

CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (the "Agreement") is entered into as of the _____ day of _____, 2000 by and between [insert] Inc., and [name] ("Consultant"), residing at [_____]. Company and Consultant are sometimes referred to herein as the Parties, and individually as a Party.

WITNESSETH:

WHEREAS, Consultant desires to provide [nature of services] to the Company, and the Company desires to retain Consultant to provide such consulting services;

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Consultant and the Company, intending to be and being legally bound hereby, **AGREE AS FOLLOWS:**

Article I. DEFINITIONS

Section 1.1 For the purposes of this Agreement, the following definitions shall apply:

- (a) "Affiliate" of the Company shall mean any other Person controlling, controlled by, or under common control with the Company.
- (b) "Associated Company" of the Company shall mean any Affiliate of the Company.
- (c) "Dollars" and "\$" each mean the lawful currency of the United States of America.
- (d) "Effective Date" shall mean the date first above written.
- (e) "Person" shall mean a natural person, a juridical person of any kind, a partnership, a corporation, an association, a joint stock company, a limited liability company, a trust, a joint venture, an unincorporated organization or other entity, or a governmental entity or any department, agency or political subdivision thereof.

Article II. CONSULTING DUTIES AND RESPONSIBILITIES

Section 2.1 Performance of Consulting Services. Consultant shall provide [nature of services] as requested from time to time during the term hereof by the management of the Company.

Section 2.2 Compliance with Laws. In the performance of his duties hereunder, Consultant will comply with all federal, state, local, and foreign laws then in effect.

Section 2.3 Availability. Consultant shall be available to work for the Company or the Associated Companies a minimum of [_____ Percent (____%)] of his working time on matters relating to the business of the Company.

Article III. TERM OF AGREEMENT

This Agreement shall go into effect as of the Effective Date and shall terminate on _____, [2004], unless terminated earlier as provided in Article 8.

Article IV. COMPENSATION

Section 4.1 **Base Compensation.** As compensation and consideration for the performance by Consultant of his obligations under this Agreement, the Company shall pay to Consultant a fee (the "Monthly Fee") totaling [_____] Dollars (\$[]), which Monthly Fee shall be payable in semi-monthly installments, subject to applicable statutory deductions or withholdings.

Section 4.2 **Bonus Compensation.** In addition to the base Annual Fee, Consultant shall be eligible to receive bonuses as follows:]

Section 4.3 **Expenses.** The Company shall reimburse Consultant for reasonable out-of-pocket expenses incurred by Consultant in connection with the business of the Company and in performance of his duties under this Agreement, upon his presentation to the Company of an itemized accounting of such expenses with reasonable supporting data, subject, however, to the policies of the Company relating to business-related expenses as in effect from time to time.

Section 4.4 **Stock Option.** Subject to approval by the Board of Directors, Consultant shall receive a grant of an option to purchase xx(xx) shares of the Company's common stock at an exercise price equal to the closing price of the Company's common stock on the date first written above (the "Option"). The Option will expire ten (10) years after the date of grant, and will vest over a three-year period with one-third of the shares vesting on the date hereof and an additional 1/12th of the total grant shall vest quarterly thereafter. The Option will be subject to such further terms and conditions as set forth in the Company's Stock Option and Restricted Stock Plan pursuant to which plan such option shall be granted.

Article V. CONFIDENTIALITY

Section 5.1 **Confidentiality.** Consultant acknowledges that during the course of the period in which he provides services to the Company, he will be, from time to time, vested with confidential information (including without limitation) trade secrets relating to, inter alia, the business practices, technology, products, business plans, marketing, financial information and plans, and research activities of the Company, Associated Companies, and customers and suppliers of the foregoing. Consultant hereby agrees to keep all such information confidential, regardless of whether documents containing such information are marked as confidential, if he has been told, or should reasonably know or expect, that such information is confidential. Consultant also agrees that he will not, except as required in the conduct of Company business, or as authorized in writing by the Company, publish, disclose or make use of any such information or knowledge unless and until such information or knowledge shall have ceased to be secret or confidential without his fault.

