OdeCloud

Updated: March 15, 2022.

ODECLOUD INC. CONSULTING SERVICES AGREEMENT (CLIENT)

This Consulting Services Agreement (this "***Agreement***") is entered into as of _____ (the "***Effective Date***"), by and between **ODECLOUD, INC.**, a California Corporation with principal offices at 165 North Point Street – 4155, San Francisco, CA 94133, USA ("***Consultant***") and **CLIENT NAME** with its principal offices at the address set forth on the signature page hereto ("***Client***"). Consultant and Client are sometimes individually each referred to herein as a "***Party***", and collectively as the "***Parties***".

1. DESCRIPTION OF SERVICES; STATEMENTS OF WORK; DELIVERABLES; REPORTS

(a) Client hereby retains Consultant [and Consultant's Affiliates (as defined below)] to perform the services (the "***Services***") and/or provide Deliverables (hereinafter defined) set forth in one or more Statements of Work (each as executed an "***SOW***" and collectively, "***SOWs***") executed from time to time between the Parties, each of which SOWs is incorporated herein by reference. Each SOW shall set forth the specific terms and conditions pursuant to which Consultant shall perform the Services and/or provide Deliverables. In the event that one or more provisions of an SOW is in addition to or conflicts with any provision of this Agreement (each a "***Superseding Provision***"), the Superseding Provisions of the applicable SOW shall supersede any conflicting provisions of this Agreement in connection with such SOW; *provided*, *however*, the Superseding Provisions shall be applicable and effective only with regard to the SOW(s) containing the Superseding Provisions and shall be of no force and effect with regard to any other SOW (or other agreement between the Parties) not containing such Superseding Provisions. "***Deliverables***" means all, work product and other deliverables, and all related written reports, requirements documents (including newly created technical and non-technical data embodied therein), specifications, program materials, flow charts, notes, outlines and the like, any modifications made by Consultant to existing intellectual property of Client on behalf of Client or for use by Client and all intermediate and partial versions thereof, that are developed, authored, conceived, originated, prepared, or otherwise created by Consultant or its employees, agents, or subcontractors for or on behalf of Client in connection with Consultant's performance of Services pursuant to an SOW. "***Affiliate***" means any entity that directly or indirectly (through one or more intermediaries) controls, is controlled by, or is under common control with Consultant (where "control" means ownership of more than 50% of the voting equity interests in such entity or the legal power to direct or cause the direction of the general management of such entity, whether by contract or otherwise). Consultant agrees that Consultant will periodically keep the Client advised as to Consultant's progress in performing the Services under this Agreement. Consultant further agrees that Consultant will, as reasonably requested by the Client, prepare written reports with respect to such progress. The Client and Consultant agree that the reasonable time expended in preparing such written reports will be considered time devoted to the performance of the Services.

2. FEES, EXPENSES; BILLING AND TAXES

(a) Client shall pay Consultant for all Services based on the service fees specified in each respective SOW.

(b) Unless otherwise provided in an SOW, Client shall also reimburse Consultant for all reasonable and customary out-of-pocket travel, lodging and related expenses pre-approved by Client and incurred by Consultant in connection with Consultant's performance of the Services. Consultant shall furnish Client with copies of receipts and other acceptable documentation for any pre-approved expenses for which Consultant requests reimbursement hereunder.

(c) Consultant shall invoice Client monthly, or as described in applicable SOW(s), for services rendered and any other applicable fees or expenses; hardware, software and third-party services purchased by Client through Consultant during the previous month or as specified in applicable SOW(s). Payment is due on Client's receipt of invoice. Consultant may charge a late payment fee on any undisputed invoice that is fifteen (15) days past due fees equal to the lower of one and one-half percent (1.5%) per month or the maximum rate allowed by law on all overdue amounts. In addition to charging a late payment fee, if any Client invoice is more than forty-five (45) days overdue, Consultant may, in its sole discretion, cease all Services that Consultant is providing to Client under the applicable SOW(s), until Client pays all overdue invoices in full.

