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| C:\Users\DTollen\My ShareSync\Law Practice\Tech Contracts Academy\Admin\Identity\Logo\TCA_TM Logo_FINAL\PNG\Tech-Contracts-Academy-Logo_TM_Color_FINAL.png  <https://TechContracts.com/> | **THE TECH CONTRACTS HANDBOOK**  **Cloud Computing Agreements, Software Licenses, and Other IT Contracts for Lawyers and Businesspeople**  Second Edition  **by David W. Tollen**  (ABA Publishing - Intellectual Property Law Section of the American Bar Association; 2015) |

***Form Contract***

**Consulting Service Agreement**

***Professional Services; Multiple Statements of Work; IP & NDA Terms; Consultant/Vendor-Friendly; Ink Signature***

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*Please delete all text above the following dotted line, as well as the line itself and the page-break following it, before using this form.*

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**CONSULTING SERVICES AGREEMENT**

This Consulting Agreement (this “Agreement”) is by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_, an individual and a resident of California (“Consultant”) and \_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ whose principal place of business is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Company”). This Agreement includes any current or future statement of work specifically referencing this Agreement and executed by each party (any “SoW”), and all such SoW’s are incorporated into this Agreement by this reference.

The parties have agreed that Consultant will provide such professional services as the parties may agree, now and pursuant to future statements of work. Therefore, in consideration for the commitments set forth below, the adequacy of which consideration the parties hereby acknowledge, the parties agree as follows.