Section 5.2 **Exclusive Property.** Consultant confirms that all confidential information is the exclusive property of the Company. All business records, papers and other documents kept or made by Consultant relating to the business of the Company or an Associated Company shall be and remain the property of the Company or the Associated Company. Upon the termination of this Agreement or upon the request of the Company at any time, Consultant shall promptly deliver to the Company, and shall

retain no copies of, any written materials, records and documents made by Consultant or coming into his possession concerning the business or affairs of the Company or an Associated Company other than personal notes or correspondence of Consultant not containing proprietary information relating to such business or affairs.

Section 5.3 Inventions, Rights to Improvements. Consultant hereby sells, transfers and assigns to the Company any right, title and interest in any and all inventions, improvements, discoveries, and ideas (whether or not patentable or copyrightable) (collectively the "Inventions") which he may make or conceive while acting in his capacity as a consultant of the Company during the term of this Agreement, and which relate to or are applicable to any phase of the Company's and the Associated Companies' businesses. Consultant hereby agrees to communicate promptly and disclose to the Company all information, details and data pertaining to the aforementioned Inventions and to execute any documents and do any act reasonably necessary to perform his duties under this Section. Consultant also affirms that if any such Inventions shall be deemed confidential by the Company, he will not disclose any such Inventions without prior written authorization of the Company.

Section 5.4 Survival of Article. The provisions of this Article 5 shall survive the termination of this Agreement for any reason whatsoever.

Article VI. EXCLUSIVITY / NON-COMPETITION

Section 6.1 Exclusivity / No Competing Consulting. For the term of this Agreement, Consultant shall not directly or indirectly, compete with the Company or any Associated Company, and he shall not directly or indirectly own an interest in, manage, operate, join, control, perform services for, lend money to, render financial or other assistance to, participate in, or be connected with, as an officer, employee, partner, stockholder, consultant or otherwise, any individual, partnership, firm, corporation or other business organization or entity that at such time is engaged in a business similar to that of the Company.

Section 6.2 No Interference. During the term of this Agreement, Consultant shall not, whether for his own account or for the account of any other individual, partnership, firm, corporation or other business organization, intentionally solicit, endeavor to entice away from the Company or an Associated Company, or otherwise interfere with the relationship of the Company or an Associated Company with any person who is employed by the Company or an Associated Company, or any person or entity who is, or was within the 12 month period immediately preceding, a customer or client of the Company or an Associated Company.

Section 6.3 Stock Ownership. Nothing in this Agreement shall prohibit Consultant from acquiring or holding any securities of any public company listed, provided that at any time during the term of this Agreement, Consultant and any members of his immediate family do not own more than five percent (5%) of any voting securities of any company engaged in a business similar to that of the Company.

Section 6.4 Territorial Scope. The prohibitions in Section 6.1 and Section 6.2 shall apply to any place where the Company or any Associated Company is doing business during the term of this Agreement.

Article VII. REMEDIES

Section 7.1 Arbitration. The Parties agree, expressly renouncing any other forum for the resolution of disputes, that except as provided in Section 7.2, any disputes arising out of, relating to, or arising in connection with this Agreement or arising out of, relating to, or arising in connection with Consultant's and Consultant's services, shall be finally settled by [arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (except insofar as those rules are modified by the terms of this Article VII). The arbitration will be held in Maryland and it shall be held as promptly as possible at such time as the arbitration tribunal may determine. The arbitration will be conducted in the English language. The arbitrator(s) shall state the reasons upon which the award is based. Judgment upon the arbitration award may be entered in any court of competent jurisdiction (including without limitation, the courts of the United States, any country where the Company or any Associated Company is engaged in business, and the respective political subdivisions of each of the foregoing), or application may be made to any such court for a judicial acceptance of the award and an order of enforcement, as the case may be. If any Party employs an attorney or commences legal or arbitral proceedings to enforce the provisions of this Agreement, the prevailing Party shall be entitled (unless the relevant tribunal decides otherwise) to recover from the other, reasonable costs incurred in connection with such enforcement, including but not limited to attorneys' fees and costs of investigation and litigation/arbitration. Except as otherwise specifically provided in this Section 7, no Party shall institute any action or proceeding against any other Party in any court with respect to any dispute which is or could be the subject of a claim or proceeding pursuant to this Section 7.

