

ODECLOUD INC. CONSULTING SERVICES AGREEMENT (FREELANCER)

This Consulting Agreement (“*Agreement*”) is entered into as of _____ (the “*Effective Date*”), between OdeCloud Inc., a California corporation having its principal place of business at 165 Northpoint St, Suite 4155, San Francisco, CA 94133 (“*Company*”), and _____, a _____ whose address is _____ (“*Consultant*”).

Company and Consultant desire to have Consultant perform services for Company, subject to and in accordance with the terms and conditions of this Agreement.

THEREFORE, the parties agree as follows:

1. SERVICES

1.1 Statements of Work. From time to time, Company and Consultant may execute one or more statements of work that describe the specific services to be performed by Consultant (as executed, a “*Statement of Work*”). Each Statement of Work shall expressly refer to this Agreement, shall form a part of this Agreement, and shall be subject to the terms and conditions contained herein. A Statement of Work may be amended only by written agreement executed by both the parties.

Performance and Tracking of Services. Consultant shall perform Consultant’s duties for Company as described in the Statement of Work (the “*Services*”) to the very best of Consultant’s abilities, in good faith and in a reasonable manner consistent with industry standards. The manner and means Consultant uses to perform the Services shall be within Consultant’s sole discretion and control; *provided*, that Consultant shall provide Company a written Deliverable status update via Company-provided online tools or via e-mail (as instructed by Company from time to time) at least once per week. If Consultant’s availability to provide the Services set forth in any Statements of Work may be impeded, reduced or delayed in any manner, Consultant shall, as soon as practicable, provide Company written notice of any such anticipated reduced availability or inability to timely provide the Services. **Consultant shall maintain a detailed list of tasks and hours which should coincide with project deliverables.**

1.2 Consultant Personnel. Consultant shall perform all Services only through its regular, full-time employees referred to as the “*Consultant Personnel*”. Consultant acknowledges and agrees that all Consultant Personnel are subject to Company’s continuing acceptance and that Company expressly reserves the right at any time to reject any Consultant Personnel, solely for good cause. To the extent that any Consultant Personnel are required to perform Services at a Company facility, Consultant shall first ensure

that such Consultant Personnel have been informed of Company’s workplace, computer and security policies and procedures, and shall comply with such policies and procedures at all times.

1.3 Key Persons. From time to time, the parties may designate in a Statement of Work one or more Consultant employees with specialized skills, knowledge or technical expertise to perform Services hereunder (each such employee is referred to as a “*Key Person*”). Consultant acknowledges and agrees that the availability and commitment of all such Key Persons is critical to Consultant’s successful performance of Services. Accordingly, Consultant agrees that it shall not reassign, remove or replace any Key Person from the performance of Services without Company’s express prior written consent. If, because of incapacitation or resignation, any Key Person becomes unavailable for the performance of Services, Consultant shall use its best efforts to replace such Key Person with a person of equal or better qualifications. The replacement person shall be subject to Company’s prior written approval, which approval shall not be unreasonably withheld or delayed.

1.4 Delivery. Consultant shall deliver to Company the deliverables, designs, modules, software, products, documentation and other materials specified in the Statement of Work (individually or collectively, “*Deliverables*”) in accordance with the delivery schedule and other terms and conditions set forth in the Statement of Work.

1.5 Communication. The parties shall promptly and proactively communicate any issues or concerns that either party may have concerning Consultant working with Company or Consultant’s provision of the Services.

2. PAYMENT

2.1 Fees. As Consultant’s sole compensation for the performance of Services, Company shall pay Consultant the fees specified in each Statement of Work in accordance with

the terms set forth therein. Without limiting the generality of the foregoing Consultant acknowledges and agrees that, if specified in the Statement of Work, Company's payment obligation shall be expressly subject to Consultant's completion or achievement of certain milestones to Company's reasonable satisfaction and/or Consultant meeting certain service level requirements as specified in the Statement of Work. Any time spent by Consultant addressing Company's or Company's client's (the "*End User*") questions or concerns regarding any of Consultant's invoices or provision of the Services or the Deliverables shall not be billable time pursuant to this Agreement of any Statement of Work.