(f) All payments or reimbursements to Consultant pursuant to this Agreement shall be made in U.S. dollars without setoff or counterclaim and free and clear of and without deduction for any present and future taxes, tariff, stamp duty, sales tax, use tax, personal property tax, value added tax, goods and services tax, royalty withholding, levies, import taxes,

imposts, duties, or any other charges of a similar nature related to the Services, and any taxes or amounts in lieu thereof ("***Taxes***"), all of which Client shall be responsible for and shall pay in full. For the avoidance of doubt, the Consultant and Client shall be responsible for its respective income and business and occupation taxes without limitation.

3. CONFIDENTIAL INFORMATION

(a) Each party acknowledges that it may have access to certain confidential information of the other party concerning the other party's intellectual property, clients, customer lists, business contacts, business plans, policies, procedures, techniques, know-how, standards, products, source or object code, product or service specifications, manuals, agreements, economic and financial information, marketing plans, business plans, data, reports, analyses, compilations, statistics, summaries, studies, and other information held in confidence by one Party for a third party ("***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 each Party's Confidential Information is protected by the Uniform Trade Secrets Act as adopted in California by its Civil Code §3426 et seq. and all other applicable laws. 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.

(b) Information shall not be deemed Confidential Information hereunder if such information: (i) is known to the receiving Party 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 receiving Party 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 receiving Party; or (iv) is independently developed by the receiving Party without reference to or reliance on the disclosing Party's Confidential Information, as demonstrated by documents or files in existence at the time of the applicable disclosure. The receiving Party may disclose Confidential Information pursuant to the requirements of a governmental agency or by operation of law, provided that the receiving Party gives the disclosing Party reasonable prior written notice 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 receiving Party 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.

(c) The provisions of this Section 3 (Confidential Information) shall survive the termination or expiration of this Agreement and any SOW.

4. REPRESENTATIONS, WARRANTIES AND DISCLAIMER

(a) Client represents and warrants that it has all the necessary authority to enter into this Agreement and any SOWs and that any intellectual property furnished by Client to Consultant in connection with this Agreement when delivered shall not infringe or violate any patent, copyright, license, trade secret, or other intellectual-property right or contractual right of any third party ("***Third-Party IP Rights***").

(b) Consultant represents and warrants that it has all the necessary authority to enter into this Agreement and any SOWs and that the Services and any Deliverables that Consultant delivers to Client in connection with the performance of this Agreement, when delivered, shall not infringe or violate any Third-Party IP Rights.

(c) Consultant represents and warrants that it shall perform the Services in a manner which conforms with industry standards reasonably applicable to the performance thereof and shall substantially and in all material ways conform to the applicable specifications when delivered. Consultant's sole obligation and the sole and exclusive remedy of Client under this warranty is limited to repair or replacement of the Deliverables to so conform. Consultant shall not be responsible for any defect or damage resulting from the mishandling, abuse, misuse, improper storage, accident, negligence, theft, vandalism, fire, water or other peril beyond the control of Consultant, or from causes other than normal use, or due to

improper installation or maintenance of any Deliverable by someone other than Consultant, or Consultant's employees and subcontractors, if any ("***Consultant Personnel"***).

(d) Consultant represents and warrants Consultant Personnel providing the Services are and will 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 3.

(d) EXCEPT FOR THE EXPRESS WARRANTY SET OUT IN THIS SECTION 4, THE SERVICES AND DELIVERABLES ARE PROVIDED ON AN "AS IS" BASIS, AND CLIENT'S USE OF THE SERVICES AND DELIVERABLES ARE AT ITS OWN RISK. CONSULTANT DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. CLIENT AGREES THAT THE ONLY REPRESENTATIONS, WARRANTIES, GUARANTIES OR INDEMNITIES MADE WITH RESPECT TO ANY EQUIPMENT, THIRD PARTY SOFTWARE AND THIRD-PARTY SERVICES PROCURED BY CONSULTANT ON BEHALF OF CLIENT ARE THOSE MADE BY THE MANUFACTURER, LICENSOR AND/OR SUPPLIER THEREOF. CONSULTANT EXPRESSLY DISCLAIMS, ANY AND ALL EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT THERETO. THE PROVISIONS OF THIS SECTION 4(E) SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT AND ANY SOW.

