

# Consulting Services Agreement

THIS CONSULTING SERVICES AGREEMENT (the "Agreement"), effective this \_\_\_\_ day of \_\_\_\_\_, 2007, is entered into by \_\_\_\_ located at ("SOLUTION PROVIDER") and **Alpha Software Inc.** ("ALPHA").

WHEREAS,

ALPHA is the owner of certain software programs including Alpha Five and ALPHA receives requests from third parties seeking to have custom applications developed for their needs using ALPHA FIVE;

SOLUTION PROVIDER desires to receive information about the third party requests for custom applications ("Leads") in exchange for providing the Leads with top quality services and the payment of commissions to ALPHA.

NOW THEREFORE, the parties hereto agree as follows:

## 1. DEFINITIONS

"Confidential Information" shall mean:

Any information, idea, concept, improvement, modification, enhancement, know-how, data, process, procedure, methodology, computer program, algorithm, computer macro, software, data base design, source code, object code, technology, technique, design, specification, drawing, story board, lay out, program, formula or test data, work in process, engineering, marketing, financial, sales, supplier, customer, employee, investor, or business information whether in oral, written, graphic, or electronic form; or any document, or other communication which is learned or disclosed in the course of discussions, studies, or other work undertaken between the parties; or anything that due to its character and nature, a reasonable person under like circumstances would treat as confidential.

Confidential Information shall not mean information which:

is legally in the receiving party's possession at the time of disclosure; is or becomes part of the public knowledge or literature, is independently developed by the receiving party without access to the Confidential Information and such access can be verified with documents existing prior to the date of this agreement; or is received from a third party who is legally in possession of such Confidential Information and has the authority to disclose it.

"ALPHA Five Consulting Services" shall mean those professional services provided by an independent SOLUTION PROVIDER resulting from a lead provided by ALPHA.

"Net Revenue" for services shall mean the total invoice amount presented by the SOLUTION PROVIDER to the customer on the delivery order or purchase order to SOLUTION PROVIDER. Less any amounts for returns, refunds, sales taxes (but not income taxes) and travel expenses.

“Products” shall mean those ALPHA products and services, including but not limited to ALPHA FIVE.

“Proprietary Information” shall mean (1) computer software, hardware or other equipment, data bases, all information, source code, and materials relating to Products not otherwise publicly disclosed by ALPHA and all intellectual property rights, including but not limited to patents, copyrights, trademarks, trade secrets, sui generis data base rights, and know how that is: (i) the proprietary property of the ALPHA either by way of ownership or license agreement(s) with third parties, (ii) not publicly known nor available from other sources having no obligation to the party that is the source of said information, and (iii) are presently being maintained by ALPHA as confidential .

## **2. RESPONSIBILITIES OF THE PARTIES**

ALPHA shall have the sole and exclusive discretion to determine if a lead is suitable for SOLUTION PROVIDER. If a Lead is so qualified by ALPHA, Qualified Sales Lead, SOLUTION PROVIDER shall use best efforts to follow-up on the Qualified Sales Leads, to determine the customer needs, to provide top quality service to Qualified Sales Leads and to pay ALPHA according to this Agreement. SOLUTION PROVIDER shall have the sole and exclusive discretion to decide whether, when, and how to provide ALPHA Five Consulting Services. SOLUTION PROVIDER shall have sole responsibility for (i) negotiating the terms and conditions as all contracts with respect to any ALPHA Five Consulting Services; (ii) the timing and method by which the ALPHA Five Consulting Services are provided, and (iii) the billing and collection of all amounts due from any prospects, customers, and/or Qualified Sales Leads with respect to ALPHA Five Consulting Services.

SOLUTION PROVIDER shall communicate with a member of ALPHA’s Consulting Management force to discuss its knowledge of customers and provide frequent status updates on such Qualified Sales Leads.

ALPHA shall have sole responsibility for (i) negotiating the terms and conditions of all contracts with respect to any sales of the Products; (ii) the sales process for prospects, customers, and/or Qualified Sales Leads; and (iii) the billing and collection of all amounts due from any prospects, customers, and/or Qualified Sales Leads with respect to sales of the Products.

