**Consultant Compensation Agreement**

**THIS AGREEMENT**, entered into on \_\_\_\_\_\_\_\_\_\_\_, 20\_\_ by and between RESELLER (hereinafter referred to as 'RS'), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as 'CONSULTANT').

**WHEREAS**, RS has agreed to perform certain services for\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (hereinafter referred to as 'CLIENT'); and,

**WHEREAS**, RS wishes to secure the services of the CONSULTANT to complete certain software development, (hereinafter referred to as the 'PACKAGE') required for the project of the CLIENT, and the CONSULTANT wishes to provide such services as may be required as an independent contractor upon terms and conditions more fully described hereinafter.

NOW THEREFORE, for and in consideration of the mutual agreements entered into between the parties they agree as follows:

**1. PACKAGE**

The CONSULTANT shall furnish all necessary equipment, supplies, hardware and personnel to complete the PACKAGE referred to as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ whose specifications are attached herein and made a part of this Agreement by reference here. CONSULTANT has reviewed and has access to all relevant portions of such Contract Documents which are incorporated into this Agreement by this reference, and is familiar with the terms thereof. CONSULTANT shall perform such services as RS may from time to time request. RS may also from time to time make changes in the work to be performed by CONSULTANT.

**2. TERM**

The term of the Agreement shall commence at 8:00 a.m. on \_\_\_\_\_\_\_\_\_, 20\_\_\_, and shall terminate at 8:00 p.m. on \_\_\_\_\_\_\_\_\_\_, 20\_\_\_, subject to the following:

(a) The parties hereto may agree to the extension of the term of this Agreement for specified periods from time to time until Package is completed.

(b) The term of this Agreement shall terminate immediately upon the completion of the CLIENT's project whether by lapse of time or otherwise.

(c) The parties hereto may terminate this Agreement at any time by their agreement to do so in writing.

(d) This Agreement may be terminated by CONSULTANT, with or without cause, upon giving fourteen (14) days prior written notice to RS. If CONSULTANT terminates this Agreement for any reason other than for cause, CONSULTANT agrees to pay to RS, as liquidated damages and not as a penalty, an amount equal to all sums paid by RS to CONSULTANT for CONSULTANT's services under this Agreement. The parties acknowledge and agree that the actual damages sustained by RS will be difficult to ascertain and agree that such repayment is reasonable. CONSULTANT further agrees that upon such termination, CONSULTANT shall have no recourse against RS under this Agreement or in a claim for quantum meruit or based upon unjust enrichment or for any costs, losses or damages otherwise sustained by CONSULTANT.

(e) This Contract may be terminated forty-eight (48) hours after the giving of written notice by RS should the CONSULTANT, in the sole judgment of RS, fail to properly perform the tasks required hereunder, or violate any provision of this Agreement, or if RS has reasonable cause to believe that CONSULTANT will not complete the required work in a timely fashion or at the request of CLIENT.

**3. INDEPENDENT CONTRACTOR**

It is expressly understood and agreed that CONSULTANT is an Independent Contractor and not an employee of RS. This Agreement is not intended to and shall not constitute, create, give rise to or otherwise recognize a joint venture, partnership or other business organization of any kind between the parties, and the rights and obligations of the parties shall be only those expressly set forth herein.

**4. WORK FOR HIRED: MATERIALS**

CONSULTANT expressly agrees that CONSULTANT shall have no ownership interest, copyright, or any other right, title or interest in programs, designs, documentation, drawings, flow charts, studies or the like and agrees that all of such work products shall be deemed to be 'work made for hire' and CONSULTANT grants RS the entire right, title and interest in and to such work products and all proprietary right therein and an unlimited, unrestricted, royalty free, fully paid-up, exclusive license with a right to grant sublicenses therein.