Section 7.2 Equitable Remedies. Consultant hereby acknowledges that breaches of Article V and Article VI of this Agreement may result in material irreparable injury to the Company for which there is no adequate remedy at law, that it will not be possible to measure damages for such breaches, and that in the event of such a breach or threat thereof, the Company shall be entitled (notwithstanding the provisions of Section 7.1 to seek and obtain a temporary restraining order, a preliminary injunction, a permanent injunction or other equitable relief restraining Consultant from engaging in activities prohibited by this Agreement. Consultant further acknowledges that in the event of such a breach or threat thereof, the Company shall be entitled to obtain such other or further relief as may be required to specifically enforce any of the covenants of this Agreement. Consultant hereby agrees and consents that such injunctive or other relief may be sought in any court of competent jurisdiction, including, without limitation, any court in the nation, state and/or political subdivision thereof in which such violation may occur, at the election of the Company. Consultant agrees to and hereby does submit to *in personam* jurisdiction before each and every such court for that purpose.

Section 7.3 Suspension of Payments. Consultant hereby acknowledges that should an alleged breach by Consultant of Article V and Article VI of this Agreement occur, the Company is entitled to suspend any payments due to Consultant during litigation of any action it may bring against Consultant for injunctive and/or monetary relief.

Section 7.4 Remedies not Exclusive. The remedies of this Article VII shall be cumulative and not exclusive, and shall be in addition to any other remedy which the Company may have.

Section 7.5 Survival of Remedies. This Article VII shall survive the termination of this Agreement for any reason whatsoever.

Article VIII. TERMINATION OF AGREEMENT

Section 8.1 **Breach**. The Company may immediately terminate the Agreement for any breach by Consultant of the terms and conditions hereunder, without further obligation to make any payment to Consultant other than those payments which have accrued prior to such date of termination. Notwithstanding the foregoing, this Agreement shall terminate upon the death or inability of Consultant due to disability to perform the obligations hereunder for a continuous period of sixty (60) days.

Section 8.2 **Termination**. In any event, the Company or the Consultant may terminate this Agreement with 60 days prior written notice to the other Party.

Article IX. NOTICES

All notices required to be given under the terms of this Agreement or which any of the Parties may desire to give hereunder shall be in writing and delivered personally or sent by express delivery, by facsimile, or by registered or certified mail with proof of receipt, postage and expenses prepaid and with return receipt requested, addressed as follows:

If to the Company:

If to Consultant:

Notice given in accordance with this Article IX shall be deemed to have been given when delivered personally, or when received if sent via express delivery, facsimile, or registered or certified mail, postage prepaid and return receipt requested. Any Party may change its address for notices by communicating its new address in writing to the other Parties.

Article X. RELEASE

Section 10.1 **Released Parties**. Consultant hereby release and forever discharge Company, Company's assignees, Company's successors, Company's predecessors, Company's Affiliates, Company's Affiliates' assignees, Company's Affiliates' successors, Company's Affiliates' predecessors (collectively the "Released Parties") and the Released Parties' employees, contractors, consultants, officers, directors, shareholders, limited partners, general partners, members and managers (collectively the "Released Parties' Servants") from all manner of actions, causes of action, suits, debts, dues, sums of money, accounts, covenants, contracts, controversies, agreements, promises, judgments, obligations, claims and demands whatsoever, of whatever kind, whether absolute or contingent, known or unknown, matured or unmatured, in law, in equity, in arbitration or other proceeding which Consultant Affiliates ever had, now has, or hereafter can, shall, or may have against the Released Parties and the Released Parties' Servants in any jurisdiction whatsoever. Notwithstanding the foregoing, this Section shall not release Company from the performance of its obligations contained in this Agreement.