ALPHA and SOLUTION PROVIDER shall work together to sell Products and for the SOLUTION PROVIDER to provide the associated consulting services as required by the Qualified Sales Leads in a commercially reasonable way as may be determined by ALPHA on a case by case basis.

In order for each party to fulfill its obligations hereunder, both ALPHA and SOLUTION PROVIDER agree to take the reasonable steps necessary to inform and educate SOLUTION PROVIDER about ALPHA’s business, products and services and in furtherance of the same to participate in any meetings, seminars, conferences or training

which may be necessary.

### 3. COMPENSATION

SOLUTION PROVIDER shall pay directly to ALPHA a Commission of ten percent (10%) of all Net Revenue up to a maximum cumulative commission of ten thousand (\$10,000.00) dollars for Consulting Services sold for each project performed to a Qualified Sales Lead. All Commissions are due and owing to ALPHA within fifteen (15) days of payment to SOLUTION PROVIDER by receipt of Qualified Sales Leads.

**However, if SOLUTION PROVIDER has preexisting support contracts with SOLUTION PROVIDER customers that are directed to SOLUTION PROVIDER as Qualified Sales Leads by ALPHA, and SOLUTION PROVIDER can verify same with written evidence (such as preexisting agreements and invoices), then SOLUTION PROVIDER shall pay ALPHA Commissions on the Net Revenue relating to all development, services and support relating to ALPHA. In the event that the Net revenue is on a bundled invoice or agreement, then the Net Revenue shall be for no less than the fair market value of the development, services and support services related to Alpha.**

### 4. TERM OF AGREEMENT AND TERMINATION

This Agreement shall be effective as of the date hereof, and shall continue in force for a one (1) year period, and may be renewed by express mutual agreement between the parties unless terminated by written notice from either party to the other not fewer than thirty (30) days prior to the end of the initial or any subsequent term. This Agreement may also be terminated by either party for convenience for any reason with ninety (90) days notice to the other, or upon the occurrence of any of the following events of default:

- (a) A change of fifty percent (50%) or more of the present ownership of either Party;
- (b) SOLUTION PROVIDER gives notice to ALPHA of its intention not to continue to cooperate with ALPHA in the marketing and sales of ALPHA products and services under the terms of this Agreement, or shall, in fact, cease to market ALPHA products and services;
- (c) Either party shall fail to comply with the terms, provisions or conditions of this Agreement after notice of such failure has been provided to it;
- (d) Either party hereto is adjudicated as bankrupt or insolvent, or admits in writing its inability to pay its debts as they come due, or makes an assignment for the benefit of creditors, or applies for or consents to the appointment of a trustee or receiver, or files or has filed against it a petition in bankruptcy; or
- (e) By mutual written agreement.

## **5. RIGHTS UPON TERMINATION**

Upon and after termination of this Agreement for any reason:

SOLUTION PROVIDER shall continue to pay commissions to ALPHA for the Net Revenue of all services delivered during the one (1) year period after the termination of this agreement as set forth in Section 3 hereof.

SOLUTION PROVIDER expressly agrees that it is not entitled to any other compensation, including, but not limited to any fees for market development, and that the sole compensation due the SOLUTION PROVIDER as set forth in this Agreement for sales of Products to Qualified Customers pursuant to valid Invoices issued for services delivered during the term of this agreement.

SOLUTION PROVIDER further agrees that after expiration or termination of this Agreement for any reason, ALPHA (and it's Affiliates and/or Parent) is free to conduct business with any third party as it sees fit, including but not limited to Qualified Leads and/or Customers with out any further involvement or compensation to SOLUTION PROVIDER.