5. LIMITATION OF LIABILITY; EXCLUSIVE REMEDY

EXCEPT FOR A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS AS OUTLINED IN SECTION 3 (CONFIDENTIAL INFORMATION), INTENTIONAL MISCONDUCT, GROSS NEGLIGENCE OR A PARTY'S INDEMNIFICATION OBLIGATIONS AS SET FORTH IN SECTION 6 (INDEMNIFICATION), EACH PARTY'S ENTIRE LIABILITY FOR ANY DAMAGES WHICH MAY ARISE HEREUNDER OR RELATED HERETO, FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, OR OTHERWISE, SHALL BE LIMITED TO MONEY DAMAGES IN AN AMOUNT EQUAL TO THE LESSER OF (A) ACTUAL DIRECT DAMAGES, OR (B) THE TOTAL PRICE PAID OR PAYABLE BY CLIENT TO CONSULTANT FOR SERVICES AND DELIVERABLES DURING THE IMMEDIATELY PRECEDING TWELVE (12) MONTHS PRIOR TO THE APPLICABLE CLAIM. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF BUSINESS OR PROSPECTIVE BUSINESS OPPORTUNITIES, PROFITS, SAVINGS, INFORMATION, USE OR OTHER COMMERCIAL OR ECONOMIC LOSS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PROVISIONS OF THIS SECTION 5 (LIMITATION OF LIABILITY; EXCLUSIVE REMEDY) SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT AND ANY SOW.

6. INDEMNIFICATION

(a) Each Party (the "***Indemnifying Party***") shall indemnify and defend the other Party ("***Indemnified Party***"), their affiliates, and their respective directors, agents, employees, successors and permitted assigns 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 relating to any third party claim against the Indemnified Party resulting from or alleged to have resulted from the Indemnifying Party's breach of any covenant, representation or warranty of this Agreement or any negligent or willful act or omission of the Indemnifying Party under or related to this Agreement.

(b) Promptly, upon becoming aware of any matter which is subject to the provisions of this Section 6 (a "***Claim***"), the Indemnified Party shall give written notice of the Claim to the Indemnifying Party, accompanied by a copy of any written documentation regarding the Claim received by the Indemnified Party.

(c) 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.

(d) 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, but not limited to, 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.

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

(i) 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

(ii) if and only to the extent that, such failure materially prejudices the Indemnifying Party's ability to satisfactorily defend or settle the Claim.

(f) Notwithstanding the foregoing, if Consultant and/or Client are, or in the opinion of Consultant are likely to

be, subjected to or enjoined from using the Deliverables on the grounds that they infringe any Third-Party IP Rights, Consultant at its option and expense may either procure the right for Client to continue to use the Deliverables or replace or modify the Deliverables to make them non-infringing. If neither of the foregoing options is reasonably practicable, Consultant may terminate the applicable SOWs on thirty (30) days prior written notice to Client.

(g) This Section 6 (Indemnity) states the Indemnifying Party's sole liability to, and the Indemnified Party's exclusive remedy against, the other Party for any type of Claim described in this Section 6.

(h) The provisions of this Section 6 (Indemnity) shall survive the termination or expiration of this Agreement and any SOW.

7. OWNERSHIP

(a) Disclosure of Work Product. Consultant shall, as an integral part of the performance of Services, disclose in writing to Client 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 that are directly and principally 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 Client pursuant to Section 1.

(b) Ownership of Consultant Work Product. Consultant and Client 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 Client. 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 Client. Consultant hereby irrevocably transfers and assigns to Client, and agrees to irrevocably transfer and assign to Client, 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 Client's request and expense, during and after the term of this Agreement, Consultant shall assist and cooperate with Client in all respects and shall cause all Consultant Personnel to assist and cooperate with Client 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 Client to enable Client 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 Client as Consultant's attorney-in-fact to execute documents on behalf of Consultant for this limited purpose.

(c) Moral Rights. To the fullest extent permitted by applicable law, Consultant also hereby irrevocably transfers and assigns to Client, and agrees to irrevocably transfer and assign to Client, 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."

(d) 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 Client of the rights assigned to Client under this Agreement (collectively, "***Related Rights***"), Consultant hereby grants or shall cause to be granted to Client 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 Client to exercise all of the rights assigned to Client under this Agreement.