2.2 Fixed Retainer Payment Terms. If Company, pursuant to a Statement of Work, retains Consultant on a fixed monthly retainer fee, assuming Consultant's compliance with the terms of this Agreement and the applicable Statements of Work, Company shall pay Consultant the fixed-monthly retainer fee set forth in the Statement of Work. Notwithstanding the foregoing, if Consultant's reported Service hours (as set forth in the Consultant's invoices) are consistently (two (2) months in a row) ten percent (10%) over or under the agreed-upon Service hours to be provided by Consultant, Company reserves the right to either increase or decrease the monthly time allocation and/or the amount of the retainer fee to be paid to Consultant for subsequent months.

2.3 Expenses. Unless otherwise provided in the Statement of Work, Company shall also reimburse Consultant for all reasonable and customary out-of-pocket travel, lodging, meals and related expenses incurred by Consultant in connection with Consultant's performance of Services that are pre-approved in writing by Company. At Company's request, Consultant shall furnish Company with copies of receipts and other customary documentation for any expenses for which Consultant requests reimbursement hereunder. Consultant's provision of copies of such requested receipts and other customary documentation for expenses is a condition precedent to Company having the obligation to pay any expenses of Consultant.

2.4 Payment Terms. All fees and other amounts set forth in the Statement of Work, if any, are stated in and are payable in U.S. dollars. The fees payable to Consultant shall be payable as set forth in the Statement of Work. Payment is contingent on Consultant's invoices containing daily time entries that each have a reasonably detailed description of the Services that Consultant has provided to Company and the time spent on providing such specific Services. Consultant shall invoice Company on a monthly basis for all expenses reimbursable to Consultant under Section 2.2 above.

Company shall pay the full amount of any undisputed amounts of each such invoice within thirty (30) days following receipt thereof.

3. RELATIONSHIP OF THE PARTIES

3.1 Independent Contractor. Consultant is an independent contractor and nothing in this Agreement shall be construed as establishing an employment or agency relationship between Company and Consultant or any Consultant Personnel. Consultant has no authority to bind Company by contract or otherwise. Consultant shall perform Services under the general direction of Company, but Consultant shall determine, in Consultant's sole discretion, the manner and means by which Services are accomplished, subject to the requirement that Consultant shall at all times comply with applicable law.

3.2 Control of Work. Company is interested only in the results achieved by Consultant, and shall not control the manner or means by which Consultant achieves those results. Consultant shall have the exclusive authority to control and direct the performance of Consultant's work performed under this Agreement.

(a) Consultant may engage Consultant Personnel to perform aspects of the required services, but Consultant shall supervise the work of and verify the suitability of the product of such individuals. Any such individuals engaged by Consultant shall be employees of Consultant and not employees or contractors of Company, or generally, subcontractors. Consultant shall be solely responsible for all compensation due such individuals; Company shall not have or exercise any control over any such individuals; Company shall not be responsible for any payment or other liability of any nature to any such individuals; and Consultant shall indemnify and hold harmless Company for all costs, losses, liabilities, etc., for all claims of any nature whatsoever by any individual engaged by Consultant asserted against Company.

(b) Consultant shall be entitled to offer Consultant's services to other entities and/or individuals.

(c) Consultant shall set Consultant's hours of work and may perform Consultant's services at any location of Consultant's choice.

3.3 Time Commitment. Consultant may devote whatever time s/he deems necessary to the completion of Consultant's duties under this Agreement; *provided*, that Consultant shall be available to meet with representatives of Company, at a mutually agreed time Monday through Friday,

to discuss the status of progress regarding the Services and the status of outstanding Deliverables.