## **6. NON-DISCLOSURE OF CONFIDENTIAL INFORMATION**

During the term of this Agreement, SOLUTION PROVIDER acknowledges that ALPHA may provide SOLUTION PROVIDER with Confidential Information of ALPHA. SOLUTION PROVIDER will not at any time disclose to any person, or use for its own benefit or the benefit of any other party, Confidential Information of ALPHA without the express written consent of ALPHA. The provisions of this Section 6 shall survive the termination of this Agreement by either party for any reason for a period of five (5) years after termination. Confidential Sales Leads, Information shall not include Qualified Sales Leads, or customer lists and ALPHA is free to use such information at any time subject to payment under this Agreement.

## **7. GENERAL**

This Agreement contains the entire understanding of the parties, shall supersede any other oral or written agreements, and shall be binding upon and inure to the benefit of the parties' successors and assigns. It may not be modified in any way without the written consent of both parties. SOLUTION PROVIDER shall not have the right to assign this Agreement in whole or in part without ALPHA's written consent. ALPHA shall not have the right to assign this Agreement in whole or in part without SOLUTION PROVIDER's written consent.

## **8. RETURN OF MATERIALS:**

Provider agrees that upon termination of this Agreement, SOLUTION PROVIDER shall

return to ALPHA all material containing or disclosing any Confidential Information of ALPHA.

## **9. NO AGENCY RELATIONSHIP**

The parties hereto agree that SOLUTION PROVIDER is furnishing its services hereunder as an independent contractor. Nothing contained herein shall be construed to create any association, partnership, joint venture, or any agency or employer-employee relationship between the parties hereto. SOLUTION PROVIDER shall not represent either orally or in writing, to be ALPHA employees or agents. SOLUTION PROVIDER shall not have the authority to make any commitment on behalf of ALPHA. SOLUTION PROVIDER agrees that it is solely liable for all taxes and other costs associated with its business operations.

## **10. CONSTRUCTION OF AGREEMENT**

This Agreement shall be construed according to the laws of the Commonwealth of Massachusetts. Venue and jurisdiction for this agreement shall be in the Courts within the Commonwealth of Massachusetts, USA.

## **11. DISPUTES AND ARBITRATION**

The parties agree that any disputes or questions arising hereunder, including the construction or application of this Agreement, shall be settled by arbitration in accordance with the rules of the American Arbitration Association. However, ALPHA expressly reserves the right to seek judicial remedies in lieu of arbitration if it deems appropriate in its sole and exclusive expression.

## **12. SEVERABILITY**

Should any part of this Agreement for any reason be declared invalid or unenforceable by an arbitrator or court of competent jurisdiction, such decision shall not affect the validity of any remaining portion, which remaining portion shall remain in force and effect as if this Agreement had been executed with the invalid portion eliminated.

## **13. NOTICES**

All notices, demands or other communications by either party to the other shall be in writing and shall be effective upon personal delivery or if sent by mail seventy-two (72) hours after deposited in the United States mail, first class postage, prepaid, Registered or Certified, and all such notices given by mail shall be sent and addressed as follows until such time as another address is given by notice pursuant to this provision 12:

**To ALPHA:**

**To SOLUTION PROVIDER:**

Alpha Software Inc.

70 Blanchard Road  
Burlington, MA 01803

**14. LIMITATION OF LIABILITY.**

**IN NO EVENT WILL EITHER PARTY BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR LOSS OF PROFITS, ARISING FROM THE RELATIONSHIP OR THE CONDUCT OF BUSINESS HEREUNDER. LIABILITY OF ALPHA (OR ITS PARENTS OR AFFILIATES) IN ANY AND ALL CATEGORIES, INCLUDING, BUT NOT LIMITED TO MISTAKE, NEGLIGENCE, ACT OR OMISSION, INTENTIONAL ACTS, AND BREACH, WILL NOT EXCEED IN THE AGGREGATE OF ONE (1) MONTH'S AVERAGE OF FEES PAID HEREUNDER. SOLUTION PROVIDER agrees that this Limitation of Liability is a critical consideration for ALPHA to enter into this Agreement.**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written in multiple counterparts, each of which shall be considered an original.

ALPHA

SOLUTION PROVIDER

By: \_\_\_\_\_ By: \_\_\_\_\_

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

Date: \_\_\_\_\_ Date: \_\_\_\_\_