(e) Notwithstanding anything to the contrary in this Agreement, Client acknowledges and agrees as follows:

(i) 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 (or Consultant's personnel) prior business experience shall not be considered part of the Consultant Work Product or Client's Intellectual Property Rights.

(ii) That (A) Consultant develops tools, utilities, techniques and algorithms and related technology for itself and third parties, including, but not limited to, the OdeCloud technology platform, (B) software independently developed by Consultant may contain ideas and concepts similar to those in the Consultant Work Product, and (C) Consultant's personnel shall gain familiarity with the general concepts and ideas in the Consultant Work Product.

(iii) Consultant and Consultant's personnel shall be free to use and employ their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of providing the Services, so long as they acquire and apply such information without disclosure of any Confidential Information of Client and without any unauthorized use or disclosure of Consultant Work Product and (y) Consultant shall also retain the right to utilize all "***Commonly Used Code***" (defined below) in intellectual property developed for others or for its own use. "***Commonly Used Code***" shall include computer code, techniques, functions, algorithms, routines, and subroutines that are common in the computer/internet technology industry and computer programming methods in common use, whether or not created pursuant an SOW.

(iv) Consultant owns or holds a license to use and/or sublicense various materials ("***Consultant's Materials***"). Consultant may, at its option, include Consultant's Materials in any Consultant Work Product. Consultant retains all right, title and interest, including all copyright, patent rights and trade secret rights in Consultant's Materials. Consultant's Materials include, but are not limited to, accelerators (bundles, plugins and apps), maintenance and support tools, utilities, diagnostic programs, and supporting programs (whether in human-readable, electronic, or machine-readable form) used or utilized by Consultant internally in the development, support or maintenance of applicable software and/or technology (including, but not limited to, the Deliverables), or externally in connection with supporting the Client. Subject to full payment of the consulting fees due under this Agreement and any applicable SOW, Consultant grants Client a perpetual, non-exclusive, worldwide, irrevocable, sublicensable license to use any Consultant's Materials that may be incorporated into any Consultant Work Product for the purpose of developing and licensing Client's products and services that contain any Consultant Work Product, but not for the purpose of licensing Consultant's Materials separately from any Consultant Work Product. Client shall make no other commercial use of Consultant's Materials, other than set forth in this Section, without Consultant's prior written consent.

(f) The provisions of this Section 7 (Ownership) shall survive the termination or expiration of this Agreement and any SOW.

8. TERM; TERMINATION

This Agreement will commence on the Effective Date and shall remain in force and effect for so long as Consultant is performing Services pursuant to any SOW. Upon the expiration or termination of this Agreement for any reason: (i) Consultant will, subject to Consultant being paid in full for all Services rendered until the date of such expiration or termination, promptly deliver to Client all Consultant Work Product, including all work in progress on any Consultant Work Product not previously delivered to Client, if any; (ii) each Party shall promptly deliver to the other Party all Confidential Information in the receiving Party's possession or control; and (iii) Client shall pay Consultant any accrued but unpaid fees due and payable to Consultant pursuant to Section 2. Furthermore, each Party hereto agrees that it shall not, at any time, 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.

The provisions of this Section 8 (Term; Termination) shall survive the termination or expiration of this Agreement and any SOW.

9. NON-SOLICITATION

(a) During the term of this Agreement and for a period of one (1) year thereafter:

(i) Client shall not, either directly or through others, solicit or attempt to solicit any employee, independent contractor or consultant of Consultant to terminate his, her or its relationship with Consultant in order to become an employee, consultant or independent contractor to or for itself or any other person or entity. Client acknowledges that breach of this provision shall adversely affect Consultant and its business and that as a consequence of such breach, Client shall pay liquidated damages to Consultant of the greater of (x) $250,000 or (y) one hundred percent (100%) of the solicited employee, independent contractor or consultant annual compensation (including bonuses and commissions) as paid by Consultant to such employee, independent contractor or consultant of Consultant and that the Parties agree that such sum is not a penalty, but rather a reasonable measure of damages, based upon the nature of the losses that may result from Client's solicitation of any employee, independent contractor or consultant of Consultant in violation of this section.