3.4 Taxes and Employee Benefits. Consultant shall report to all applicable government agencies as income all compensation received by Consultant pursuant to this Agreement. Consultant shall be solely responsible for the payment of all compensation to all Consultant Personnel, as well as for payment of all withholding taxes, social security, workers' compensation, unemployment and disability insurance or similar items required by any government agency. Consultant Personnel shall not be entitled to any benefits paid or made available by Company to its employees, including, without limitation, any vacation or illness payments, or to participate in any plans, arrangements or distributions made by Company pertaining to any bonus, stock option, profit sharing, insurance or similar benefits. Consultant shall indemnify and hold Company harmless from and against all damages, liabilities, losses, penalties, fines, expenses and costs (including reasonable fees and expenses of attorneys and other professionals) arising out of or relating to any obligation imposed by law on Company to pay any withholding taxes, social security, unemployment or disability insurance or similar items in connection with compensation received by Consultant pursuant to this Agreement.

3.5 Insurance.

(a) Consultant shall at its own expense secure and continuously maintain throughout the term of this Agreement and for one (1) year following the expiration or termination of this Agreement the following insurance with companies qualified to do business in the jurisdiction in which the services will be performed and rating A-VII or better in the current Best's Insurance Reports published by A.M. Best Company.

(b) [Optional] Worker's Compensation Insurance, which shall fully comply with the statutory requirements of all applicable state and federal laws.

(c) **Commercial General Liability Insurance with a combined single limit of liability of \$1,000,000 per occurrence and \$1,000,000 aggregate** for bodily injury, death, property damage, personal injury, and products.

(d) [Optional] Excess (Umbrella) coverage with respect to Sections 3.5(a), 3.5(b), and 3.5(c) above with a per occurrence limit of \$3,000,000.

(e) **Technology/Cyber and Errors and Omissions (Professional Liability) Insurance with limit of \$1,000,000**, covering liabilities arising from a) product or service financial injury caused by a product or service defect or performance failure; b) technology-related injury caused by any errors or omissions and all series of continuous, repeated or related acts, errors or omissions; and c) breach mitigation and notification expenses related to a privacy breach. Coverage also includes reasonable legal litigation expenses.

(f) Before any cancellation, modification, or reduction in coverage of such policy, Consultant shall give Company thirty (30) days prior written notice of such proposed cancellation, modification, or reduction; *provided*, that Consultant will not reduce or cancel its above-stated insurance coverage during the Term and for at least one (1) year thereafter. Any insurance carried by Company shall be deemed excess insurance, not subject to contribution. Consultant hereby waives any and all rights of subrogation against Company, its directors, officers, agents, employees, assignees and successors and shall cause its insurers to endorse its commercial general liability, umbrella and workers compensation policies to include a waiver of subrogation provision.

4. OWNERSHIP

4.1 Disclosure of Work Product. Consultant shall, as an integral part of the performance of Services, disclose in writing to Company all inventions, products, designs, drawings, notes, documents, information, documentation, improvements, works of authorship, processes, techniques, know-how, algorithms, specifications, biological or chemical specimens or samples, hardware, circuits, computer programs, databases, user interfaces, encoding techniques, and other materials of any kind that Consultant may make, conceive, develop or reduce to practice, alone or jointly with others, in connection with performing Services, or that result from or that are related to such Services, whether or not they are eligible for patent, copyright, mask work, trade secret, trademark or other legal protection (collectively, "**Consultant Work Product**"). Consultant Work Product includes without limitation any Deliverables that Consultant delivers to Company pursuant to Section 1.2.

