CONSULTING AGREEMENT WITH

SHARING OF SOFTWARE REVENUES

This Consulting Agreement (the “Agreement”) is made and effective [DATE],

**BETWEEN: [YOUR COMPANY NAME]** (the "Company"), a company organised and existing under the laws of [STATE/PROVINCE], with its head office located at:

[YOUR COMPLETE ADDRESS]

**AND: [CONSULTANT NAME]** (the "Consultant"), a company organised and existing under the laws of [STATE/PROVINCE], with its head office located at:

[COMPLETE ADDRESS]

**RECITALS**

WHEREAS, the Company is in the business of developing and marketing software and possesses the rights to develop, market, and otherwise exploit a computer programme to be used by [DESCRIBE] for the purposes of [DESCRIBE] (the "Product").

WHEREAS, the Consultant specialises in the production of custom computer software packages in the [SPECIFY] industry.

WHEREAS, the Company is desirous of engaging the Consultant, and the Consultant is willing to accept such engagement, to provide consulting and other services to the Company in connection with the development of the Product.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto, intending, to be legally bound, agree as follows:

1. **EMPLOYMENT**

The Company agrees to employ the Consultant, and the Consultant hereby agrees to accept such

employment, upon the terms and conditions set forth in this Agreement.

1. **TERM**

Subject to earlier termination as hereinafter provided, the term of the Consultant's employment hereunder (the "Term") shall commence on the date hereof, shall terminate on [DATE] and shall be automatically renewed from year to year thereafter unless either party gives at least [NUMBER] days prior written notice of termination.

1. **DUTIES**

During the Term the Consultant shall perform the development, maintenance, support and consulting services with regard to the Product as are specified on Schedule A attached hereto (the "Services") at times mutually agreed to by the Company and the Consultant. The Consultant shall at all times provide the services of the Project Manager ("Project Manager") who shall maintain direct management responsibility for the performance by the Consultant of the Services. The Consultant shall also provide such programmers and other Consultant Personnel (as hereinafter defined) as may be required to fulfil its obligations hereunder and as may be reasonably acceptable to the Company. The Consultant shall keep the Project Manager and other Consultant Personnel reasonably available to the Company during the Term and shall perform the Services in a timely, professional manner.

1. **COMPENSATION**

4.1 For all Services rendered hereunder, the Company shall pay the Consultant a maximum consulting fee of [AMOUNT] during the Term payable weekly in arrears on the basis of [AMOUNT] per man-hour of Consultant Personnel time during the preceding week.

4.2 The Consultant shall also be entitled to receive a [%] share of the Net Profits attributable to the Product (the "Profit Share"). Net Profits shall be defined as all revenues generated from the Product and actually received by the Company less sales commissions and expenses, consulting fees, costs of development, marketing and production of the Product, administrative expenses and other overhead charges attributable thereto, interest expense in connection with financing of the Product and provision for income taxes with relation to Product revenues.

4.3 The Consultant shall maintain complete and accurate records of man-hours spent by the Consultant Personnel in connection with the performance of the Services and shall provide the Company with a statement at the end of each week detailing the Services rendered and the man-hours spent during the week then ended.

4.4 The Profit Share shall be payable by the Company within [NUMBER] days after the end of each quarter during the Term on the basis of Net Profits attributable to the Product during the quarter then ended. Each payment of the Profit Share shall be accompanied by a statement outlining the manner in which such payment was calculated. The Consultant shall have the right, at its sole cost and expense, to cause an independent certified public accounting firm reasonably acceptable to the Company to examine the Company's books and records (but only to the extent relevant to inquiry under this Paragraph 4(d)) during business hours, but not more than once a year, in order to verify the accuracy of the Company's calculation of the Consultant's Profit Share. Such accounting firm shall not disclose to the Consultant any information other than the verification of the accuracy of the payments of the Profit Share hereunder.

1. **PROPRIETARY INFORMATION**

The Consultant acknowledges that during its employment by the Company it will or may be given access to information, including, without limitation, source code, object code, algorithms, programs, computer routines, documentation, flowcharts, diagrams, internal specifications, data, databases, marketing plans and all work product developed or under development by the Consultant or the Company during the Term, which are confidential and proprietary to the Company (collectively, "Proprietary Information"). The Consultant agrees to use reasonable care to safeguard the Proprietary Information and to prevent the unauthorised use or disclosure thereof by it or any of the Consultant's Personnel.

1. **NON-DISCLOSURE**

Either during or after the Term, the Consultant will not disclose to anyone outside of the Company nor use in other than the Company's business and on the Company's behalf, except with the prior written permission of the Company, any invention, trade secret, work of authorship, Proprietary Information or proprietary thing that relates in any manner to the Product or any of the Company's actual or anticipated business, research, development product, device or activity or that is received in confidence by or for the Company from any other person. The Consultant shall disclose or give access to Proprietary Information only to partners, principals, agents, contractors or employees of the Consultant ("Consultant Personnel") having a need-to-know in connection with the performance of the Services hereunder, and only for use in connection therewith, and only with the prior written consent of the Company. The Consultant will advise all Consultant Personnel having access to Proprietary Information of the confidential and proprietary nature thereof and shall require all Consultant Personnel to execute an agreement in the form of Schedule B attached hereto prior to gaining access to the Proprietary Information. The Consultant agrees promptly to furnish to the Company an original execution copy of each such agreement signed by all Consultant Personnel.

1. **REPRODUCTION OF NOTICES**

Any copies or reproductions of the Proprietary Information shall bear the patent, copyright, trademark or proprietary notices contained in the original.

1. **RETURN OF PROPRIETARY INFORMATION**

Upon termination of this Agreement, the Consultant shall return to the Company any and all Proprietary Information (including any copies or reproductions thereof) in its possession or control and shall cease using any of such Proprietary Information.