CONSULTANT hereby agrees and acknowledges that all materials, plans, drawings, proposals, records, notes, data, programs and equipment of every nature and description obtained by CONSULTANT or created by CONSULTANT in the performance of the terms of this Agreement are the property of RS, and upon the demand of CLIENT or RS at any time the same shall be immediately turned over to RS without regard to whether the term of this Agreement has expired by lapse of time, or shall have been otherwise terminated. This provision shall include all ideas, designs, inventions or other developments or improvements conceived by CONSULTANT during the term of this Agreement or within the scope of the terms of this Agreement which shall be the property of RS. CONSULTANT further agrees to grant to RS, for valuable consideration, the sufficiency of which is hereby acknowledged, the exclusive right in ownership of all tasks outlined herein.

**5. CONSULTANTS REPRESENTATIONS**

The CONSULTANT further represents, covenants and binds himself to RS for the following:

(a) CONSULTANT agrees that he will at all times faithfully, industriously and to the best of its ability, experience and talents perform all the duties that may be required for the successful completion of the Package and the terms of this Agreement. Such duties shall be performed as such place or places as may be required to successfully complete the project, and shall be subject to the general direction of RS.

(b) CONSULTANT will report to and consult with RS at reasonable times and places as RS may require for the purpose of reviewing the progress and the status of the Package.

(c) CONSULTANT will no disclose to any persons, firm or corporation any information obtained from customer or RS, or created by CONSULTANT in the furtherance of its duties, which in any way relates to the business of RS, or its subsidiaries or customers including but not limited to the names of customers and dealers, personnel records, programs, software, hardware, either during or within two (2) years of the termination of the Agreement, whether a lapse of time or otherwise, without the express written consent of RS.

(d) During the term of this Agreement and for a period of two years following the termination of this Agreement, CONSULTANT further agrees not to engage in any business arrangement with RS Clients, customers, business associates, dealers, etc. without the express written consent of RS.

(e) CONSULTANT agrees that for a period of one (1) year after completion of the PACKAGE, he will provide to RS remedies for problems, commonly referred to as 'bugs' found in the Package by clients, employees, or by CONSULTANT himself. CONSULTANT agrees to provide RS with documentation and machine readable source code of the Package as well as machine readable code of the version provided to RS' clients, if not source, after each 'bug' fix.

(f) CONSULTANT agrees that, while this agreement is in effect and after its termination for any reason, (a) he will no copy or reproduce, in whole or in part, the Package for any purpose, that (b) he will not exhibit, furnish or make accessible the Package in whole or in part, to any person, firm, corporation, or other entity other than RS clients and employees, without RS's prior written consent, and that (c) he will keep each and every part of the Package strictly and absolutely confidential.

(g) CONSULTANT agrees that he will take the appropriate action by instruction to, or agreement with, his employees to satisfy his obligations not to copy, reproduce, modify, merge, divulge, exhibit, furnish or make accessible the Package or any part thereof.

**6. COMPENSATIONS**

RS shall pay to CONSULTANT as full and complete compensation for the PACKAGE created under this Agreement in accordance with the following standards:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Payment shall be made in accordance with the receipt by RS of the related funds payable by Client to RS on the schedule outlined in the Client documents reviewed by CONSULTANT. Final payment shall be made within fifteen (15) days of receipt by RS of the final billing, provided that CONSULTANT is not in breach of any term of this Agreement. All invoices shall be submitted in duplicate. CONSULTANT shall retain receipts and maintain records of all billable items, copies of which shall be provided to RS from time to time upon written request.

In addition to the payment above, RS offers to CONSULTANT, upon successful completion of this project, a royalty payment of twenty-five percent (25%), of all subsequent sales of Package by RS to end-users. This royalty payment shall endure for the live of the Package. RS also offers to CONSULTANT, upon successful completion of this project, first right of refusal to provide modifications for the Package. This first right of refusal for custom modifications to the Package is offered with the stipulation that CONSULTANT can make such modifications in a timely manner acceptable to RS.