4.2 Ownership of Consultant Work Product. Consultant and Company agree that, to the fullest extent permitted by applicable law, each item of Consultant Work Product shall be a work made for hire owned exclusively by Company. Consultant agrees that regardless of whether an item of Consultant Work Product is a work made for hire, all Consultant Work Product shall be the sole and exclusive

property of Company. Consultant hereby irrevocably transfers and assigns to Company, and agrees to irrevocably transfer and assign to Company, all right, title and interest in and to the Consultant Work Product, including all worldwide patent rights (including patent applications and disclosures), copyright rights, mask work rights, trade secret rights, know-how, and any and all other intellectual property or proprietary rights (collectively, “**Intellectual Property Rights**”) therein. At Company’s request and expense, during and after the term of this Agreement, Consultant shall assist and cooperate with Company in all respects and shall cause all Consultant Personnel to assist and cooperate with Company in all respects, and shall execute documents and shall cause all Consultant Personnel to execute documents, and shall take such further acts reasonably requested by Company to enable Company to acquire, transfer, maintain, perfect and enforce its Intellectual Property Rights and other legal protections for the Consultant Work Product. Consultant hereby appoints the officers of Company as Consultant’s attorney-in-fact to execute documents on behalf of Consultant for this limited purpose. Notwithstanding anything contained in this Agreement to the contrary, any documents, know-how, information, processes, techniques, intellectual property or proprietary information or other materials of any kind that Consultant owns, has developed or has in Consultant’s possession prior to the Effective Date as a result of Consultant’s prior business experience shall not be considered part of the Consultant Work Product or Company’s Intellectual Property Rights.

4.3 **Moral Rights.** To the fullest extent permitted by applicable law, Consultant also hereby irrevocably transfers and assigns to Company, and agrees to irrevocably transfer and assign to Company, and waives and agrees never to assert, any and all Moral Rights (as defined below) that Consultant or any Consultant Personnel may have in or with respect to any Consultant Work Product, during and after the term of this Agreement. “**Moral Rights**” mean any rights to claim authorship of a work, to object to or prevent the modification or destruction of a work, to withdraw from circulation or control the publication or distribution of a work, and any similar right, existing under judicial or statutory law of any country in the world, or under any treaty, regardless of whether or not such right is called or generally referred to as a “moral right.”

4.4 **Related Rights.** To the extent that Consultant owns or controls (presently or in the future) any patent rights, copyright rights, mask work rights, trade secret rights, or any other intellectual property or proprietary rights that may block or interfere with, or may otherwise be required for, the exercise by Company of the rights assigned to Company under this Agreement (collectively, “**Related Rights**”),

Consultant hereby grants or shall cause to be granted to Company a non-exclusive, royalty-free, irrevocable, perpetual, transferable, worldwide license (with the right to sublicense) to make, have made, use, offer to sell, sell, import, copy, modify, create derivative works based upon, distribute, sublicense, display, perform and transmit any products, software, hardware, methods or materials of any kind that are covered by such Related Rights, to the extent necessary to enable Company to exercise all of the rights assigned to Company under this Agreement.

5. CONFIDENTIAL INFORMATION

5.1 **Confidentiality.** Each party acknowledges that it shall have access to certain confidential information of the other party concerning the other party’s means, with respect to the disclosing party (the “**Disclosing Party**”), any information that is disclosed by the Disclosing Party to the receiving party (the “**Recipient**”) during the term of this Agreement, either directly or indirectly, in writing, orally or by inspection or observation of tangible and intangible objects, including, but not limited to, proprietary information, technical data, trade secrets or know-how, including, but not limited to, research, product plans, products, services, markets, works of original authorship, photographs, negatives, digital images, software, computer programs, source code, object code, ideas, inventions (whether or not patentable), processes, formulas, technology, designs, drawings and engineering, hardware configuration information, marketing or finance documents, promotional methods, volumes of sales, customer, vendor and supplier names, lists and data and other technical, business, financial, customer and product development plans, forecasts, strategies and information, price policies, business opportunities and strategic partnerships and alliances (“**Confidential Information**”). Confidential Information shall include all information in tangible or intangible form that is marked or designated as confidential or that, under the circumstances of its disclosure, should reasonably be considered confidential. Each party agrees that it shall not use in any way, for its own account or the account of any third party, except as expressly permitted by, or required to achieve the purposes of, this Agreement, nor disclose to any third party (except as required by the court as reasonably necessary), any of the other party’s Confidential Information and shall use commercially reasonable efforts and precautions to protect the confidentiality of such information, which precautions shall be at least as stringent as it takes to protect its own Confidential Information of a like or similar nature, but in no case shall a party use less than a reasonable degree of care.