(ii) Consultant shall not, either directly or through others, solicit or attempt to solicit any employee, independent contractor or consultant of Client to terminate his or her relationship with Client in order to become an employee, consultant or independent contractor to or for itself or any other person or entity. Consultant acknowledges that breach of this provision shall adversely affect Client and its business and that as a consequence of such breach Consultant shall pay liquidated damages to Client of the greater of $250,000 or one hundred percent (100%) of the solicited employee, independent contractor or consultant annual compensation (including bonuses and commissions) as paid by Client to such employee, independent contractor or consultant of Client and that the Parties agree that such sum is not a penalty, but rather a reasonable measure of damages, based upon the nature of the losses that may result from Consultant's solicitation of any employee, independent contractor or consultant of Client in violation of this section.

10. COMPETITIVE ACTIVITIES

During the term of this Agreement, Consultant will not, directly or indirectly, in any individual or representative capacity, engage or participate in or provide services to any business that is directly competitive with the business of the Client, including the sales of electronic products and equipment, in each case which is the business being conducted by Client.

11. GENERAL PROVISIONS

(a) Governing Law; Dispute Resolution, Attorneys' Fees. This Agreement is made under and shall be governed by and construed in accordance with the laws of the **State of California** (except that body of law controlling conflicts of law). Any dispute relating to the terms, interpretation or performance of this Agreement (other than claims for preliminary injunctive relief or other pre-judgment remedies) shall be resolved at the request of either party through binding arbitration. Arbitration shall be conducted in San Francisco, California, in accordance with the Arbitration Rules of the American Arbitration Association ("***AAA***"). If any action is necessary to enforce the terms of this Agreement, the substantially prevailing party will be entitled to reasonable attorneys' fees, costs and expenses in addition to any other relief to which such prevailing party may be entitled.

(b) Severability. In the event part, term or provision of this Agreement be declared by a court of competent jurisdiction to be invalid, void or unenforceable at law or in equity, it is the express intention of the Parties that such part, term or provision shall be construed in such manner as to provide for the enforcement thereof to the maximum extent and in the broadest scope permitted under law and all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

(c) Assignment. This Agreement is personal to the parties and neither party may assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of the other party, except that either party may assign this Agreement in whole as part of a corporate reorganization, consolidation, merger, sale of substantially all of its assets or similar transaction.

(d) Notices. Any notice hereunder shall be given in writing to the appropriate party at the address specified below or at such other address as the party shall specify in writing. Any notice sent by personal service or electronic communication shall be deemed received upon such personal service or upon dispatch by electronic means. Any notice sent by overnight courier shall be deemed received on the business day immediately following deposit with the overnight courier. Any notice sent by registered or certified, first class U.S. mail, return receipt requested, shall be deemed received forty-eight
(48) hours following deposit into the U.S. mail.

(e) Relationship of Parties. The Parties are independent contractors and this Agreement shall not establish any relationship of partnership, joint venture, employment, franchise or agency between the Parties. Neither Party shall have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein. It shall be Consultant's responsibility to provide worker's compensation and, if applicable, pay any premium "overtime" rate, for its employees who perform any Services covered by this Agreement, to make required FICA, FUTA, income tax withholding or other payments related to such employees, and to provide Client suitable evidence of same when requested.

(f) Modifications; Waiver. All modifications to this Agreement or exhibits shall be in writing and signed by a duly authorized representative of each Party. If either Party hereto waives or modifies any term or condition of this Agreement, such action shall not void, waive or change any other term or condition, nor shall the waiver by one Party of any default hereunder by the other constitute the present or future waiver of any other default hereunder.

(g) Entire Agreement. This Agreement, including all SOWs, exhibits and other documents incorporated herein by reference, constitutes the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes and replaces any prior or contemporaneous discussions, negotiations, understandings and Agreements, written and oral, regarding such subject matter. Any additional

or different terms in any purchase order or other response by Client shall be deemed objected to by Consultant without need of further notice of objection, and shall be of no effect or in any way be deemed accepted by Consultant.

(h) Equitable Remedies. Each Party 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 such Party may have for a breach of this Agreement.

(i) No Election of Remedies. Except as expressly set forth in this Agreement, the exercise by either Party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or available at law or in equity.

(j) Survival. The provisions of this Section 11 (General Provisions) shall survive the termination or expiration of this Agreement and any SOW.

[SIGNATURE PAGE FOLLOWS]