**7. ENFORCEMENT**

The terms, provisions and covenants of this Agreement may be enforceable in law or in equity, and shall be governed by the laws of the state of \_\_\_\_\_\_\_\_\_\_\_\_\_\_. In any proceeding to enforce the terms of this Agreement or the damages resulting from its breach, the prevailing party shall be entitled to recover, as part of its damages, its reasonable attorney's fees and costs.

**8. INDEMNIFICATION**

The CONSULTANT agrees to indemnify and hold RS, its employees and agents, harmless from any and all claims, judgments, losses or damage to property or injury caused directly or indirectly by the tasks performed by the CONSULTANT in fulfilling the terms of this Agreement, or arise directly or indirectly out of the performance hereunder by CONSULTANT. This indemnification includes the agreement by the CONSULTANT to indemnify and hold RS harmless for the failure or refusal of CONSULTANT to thoroughly complete any services undertaken by CONSULTANT pursuant to the terms of this Agreement, and shall be binding upon the CONSULTANT, his executors, administrators, heirs and assigns.

**9. NOTICE**

Notice under this Agreement shall be in writing and may be given in person or by mail. If notice is given in person it shall be by personal delivery, and shall be considered given upon delivery. If notice is given by mail, it shall be by first class mail, postage prepaid, and considered given two (2) business days after deposited in the mail. The address for giving notice shall be that shown for the party on the signature page of this agreement. The place of giving notice may be changed by complying with the requirements of this paragraph.

**10. ASSIGNMENT**

CONSULTANT may not assign its interests under this Agreement except upon the express written authorizations of RS. Any attempt by the CONSULTANT to assign in contravention of the terms of this paragraph shall work an immediate suspension of RS' obligation to pay pursuant to the terms of paragraph 6 hereof, but shall not release the subcontractor from the obligation to perform its duties.

**11. ENTIRE AGREEMENT**

This written Agreement shall constitute the entire agreement between the parties and no variance or modification shall be valid or enforceable except by a supplemental agreement in writing.

**12. SEVERABILITY**

Should any provision of this Agreement be found invalid or unenforceable, the Agreement shall be construed as if that provision were deleted, and all remaining terms and provisions shall be enforceable in law or equity in accordance with their terms.

**IN WITNESS WHEREOF**, the parties hereby have executed this Agreement on the dates set out hereinafter. For convenience of the parties, this Agreement may be executed in several counterparts, which are in all respects similar to each other and which shall be deemed complete so that any one may be introduced in evidence or for any other purpose without the production of the other counterparts.

DATED :\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

CONSULTANT RESELLER:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

by: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ by: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Telephone (\_\_\_) \_\_\_ - \_\_\_\_ Telephone: (\_\_\_) \_\_\_-\_\_\_\_

**POSSIBLE ADDITIONAL PARAGRAPHS:**

To be inserted after paragraph 4

NON-SOLICITATION/NON-HIRER: RS and CONSULTANT each agree not to solicit, hire or otherwise engage in any manner whatsoever, directly or indirectly, any of the other party's employees during the term of this Agreement and for a period of one year thereafter. The parties hereto believe that actual damages in the event of a variation will be difficult to determine and, therefore, agree that either party violating this provision shall pay to the other party the sum of one year's direct salary of each employee involved as liquidated damages and not as penalty.

To be inserted as new paragraphs after existing paragraph 6

**INSURANCE:**

CONSULTANT agrees to carry the following insurance for the term of this Agreement:

(a) Worker's compensation as required by the laws of the state in which the work is being performed.

(b) Comprehensive general liability and property damage insurance with bodily limits to $300,000.00 for each occurrence and property damage limits of $300,000.00 for each occurrence naming RS as an additional insured.

(c) Fidelity Bond-p for $100,000.00 for claims arising from fraudulent or dishonest acts of CONSULTANT which result in losses to or claims against RS.

CONSULTANT shall provide RS with the appropriate insurance certificates evidencing that the required insurance is in effect.