5.2 Exclusions. Information shall not be deemed Confidential Information hereunder if such information: (i) is known to the Recipient prior to receipt from the Disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (ii) becomes known (independently of disclosure by the Disclosing Party) to the Recipient directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the Recipient; or (iv) is independently developed by the Recipient without reference to or reliance on the Disclosing Party's Confidential Information as evidenced by documents or files in existence at the time of the confidential disclosure. The Recipient may disclose Confidential Information pursuant to (x) written permission from the Disclosing Party permitting the disclosure of the Disclosing Party's Confidential Information or (y) the requirements of a governmental agency or by operation of law; *provided*, that it gives the Disclosing Party reasonable prior written notice (unless prohibited by law or a government order) sufficient to permit the Disclosing Party to contest such disclosure pursuant to a protective order or other remedy. In the event that such protective order or other remedy is not obtained, the Recipient shall furnish only that portion of the Confidential Information that is legally required and use commercially reasonable efforts to obtain assurance that confidential treatment shall be accorded the Confidential Information.

6. WARRANTIES

6.1 No Pre-existing Obligations. Consultant represents and warrants that Consultant has no pre-existing obligations or commitments (and shall not assume or otherwise undertake any obligations or commitments) that would be in conflict or inconsistent with or that would hinder Consultant's performance of its obligations under this Agreement.

6.2 Performance Standard. Consultant represents and warrants that Services shall be performed in a thorough and professional manner, consistent with high professional and industry standards by individuals with the requisite training, background, experience, technical knowledge and skills to perform the Services.

6.3 Non-infringement. Consultant represents and warrants that the Consultant Work Product shall not infringe, misappropriate or violate the rights of any third party, including, without limitation, any Intellectual Property Rights or any rights of privacy or rights of publicity, except to the extent any portion of the Consultant Work Product is

created, developed or supplied by Company or by a third party on behalf of Company.

6.4 Non-Solicitation of Employees. During the term of this Agreement and for a period of one (1) year thereafter, neither party shall directly or indirectly solicit the services of any employee of the other party for its own benefit or for the benefit of any other person or entity; *provided, however*, that a general advertisement that an employee of the other party responds to shall not be a violation of this Section 6.4.

6.5 Agreements with Consultant Personnel. Consultant represents and warrants that all Consultant Personnel who perform Services are and shall be bound by written agreements with Consultant under which: (i) Consultant owns or is assigned exclusive ownership of all Consultant Work Product; and (ii) Consultant Personnel agree to limitations on the use and disclosure of Confidential Information no less restrictive than those provided in Section 5.

7. INDEMNITY

7.1 Indemnity by Consultant. Consultant shall defend, indemnify and hold Company and Company's directors, members, managers, agents, employees, successors and permitted assigns harmless from and against any losses, damages (including, without limitation, actual damages, compensatory damages, punitive damages and extra-contractual damages), liabilities, penalties, regulatory fines, costs and expenses (including, without limitation, attorneys' fees, investigation costs and all other reasonable costs associated with the defense thereof) (collectively, "*Losses*") (arising out of or resulting from:

(i) any action by a third party against Company that is based on a claim that any Services performed under this Agreement, or the results of such Services (including any Consultant Work Product), or Company's use thereof, infringe, misappropriate or violate such third party's Intellectual Property Rights; and

(ii) any action by a third party against Company that is based on any act or omission of Consultant or any Consultant Personnel and that results in: (a) personal injury (or death) or tangible or intangible property damage (including loss of use); or (b) the violation of any statute, regulation or ordinance.