1. **PROFESSIONAL SERVICES.** Consultant shall provide the services set forth in each SoW (“Professional Services”). Company shall provide any assistance and cooperation necessary or convenient to facilitate the Professional Services or called for in an SoW.
2. **FEES & REIMBURSEMENT.** Company shall: (a) pay Consultant the fees as set forth in each SoW; and (b) reimburse such expenses as Consultant reasonably incurs in provision of Professional Services. Amounts listed in SoW’s are estimates of Professional Services fees and will not be binding, except to the extent that the SoW specifically provides to the contrary.
3. **CONFIDENTIAL INFORMATION.** 
   1. Confidential Information Defined. “Confidential Information” refers to the following: (a) any Company document marked “confidential” or otherwise marked as sensitive; (b) any other information Company provides to Consultant and orally designates “confidential,” provided Company confirms such designation in writing within 5 business days; and (c) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in Consultant’s possession at the time of disclosure; (ii) is independently developed by Consultant without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of Consultant’s improper action or inaction; or (iv) is approved for release in writing by Company.
   2. Nondisclosure*.* Consultant shall not use Confidential Information for any purpose other than to facilitate his/her duties as assigned by Company. Consultant shall not disclose Confidential Information to any other third party without Company’s prior written consent and shall exercise reasonable care to prevent unauthorized disclosure of Confidential Information. Notwithstanding the foregoing, Consultant may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. Consultant shall give Company prompt notice of any such legal or governmental demand and reasonably cooperate with Company in any effort to seek a protective order or otherwise to contest such required disclosure, at Company’s expense.
   3. Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. Company will retain all right, title, and interest in and to all Confidential Information.
   4. Exception & Immunity. Pursuant to the Defend Trade Secrets Act of 2016, 18 USC Section 1833(b), Consultant is on notice and acknowledges that, notwithstanding the foregoing or any other provision of this Agreement:
      1. *IMMUNITY*. 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.
      2. *USE OF TRADE SECRET INFORMATION IN ANTI-RETALIATION LAWSUIT*. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual- (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.
4. **INTELLECTUAL PROPERTY.**
   1. Company Ownership of Work Product. “Work Product” refers to computer software programs, other works of authorship, formulas, processes, compositions of matter, databases, mask works, improvements, logos, symbols, designs, and other inventions that Consultant makes, conceives, reduces to practice, or creates, either alone or jointly with others, for Company as part of Professional Services.
      1. *Work-for-Hire*. To the extent permissible under applicable law, Work Product will be considered work made for hire pursuant to the U.S. Copyright Act, 17 U.S.C. §§ 101 *et seq*.
      2. *Assignment*. To the extent, if any, that Company does not own full right, title and interest in and to the Work Product pursuant to Subsection 4.1(a) above, Consultant hereby assigns to Company all of his/her ownership, right, title, and interest in and to all Work Product, including, without limitation: (i) all copyrights, patents, trade secrets, and other intellectual property rights; and (ii) all benefits, privileges, causes of action, and remedies relating to any of the foregoing.
   2. Further Assistance. Consultant shall help Company obtain and enforce patents, copyrights, and other legal protections for the Work Product in any and all jurisdictions throughout the world. Consultant shall execute any documents Company reasonably requests for use in obtaining or enforcing such rights and protections. Company shall compensate Consultant for time and expenses spent at Company’s request pursuant to this Section 4.2, at Consultant’s standard rates set forth in the most recent SoW, or if none, at a reasonable rate, which the parties shall negotiate in good faith. Consultant hereby appoints Company or its designated representative as Consultant’s attorney-in-fact to execute documents on Consultant’s behalf for the purposes set forth in this Section 4.2.
5. **REPRESENTATIONS & WARRANTIES.** 
   1. Authority. Each party represents and warrants that it has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement.
   2. Warranty Disclaimers. Except as set forth above in this Article 5, CONSULTANT PROVIDES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CONSULTANT DOES NOT REPRESENT OR WARRANT THAT WORK PRODUCT WILL NOT INFRINGE UPON THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES OR THAT IT WILL OPERATE OR PERFORM WITHOUT INTERRUPTION OR ERROR.
6. **INDEMNIFICATION.** Company shall indemnify, defend, and hold harmless Consultant and his/her agents, heirs, successors, and assigns against any “Indemnified Claim,” meaning any third party claim, suit, or proceeding arising out of or related to Company’s business, including without limitation claims related to the operation or failure to operate of Work Product, claims of personal injury or property damage, and claims of intellectual property infringement. Indemnified Claims include, without limitation, claims by or Company’s customers, contractors, and other users. Company’s obligations pursuant to this Article 6: (a) include retention and payment of attorneys and payment of court costs, as well as settlement at Company’s expense and payment of judgments; and (b) will be excused to the extent that the other contracting party’s (“Indemnified Party’s”) or any of such Indemnified Party’s Associates’ failure to provide prompt notice of the Indemnified Claim or reasonably to cooperate materially prejudices the defense. Company will control the defense of any Indemnified Claim, including appeals, negotiations, and any settlement or compromise thereof; provided Consultant will have the right, not to be exercised unreasonably, to reject any settlement or compromise that requires that he admit wrongdoing or liability or subjects him to any ongoing affirmative obligations.
7. **LIMITATION OF LIABILITY.** CONSULTANT’S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE FEES PAID TO CONSULTANT PURSUANT TO THE STATEMENT OF WORK AT ISSUE DURING THE 6 MONTHS PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. IN NO EVENT WILL CONSULTANT BE LIABLE FOR ANY OF THE FOLLOWING ARISING OUT OF OR RELATED TO THIS AGREEMENT: CONSEQUENTIAL, INDIRECT, SPECIAL, OR INCIDENTAL DAMAGES, EXCEPT PURSUANT TO SECTION 3.2 ABOVE (*Nondisclosure*), OR PUNITIVE DAMAGES. THE LIABILITIES LIMITED BY THIS ARTICLE 7 APPLY: (a) TO LIABILITY FOR NEGLIGENCE; (b) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (c) EVEN IF CONSULTANT IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (d) EVEN IF COMPANY’S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. If applicable law limits the application of the provisions of this Article 7, Consultant’s liability will be limited to the maximum extent permissible.
8. **TERM & TERMINATION.**
   1. Term and Termination. The term of this Agreement will commence on the Effective Date and continue for the period set forth in any outstanding SoW. Either party may terminate this Agreement for the other’s material breach by written notice specifying in detail the nature of the breach, effective in 30 days unless the other party first cures such breach, or effective immediately if the breach is not subject to cure.
   2. Survival. The following provisions will survive termination or expiration of this Agreement: (a) any obligation of Company to pay fees incurred before termination; (b) Articles and Sections 3 (*Confidential Information*), 5.2 (*Warranty Disclaimers*), 6 (*Indemnification*), and 7 (*Limitation of Liability*); and (c) any other provision of this Agreement that must survive to fulfill its essential purpose.
9. **MISCELLANEOUS.**
   1. Independent Contractors. The parties are independent contractors and shall so represent themselves in all regards.
   2. Notices. Notices pursuant to this Agreement shall be sent to the addresses below, or to such others as either party may provide in writing. Such notices will be deemed received at such addresses upon the earlier of (i) actual receipt or (ii) delivery in person, by fax with written confirmation of receipt, or by certified mail return receipt requested.
      1. *For Consultant*: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
      2. *For Company*: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
   3. Force Majeure. No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party’s reasonable control.
   4. Severability & Waiver. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.
   5. Choice of Law & Jurisdiction: This Agreement will be governed solely by the internal laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_, including without limitation applicable federal law, without reference to any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties’ rights or duties. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of \_\_\_\_\_\_\_\_\_\_ [city or county], \_\_\_\_\_\_\_\_\_ [state]. This Section 9.5 governs all claims arising out of or related to this Agreement, including without limitation tort claims.
   6. Construction. In the event of any conflict among the attachments to this Agreement and this main body, the following order of precedence will govern, with lower numbers governing over higher ones: (1) this main body of this Agreement; and (2) any SoW, with more recent SoW’s taking precedence over later ones. The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship. This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument. This Agreement may not be amended except through a written agreement executed by each party.

IN WITNESS THEREOF, the parties have executed this Agreement as of the Effective Date.

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| **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ COMPANY** | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ CONSULTANT** |
|  |  |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (signature) | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (signature) |
| Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (print) | Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (print) |
| Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |