harmless against any claims by any of Consultant's employees or Subcontractors for compensation and employment or other benefits from Client with respect to the Consulting Services.

11.3 Independent Development. Nothing in this Agreement will be construed as restricting Client's ability to acquire, license, or develop for itself, or have others acquire, license, or develop for Client, any services that are similar to and/or that perform the same or similar functions as the Consulting Services or the Work Product.

11.4 Hiring Provisions. Client reserves the right to hire individual employees or Subcontractors (or employees thereof) of Consultant ("**Individuals**") as employees of Client. When such a hire is made, Client may be required to make a one-time payment to Consultant based on the total length of the Individual's engagement with Client pursuant to this Agreement and a percentage of the first year salary offered by Client and accepted by the Individual, in accordance with the Schedule below. Any Individual

engaged directly or indirectly pursuant to this Agreement for over six months may be hired by Client with no payment obligation to Consultant. In the event an employee of Consultant hired by Client has not worked under this Agreement, there will be no payment hereunder to Consultant.

<u>Length of Engagement Consultant</u>	<u>% of Yearly Salary to be Paid to Consultant</u>
0-3 months	25%
3-6 months	15%
Over 6 months	0%

During the Term and for one (1) year following the termination of this Agreement, Consultant agrees not to, directly or indirectly, employ, solicit for employment or induce to leave the employ of Client, any person who is then a Client employee or who was a Client employee during the one year period prior to the attempted employment, solicitation or inducement.

11.5 Construction; No Inadvertent Waiver. If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect for the same purpose. Failure by either party to enforce any provision of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision. No waiver of any provision of this Agreement shall be effective unless it is in a signed writing, and no such waiver constitute a waiver of any other provision(s) or of the same provision on another occasion.

11.6 Time of the Essence. The parties agree that time is of the essence in this Agreement.

11.7 Dispute Resolution. Except for (i) disputes concerning breaches of Section 7 (Confidentiality) or Section 9 (Indemnification) and (ii) either party's exercise of its rights to terminate this Agreement as provided in Section 10 (which disputes shall be resolved pursuant to either subsection (b) or (c) hereof), material disputes between the parties that may arise during the Term of this Agreement will be resolved as follows: Each party will designate a representative who will negotiate in good faith to resolve such dispute. If the matter is not resolved within two (2) business days, it will be escalated to a representative of each party with appropriate authority to resolve such matter. If these representatives are unable to resolve the matter within five (5) business days, then (a) the parties may mutually agree to extend the dispute resolution negotiations, (b) the parties may mutually agree to submit the matter to binding arbitration under the rules of the American Arbitration Association, which arbitration shall be conducted by a panel of three (3) arbitrators and held in Portage County, Wisconsin; or (c) either party may take any action or no action or exercise any or all rights and

remedies set forth herein or provided by law and in equity, and any negotiations undertaken pursuant to this Section 11.7 will be without prejudice to either party.

11.8 Governing Law; Exclusive Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of Wisconsin, without giving effect to the conflict of law principles thereof. Except as the parties may otherwise mutually agree in writing, any dispute arising under this Agreement or concerning its interpretation will be resolved exclusively in the state or federal courts located in or serving Wisconsin, and Consultant irrevocably consents to the exercise of jurisdiction by said courts over Consultant. In such a dispute, legal process may be served upon Client or Consultant in the same manner as provided in this Agreement for delivery of non-electronic notices (i.e. no service by facsimile).

11.9 Attorneys' Fees. Except as expressly provided otherwise in this Agreement, if either party employs attorneys to enforce any rights arising out of or relating to this Agreement in any suit or other action to enforce any right or remedy under this Agreement, the prevailing party or substantially prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

11.10 No Assignment by Consultant. This is a contract for personal services, and Client relies upon Consultant's qualifications, reputation and expertise to perform all obligations hereunder, as well as Consultant's affirmative representation that it has the resources and expertise to perform all of the Consulting Services required under this Agreement. Accordingly, Consultant shall not sell, assign, transfer, pledge or encumber any of its rights or delegate any of its duties or obligations under this Agreement, or any portion thereof, without Client's prior written consent, which may be withheld in Client's sole discretion. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of each party hereto. Any attempted assignment or other action in violation of this Section 11.10 shall be void, and, upon any such attempted assignment or action, Client may terminate this Agreement due to a breach pursuant to Section 10.1.1; provided, that Client need not provide Consultant the cure period specified in Section 10.1.1(ii).