7.2 Indemnity by Company. Company shall defend, indemnify and hold Consultant and Consultant's directors, members, managers, agents, employees, successors and

permitted assigns harmless from and against any Losses arising out of or resulting from:

(i) any action by a third party against Consultant that is based on a claim that any materials provided to Consultant by Company to be used by Consultant in the performance of the Services under this Agreement (including such materials that may be included in the Consultant Work Product), or Consultant's use thereof on behalf of Company, infringe, misappropriate or violate such third party's Intellectual Property Rights; and

(ii) any action by a third party against Consultant that is based on any act or omission of Company or any Company personnel and that results in: (a) personal injury (or death) or tangible or intangible property damage (including loss of use); or (b) the violation of any statute, regulation or ordinance.

7.3 Indemnity Procedures.

- (i) Promptly, upon becoming aware of any matter which is subject to the provisions of this Section 7 (a "**Claim**"), the indemnified party shall give notice of the Claim to the indemnifying party, accompanied by a copy of any written documentation regarding the Claim received by the indemnified party.
- (ii) The indemnifying party shall, at its option, settle or defend, at its own expense and with its own counsel, the Claim. The indemnified party shall have the right, at its option, to participate in the settlement or defense of the Claim, with its own counsel and at its own expense; but the indemnifying party shall have the right to control the settlement or defense. The indemnifying party shall not enter into any settlement that imposes any liability or obligation on the indemnified party without the indemnified party's prior written consent, which shall not be unreasonably withheld conditioned or delayed. The Parties shall cooperate in the settlement or defense and give each other full access to all relevant information in their control or possession.
- (iii) If the indemnifying party (i) fails to notify the indemnified party of the indemnifying party's intent to take any action within thirty (30) days after receipt of a notice of a Claim or (ii) fails to proceed in good faith with the prompt resolution of the Claim, the indemnified party, with prior written notice to the indemnifying party and without

waiving any rights to indemnification, including reimbursement of reasonable attorney's fees and legal costs, may defend or settle the Claim without the prior written consent of the indemnifying party. The indemnifying party shall reimburse the indemnified party on demand for all Losses incurred by the indemnified party in defending or settling the Claim.

(iv) Neither party is obligated to indemnify and defend the other with respect to a Claim (or portions of a Claim):

(a) if the indemnified party fails to promptly notify the indemnifying party of the Claim and fails to provide reasonable cooperation and information to defend or settle the Claim; and

(b) if and only to the extent that, that failure materially prejudices the indemnifying party's ability to satisfactorily defend or settle the Claim.

8. TERM AND TERMINATION

8.1 Term. This Agreement shall commence on the Effective Date and, unless terminated earlier in accordance with the terms of this Agreement, shall remain in force and effect for as long as Consultant is performing Services pursuant to a Statement of Work.

8.2 Termination for Breach. Either party may terminate this Agreement (including all Statements of Work) if the other party breaches any material term of this Agreement and fails to cure such breach within thirty (30) days following written notice thereof from the non-breaching party. Breach by Consultant of this Agreement includes, but is not limited to, Consultant failing to perform (i) to the very best of Consultant's abilities, (ii) in good faith, (iii) in a reasonable and timely manner consistent with industry standards, and/or (iv) consistent with the terms of this Agreement.

8.3 Termination for Convenience. Either party may terminate this Agreement (including any Statements of Work) at any time, for any reason or no reason, upon at least fourteen (14) days prior written notice to the other party; provided, however, that Consultant may not terminate this Agreement for convenience prior to meeting its obligations and/or delivering applicable Deliverables under each applicable Statement of Work.

8.4 Effect of Termination. Upon the expiration or termination of this Agreement for any reason: (i) Consultant

shall promptly deliver to Company all Consultant Work Product, including all work in progress on any Consultant Work Product not previously delivered to Company, if any; (ii) Consultant shall promptly deliver to Company all Confidential Information in Consultant's possession or control; and (iii) Company shall pay Consultant any accrued but unpaid fees due and payable to Consultant pursuant to Section 2. Similarly, the Consultant shall retain Consultant's equity rights to any vested Shares under the option agreement as referenced under the attached Statement of Work. Furthermore, upon termination or expiration of this Agreement each party hereby agrees that it shall not disparage the other party or the other party's products, services, agents, representatives, directors, officers, shareholders, attorneys, employees, vendors, affiliates, successors or assigns, or any person acting by, through, under or in concert with any of them, with any written or oral statement. Nothing contained in the foregoing sentence shall prohibit the parties from providing truthful information in response to a subpoena or other legal process.