1. **NOTICE OF unauthorised DISCLOSURE**

The Consultant shall promptly advise the Company in writing if it learns of any unauthorised use or disclosure of Proprietary Information by any current or former Consultant Personnel or any other third party.

1. **ASSIGNMENT OF RIGHTS**

10.1 The Consultant shall have no proprietary interest in the Product or the work product developed by the Consultant during the course of its engagement with the Company, and the Consultant agrees that the Product and such work product is work made for hire and that the Company shall have all proprietary rights in the Product and such work product, including all patent, copyright and trade secret rights inherent therein and appurtenant thereto. The Consultant hereby assigns and agrees to assign to the Company and its successors, assigns or nominees all right, title and interest of the Consultant in the Product and any developments, designs, inventions, improvements, trade secrets, trademarks, algorithms, computer routines, programs, copyrightable subject matter or proprietary information which the Consultant has made or conceived, or may make or conceive, either solely or jointly with others while providing the Services to the Company or with the use of the time, materials or facilities of the Company or relating to any of the Company's actual or anticipated business, research, development, product, service or activity, or suggested by or resulting from any task assigned to the Consultant or work performed by the Consultant for or on behalf of the Company.

10.2 The parties further agree that the Consultant will, at its sole cost and expense, execute and deliver all such further papers as may be necessary, including original applications and applications for renewal, extensions or reissues or patents, trademark registrations or copyright registrations, in any and all countries, to vest title thereto in the Company and its successors, assigns or nominees.

1. **NON-COMPETITION**

*In re*cognition of the considerations described in Paragraph 5 and the fact that the Services are of a special, unique, unusual, extraordinary and intellectual character and that the Consultant's position with the Company and its expertise are such that it would be capable of competing with the Company, the Consultant covenants and agrees that it shall not market or participate in the marketing of any Proprietary Information and shall not consult or provide any services or products to any person or organisation in connection with a product performing functions substantially similar to those performed by the Product, in each case for a period of [NUMBER] years after the end of the Term or the earlier termination of the Consultant's engagement with the Company.

1. **SPECIFIC REMEDIES**

If the Consultant commits a breach of any of the provisions of Paragraphs 5, 6 or 11, the Company shall have (1) the right and remedy to have such provisions specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach will cause irreparable injury to the Company and that money damages will not provide an adequate remedy and (ii) the right and remedy to require the Consultant to account for and pay over to the Company all compensation, profits, monies, accruals, increments or other benefits (collectively "Benefits") derived or received by the Consultant as the result of any transactions constituting a breach of any of such provisions, and the Consultant hereby agrees to account for and pay over such Benefits to the Company.

1. **SURVIVAL**

Except as otherwise provided herein, the provisions of Paragraphs 5, 6, 8, 9 and 10 shall remain in effect indefinitely and shall survive the termination of this Agreement.

1. **INDEPENDENT CONTRACTORS**

It is expressly agreed that the Company and the Consultant are acting hereunder as independent contractors, and under no circumstances shall any employees of one party be deemed the employees of the other for any purpose. This Agreement shall not be construed as authority for either party to act for the other party in any agency or other capacity or to make commitments of any kind for the account of or on behalf of the other except to the extent and for the purposes expressly provided for herein. The Consultant shall be responsible for the conduct of all Consultant Personnel. Individuals or subcontractors assigned by the Consultant to perform the Services under this Agreement shall observe the standard working rules of the Company while on the Company's premises. The Company agrees to provide reasonable access to its premises for Consultant Personnel, including access as reasonably required after the Company's normal

working hours, subject to the Company's security operating procedures.

1. **TERMINATION**

The Consultant's employment hereunder shall be terminated (a) upon the Project Manager's death or disability, which shall be defined as the Project Manager's inability to perform his duties required hereunder by reason of illness or incapacity for a continuous period of [NUMBER] days or for a period of [NUMBER] months in any [NUMBER] month period, or (b) for cause, which shall be defined as the Consultant's failure to comply with any of the material terms of this Agreement, including, without limitation, the Consultant's violation of the provisions of Paragraphs 5, 6 and I 1. In the event of the termination of this Agreement, whether pursuant to this Paragraph 15, at the end of the Term or otherwise, the Consultant shall have no rights to the Product or against the Company except for its right to receive the compensation specified in Paragraph 4(a) and (b) pro rated to the date of termination.

1. **USE OF TRADEMARKS**

Neither party shall use the other's name, logo or any facsimile thereof in connection with its marketing, promotional or business generating efforts without the prior written consent of the other party.

1. **GOVERNING LAW**

This Agreement shall be governed by and interpreted in accordance with the laws of [STATE/PROVINCE].

1. **ARBITRATION**

18.1 Any dispute, controversy or claim relating to this Agreement or any breach or default in the performance of the terms and conditions thereof shall be settled by arbitration in [STATE/PROVINCE] in accordance with the then-existing arbitration rules promulgated by the [ASSOCIATION/ORGANIZATION]. The decision of the arbitrators shall be final and binding on the parties, and judgement  upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Any arbitration award shall include attorneys' fees for the prevailing party.

18.2 In any arbitration proceeding under Paragraph 18, the rights of the parties shall be determined according to the governing law set forth in Paragraph 17 above, and the arbitrators shall apply such law.

1. **SEVERABILITY**

If any provisions of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

1. **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writings and all other communications between the parties. It may not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorised representative of each of the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth first above, with full knowledge of its content and significance and intending to be legally bound by the terms hereof.

COMPANY CONSULTANT

Authorized Signature Authorized Signature

Print Name and Title Print Name and Title