11.11 Exhibits. The Exhibits and Statements of Work attached hereto or referencing this Agreement, as amended from time to time, are incorporated into this Agreement by this reference. All references to the "Agreement" are references to this Agreement and all such Exhibit and executed Statements of Work, all as amended from time to time. To the extent that any provision contained in any Exhibit or Statement of Work is inconsistent or conflicts with this Agreement exclusive of the Exhibits or Statements of Work, the provisions of this Agreement (exclusive of the Exhibits and Statements of Work) shall control.

11.12 Interpretation. Headings used in this Agreement are intended for convenience and shall not be deemed to supersede or modify any provisions. Wherever the words "include," "includes," or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." Pronouns in the male, female or neuter gender shall be deemed to include the others genders.

11.13 No Third Party Beneficiaries. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties hereto.

11.14 Counterparts; Faxed Signatures. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute one and the same instrument. Each party shall receive a duplicate original of the counterpart copy or copies executed by it. For purposes hereof, a facsimile copy of this Agreement, including the signature pages hereto, shall be deemed to be an original, and each party agrees that it will not contest the validity of the execution of this Agreement solely on the basis of any signature being a facsimile transmission. Notwithstanding the foregoing, the parties shall each deliver original execution copies of this Agreement to one another as soon as practicable following execution thereof.

11.15 Insurance. No later than thirty (30) days after the Effective Date, Consultant shall have procured insurance coverage, effective as of the Effective Date, and shall maintain such coverage throughout the Term of this Agreement. Such insurance shall be in a form and with insurers with at least an "A+" rating, shall list Client as an additional insured under each policy, and shall comply with the minimum requirements set forth in Exhibit C hereto. Within thirty (30) days of the Effective Date, Consultant shall provide to Client proof, such as an insurance certificate, evidencing full compliance with the insurance requirements set forth herein. The insurance policies shall provide that the insurance company shall notify Client in writing at least thirty (30) days in advance if the Seller's insurance coverage is to be canceled or materially altered so as not to comply with the requirements of this Agreement.

11.16 Entire Agreement; Amendments. This Agreement shall not be effective until signed by both parties. This Agreement (together with the Exhibits and Statements of Work attached hereto or referencing this Agreement) constitutes the entire agreement between the parties with respect to the subject matter hereof and merges and supersedes all prior and contemporaneous communications. This Agreement shall not be modified except by a written agreement dated subsequent to the date hereof and signed on behalf of Consultant and Client by their respective duly authorized representatives.

**[signature page follows]**

**IN WITNESS WHEREOF**, the parties have entered into this Consulting Services Agreement as of the Effective Date written above.

**CLIENT**

**CONSULTANT**

\_\_\_\_\_  
By (Sign)

\_\_\_\_\_  
By (Sign)

\_\_\_\_\_  
Name (Please print)

\_\_\_\_\_  
Name (Please print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
By (Sign)

\_\_\_\_\_  
Name (Please print)

\_\_\_\_\_  
Title

## Exhibit A

### Form of Statement of Work

This Statement of Work is issued under and is subject to that certain Consulting Services Agreement (the “**Agreement**”) by and between YOUR COMPANY, a \_\_\_\_\_, including its affiliates and subsidiaries, with offices at YOUR ADDRESS (“**Client**”) and \_\_\_\_\_ (“**Consultant**”), dated as of \_\_\_\_\_, 200\_\_. All capitalized terms not defined herein shall have the meanings ascribed in the Agreement.

1. **PROJECT SUMMARY (Including designation of whether the project will be performed on a Time and Materials basis or for a Fixed Price)**
  
2. **DESCRIPTION OF CONSULTANT’S TASKS & DELIVERABLES**

<b>Task Description</b>	<b>Deliverables and Specifications/Criteria</b>	<b>Delivery Date</b>

3. **STAFFING**

#### Core Consultant Personnel

<b>Individual</b>	<b>Role</b>	<b>Responsibilities</b>

**For Time and Materials Based Engagements:** Consultant will perform the Consulting Services with \_\_\_ [number] consultants, including the Core Consultant Personnel listed above. Consultant and Client Project Managers will determine in writing when to introduce any new consultants into the project.