Section 10.2 Further Action. Consultant will not hereafter, in any action in law, equity, arbitration or other proceeding attempt to make or prosecute any claim, demand, or cause of action for any matter released hereunder, against the Released Parties or the Released Parties' Servants.

Article XI. MISCELLANEOUS

Section 11.1 Agreement is Non-Assignable. This Agreement is a personal service contract and shall not be assignable by the Parties, except that the Company may assign this Agreement to an Associated Company or any Person that succeeds to the Company's rights and liabilities by merger, sale of assets as a going concern, or consolidation with the Company.

Section 11.2 Binding Effect. All rights and obligations and agreements of the Parties under this Agreement shall be binding upon and enforceable against, and inure to the benefit of the Parties and their personal representatives, heirs, legatees and devisees, and any Person succeeding by operation of law to their rights under this Agreement.

Section 11.3 Further Assurances. Consultant and the Company shall execute and deliver such further instruments and perform such further acts and things as may be required to carry out the terms or conditions of this Agreement or as may be consistent with the intent and purpose of this Agreement.

Section 11.4 Rights of Third Parties. Nothing in this Agreement, expressed or implied, is intended to confer upon any person other than the Parties hereto any rights or remedies under or by reason of this Agreement.

Section 11.5 Effect of Waiver. A waiver of, or failure to exercise, any rights provided for in this Agreement, in any respect, shall not be deemed a waiver of any further or future rights hereunder. Except for rights which must be exercised within a specified time period under this Agreement, no rights herein shall be considered as waived, whether intentionally or not, unless waived in a writing signed by the Party to be charged with the waiver.

Section 11.6 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of [] applicable to contracts made and performed in that jurisdiction, without regard to the principles of conflicts of laws.

Section 11.7 Amendments. This Agreement may not be changed or amended orally, but only by an agreement in writing signed by all Parties hereto.

Section 11.8 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, and such counterparts shall together constitute but one and the same instrument.

Section 11.9 Severability. If a court of competent jurisdiction declares that any term or provision of this Agreement is invalid or unenforceable, then (i) the remaining terms and provisions hereof shall be unimpaired and (ii) the invalid or unenforceable term or provision shall be deemed replaced by a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision.

Section 11.10 No Conflicts. Consultant represents and warrants that he is not prevented by any other agreement, arrangement, contract, understanding, court order or otherwise, which in any way

directly or indirectly conflicts, is inconsistent with, or restricts or prohibits it from fully performing the terms and conditions of this Agreement.

Section 11.11 Headings. The headings to the Sections contained in this Agreement are for reference only, do not form a substantive part of this Agreement and shall not restrict nor enlarge any substantive provision of this Agreement.

Section 11.12 Entire Agreement. This Agreement supersedes all prior agreements, oral or written, between the Parties hereto with respect to the matters herein. This Agreement contains the entire agreement of the Parties with respect to the retainment of Consultant by the Company, and the Parties shall not be bound by any terms, conditions, statements, covenants, representations or warranties, oral or written, not herein contained.

Section 11.13 Declaration by Independent Contractor. Independent Contractor declares that he has complied with all applicable federal, state, and local laws regarding business permits and licenses that may be required to carry out work to be performed under this Agreement. Independent Contractor acknowledges that the Company's insurance policies do not cover individuals who are independent contractors. Accordingly, Independent Contractor acknowledges that he is solely responsible for payment of taxes, personal superannuation, obtaining his own worker's compensation insurance and general liability insurance concerning himself or his own employees and payment of any fees.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first above written.

[Company]

By: _____
Name:
Title:

[Consultant]