8.5 Survival. The rights and obligations of the parties under Sections 2, 3, 4, 5, 6.3, 6.4, 7, 8.4, 8.5, 9 and 10 shall survive the expiration or termination of this Agreement.

9. LIMITATION OF LIABILITY.

EXCEPT FOR A PART'S BREACH OF SECTION 5 (CONFIDENTIAL INFORMATION) OR A CLAIM MADE PURSUANT TO SECTION 7 (INDEMNITY) OR BODILY INJURY OF A PERSON OR A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT OR UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY: (A) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE; (B) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID (AND, IN THE CASE OF CONSULTANT, OWED) BY COMPANY TO CONSULTANT FOR THE ONE (1) YEAR PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY.

10. GENERAL

10.1 Assignment. Consultant may not assign or transfer this Agreement, in whole or in part, without Company's

express prior written consent. Any attempt to assign this Agreement, without such consent, shall be void. Subject to the foregoing, this Agreement shall bind and benefit the parties and their respective successors and assigns.

10.2 No Election of Remedies. Except as expressly set forth in this Agreement, the exercise by Company or Consultant of any of their respective remedies under this Agreement shall not be deemed an election of remedies and shall be without prejudice to such party's other remedies under this Agreement or available at law or in equity or otherwise.

10.3 Equitable Remedies. Because the Services are personal and unique and because Consultant shall have access to Confidential Information of Company, Company shall have the right to enforce this Agreement and any of its provisions by injunction, specific performance or other equitable relief, without having to post a bond or other consideration, in addition to all other remedies that Company may have for a breach of this Agreement at law or otherwise.

10.4 Attorneys' Fees. If any action is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and expenses in addition to any other relief to which such prevailing party may be entitled.

10.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its body of law controlling conflict of laws. Any legal action or proceeding arising under this Agreement shall be brought exclusively in the federal or state courts located in the Northern District of California and the parties irrevocably consent to the personal jurisdiction and venue therein.

10.6 No Trial by Jury. BY VOLUNTARILY AGREEING TO THE ARBITRATION PROVISION SET FORTH IN SECTION 10.5 OF THIS AGREEMENT, COMPANY AND CONSULTANT BOTH GIVE UP THEIR RIGHTS TO TRIAL BY JURY.

10.7 Severability. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect, and the provision affected shall be construed so as to be enforceable to the maximum extent permissible by law.

10.8 Waiver. The failure by either party to enforce any provision of this Agreement shall not constitute a waiver of future enforcement of that or any other provision.

10.9 Notices. All notices required or permitted under this Agreement shall be in writing, shall reference this Agreement, and shall be deemed given: (i) when delivered personally; (ii) one (1) business day after deposit with a nationally-recognized express courier, with written confirmation of receipt; or (iii) three (3) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid. All such notices shall be sent to the addresses set forth above or to such other address as may be specified by either party to the other party in accordance with this Section 10.9.

10.10 Defend Trade Secrets Act Notice. Consultant acknowledges receipt of the following notice under 18 U.S.C § 1833(b)(1), and shall provide such notice to its employees, contractors and others involved in the Services, if any: “An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.”

10.11 Entire Agreement. This Agreement, together with all Statements of Work, constitutes the complete and exclusive understanding and agreement of the parties with respect to its subject matter and supersedes all prior understandings and agreements, whether written or oral, with respect to its subject matter. In the event of a conflict, the terms and conditions of each Statement of Work shall take precedence over the terms and conditions of this Agreement. Any waiver, modification or amendment of any provision of this Agreement shall be effective only if in writing and signed by the parties hereto.

10.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