**For Fixed Price Based Engagements:** Provided the services of the Core Consultant Personnel are provided, Consultant will provide such number of consultants as it believes is necessary and/or appropriate to achieve the tasks within the schedule, all as set forth in this Statement of Work, and may adjust such engagement staffing, at its discretion.

**4. SCHEDULE**

Consultant will commence the Consulting Services at the soonest possible start date but no later than \_\_\_\_\_ [date]. Consultant estimates that it will complete the Consulting Services within \_\_\_\_ [number] calendar weeks of project commencement.

The work effort distribution is estimated as follows:

Consultant Grade	Estimated Number of Days To Be Worked

**5. CLIENT’S RESPONSIBILITIES (describe any specific Client responsibilities)**

**[Examples]**

[Client’s management and staff will be made available, on an as needed and reasonable basis, to meet with Consultant to provide the necessary input into the project.]

To assist the Consultant team in its engagement activities and to meet the estimated schedules outlined herein, the following documentation will be gathered and organized by Client staff prior to the engagement: [list any documentation]

Client will ensure timely completion of the deliverables review and acceptance in order to meet schedules and optimize delivery activities.]

**6. ACCEPTANCE**

Client will have \_\_ business days from delivery to evaluate and accept (or reject) deliverables (the “**Evaluation Period**”). During the Evaluation Period, Client will review the deliverables to ensure that such deliverables substantially meet the specifications and/or criteria set forth in **Section 2** of this Statement of Work the (“**Acceptance Criteria**”).

If within the Evaluation Period, Client believes the deliverables fail to meet the Acceptance Criteria, it will provide Consultant with a written deficiencies list which describes in reasonable detail how the deliverables fail to meet the Acceptance Criteria. If a deficiencies list is presented, Consultant will take such corrective action required to cause the deliverables to meet the foregoing Acceptance Criteria. Consultant will resubmit the deliverables for acceptance following such corrective action and Client shall have an additional Acceptance Period to determine if the Acceptance Criteria have been met. Regardless of whether the Consulting Services are performed on a time and materials basis or fixed fee (per milestone) basis, all such corrective action shall be at Consultant's sole expenses.

Deliverables will be deemed "accepted" if Client fails to notify Consultant of deficiencies in the deliverables on or before the last day of the Evaluation Period. Until such time as "acceptance" occurs, Client shall be relieved of the obligation to pay amounts, if any, contingent on "acceptance."

**7. PRICE & PAYMENTS**

**For Time and Materials:** Consultant will perform the Consulting Services set forth herein on a time and materials (T&M) basis, including travel and out-of-pocket expenses, in accordance with the Agreement.

The following T&M rates will apply:

<b>Consultant Grade</b>	<b>Daily Rate</b>
Associate	
Consultant	
Senior Consultant	
Technical Architect	
Business Analyst	
Programmer/Developer	

Based on the schedules and staffing set forth above in this Statement of Work, the total project fees [are estimated to be \$\_\_\_\_\_] [but, without limiting Consultant's requirement to provide the Consulting Services, will not exceed \$\_\_\_\_\_], including reasonable travel and out-of-pocket expenses.

**For Fixed Price:** Consultant will perform the Consulting Services for a fixed price of [\$] [based on completion and/or acceptance of milestones], including reasonable travel and out-of-pocket expenses.

Consultant will submit invoices Client for these fixed price fees in accordance with the following milestone schedule: [include a list of payments per milestone]

Consultant will also invoice Client for reasonable travel and out of pocket expenses incurred once each month.

**8. CONTACTS/PROJECT MANAGERS**

The following contacts are designated by Consultant and Client for questions concerning this Statement of Work:

<b>Contact</b>	<b>Name</b>	<b>Telephone/pager/ e-mail</b>
Consultant Account Executive		
Consultant Project Manager		
Client Project Manager		

**9. ADDITIONAL TERMS (if applicable)**

IN WITNESS WHEREOF, the parties have each caused this Statement of Work to be executed by their duly authorized representatives.

**CLIENT**

**CONSULTANT**

\_\_\_\_\_  
By (Sign)

\_\_\_\_\_  
By (Sign)

\_\_\_\_\_  
Name (Please print)

\_\_\_\_\_  
Name (Please print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
By (Sign)

\_\_\_\_\_  
Name (Please print)

\_\_\_\_\_  
Title

**Exhibit B**

**Prior Works**

**Exhibit C**

**Minimum Insurance Requirements**