

## **INDEPENDENT CONSULTING AGREEMENT**

This Agreement is made between **CLIENT NAME** ("Client"), with a principal place of business at **CLIENT ADDRESS**, and digitalCCT ("Consultant"), with a principal place of business at 23822 Main Street., Suite 210, Naperville, IL 60540.

### **1. Services to be Performed**

Consultant agrees to perform the consulting services described in Exhibit "A" attached to this Agreement.

### **2. Payment**

In consideration for the services to be performed by Consultant, Client agrees to pay Consultant at the rate of x,000 per month. If Consultant provides services that exceed a total of 30 hours in a single month, all additional services will be billed at a rate of \$xxx.00 per hour.

### **3. Terms of Payment**

Consultant shall be paid in advance of each month.

### **4. Expenses**

Client shall reimburse Consultant for reasonable expenses that are directly attributable to work performed under this Agreement provided there is prior written agreement to such expenses (other than in respect of minor out of pocket expenses). Consultant shall submit an itemized statement of Consultant's expenses. Client shall pay Consultant within 30 days after receipt of each statement.

### **5. Materials**

Consultant will furnish all materials, equipment and supplies used to provide the services required by this Agreement.

### **6. Independent Contractor Status**

Consultant is an independent contractor, and neither Consultant nor Consultant's employees or contract personnel are, or shall be deemed, Client's employees. In its capacity as an independent contractor, Consultant agrees and represents, and Client agrees, as follows:

- Consultant has the right to perform services for others during the term of this Agreement.
- Consultant has the sole right to control and direct the means, manner and method by which the services required by this Agreement will be performed provided that this shall not apply if the way in which the services are being performed is illegal or is damaging or may be damaging to the business of the Client.

- Consultant has the right to perform the services required by this Agreement at any place or location and at such times as Consultant may determine.
- Consultant has the right to hire assistants as subcontractors, or to use employees to provide the services required by this Agreement.
- The services required by this Agreement shall be performed by Consultant, or Consultant's employees or contract personnel, and Client shall not hire, supervise or pay any assistants to help Consultant.
- Neither Consultant nor Consultant's employees or contract personnel shall receive any training from Client in the professional skills necessary to perform the services required by this Agreement.
- Neither Consultant nor Consultant's employees or contract personnel shall be required by Client to devote full time to the performance of the services required by this Agreement.

### **7. Permits and Licenses**

Consultant has complied with all federal, state and local laws requiring business permits, certificates and licenses required to carry out the services to be performed under this Agreement.

### **8. State and Federal Taxes**

Client will not:

- withhold FICA (Social Security and Medicare taxes) from Consultant's payments or make FICA payments on Consultant's behalf,
- make state or federal unemployment compensation contributions on Consultant's behalf, or
- withhold state or federal income tax from Consultant's payments.

Consultant shall pay all taxes incurred while performing services under this Agreement--including all applicable income taxes and, if Consultant is not a corporation, self-employment (Social Security) taxes. Upon demand, Consultant shall provide Client with proof that such payments have been made.

Consultant will indemnify and hold Client harmless in respect of any claim which may be brought against Client in respect of any such taxes as are referred to in this paragraph 8.

### **9. Fringe Benefits**

Consultant understands that neither Consultant nor Consultant's employees or contract personnel are eligible to participate in any employee pension, health, vacation pay, sick pay or other fringe benefit plan of Client.

### **10. Workers' Compensation**

Client shall not obtain workers' compensation insurance on behalf of Consultant or Consultant's employees. If Consultant hires employees to perform any work under this

Agreement, Consultant will cover them with workers' compensation insurance and provide Client with a certificate of workers' compensation insurance before the employees begin the work.

### **11. Unemployment Compensation**

Client shall make no state or federal unemployment compensation payments on behalf of Consultant or Consultant's employees or contract personnel. Consultant will not be entitled to these benefits in connection with work performed under this Agreement.

### **12. Indemnifications**

To the extent permitted by law and applicable statutes Consultant shall indemnify Client against liability or loss arising out of Consultant's actual or asserted misfeasance or non-feasance in the performance of Consultant's duties or out of any actual or asserted wrongful act against, or by Consultant including, but not limited to, judgments, fines, settlements and expenses incurred in the defense of action, proceedings, and appeals therefrom.

Client shall defend, indemnify and hold Consultant harmless against any and all third-party claims, liabilities or losses, and damages, including, without limitation, judgments, fines, settlements, and expenses (including reasonable attorneys' fees and costs) incurred in the defense of any actions, proceedings, and appeals therefrom, arising solely out of (i) Client's misfeasance or non-feasance in the performance of Client's duties hereunder; or (ii) out of any actual or asserted wrongful act by Client.

### **13. Term of Agreement**

This agreement will become effective when signed by both parties and will terminate on

August 1, 20\_\_

### **14. Terminating the Agreement**

Client may terminate this Agreement any time by giving written notice to Consultant, however, all fees as set forth in paragraphs 2 and 3 shall still be due.

Client may terminate this Agreement forthwith without liability for further payments of fees (except those which are already due and owing in respect of services supplied at such time) if Consultant shall:

(a) commit any serious or persistent breach of any of its obligations hereunder or done anything harmful to the business of the Client and (in the case of a breach or action capable of being remedied) shall have failed, within 14 days after the receipt of a written request from the Client so to do, to remedy the breach (such request to contain a warning of the Client's intention to terminate);

(b) pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent

jurisdiction shall make an order to that effect;

(c) make any voluntarily arrangement with its creditors or become subject to an administration order;

(d) have a receiver or administrative receiver appointed of it or over any part of its undertaking or assets; or

(e) cease, or threaten to cease, to carry on business.

### **15. Exclusive Agreement**

This is the entire Agreement between Consultant and Client.

### **16. Modifying the Agreement**

This Agreement may be modified only by a writing signed by both parties.

### **17. Intellectual Property Ownership**

Client assigns to Consultant all patent, copyright, trademark and trade secret rights in anything created or developed by Consultant for Client under this Agreement. Client shall help prepare any papers that Consultant considers necessary to secure any patents, copyrights, trademarks or other proprietary rights. Any and all expenses involved with securing proprietary rights shall be the sole responsibility of Consultant.

### **18. Confidentiality**

Neither party will disclose or use, either during or after the term of this Agreement, any proprietary or confidential information, technology or intellectual property of the other without such other party's prior written permission.

Proprietary or confidential information includes:

- the written, printed, graphic or electronically recorded materials furnished by one party for the other to use
- business plans, accounts, customer lists, accounts, finance and contractual arrangements, other dealings, transactions, affairs and operating procedures, trade secrets, design formulas, know-how and processes, computer programs and inventories, discoveries and improvements of any kind, and
- information belonging to customers and suppliers of one of the parties about whom the other party gains knowledge as a result of Consultant's services to Client.

Neither party shall be restricted in using any material which is publicly available, already in that party's possession or known to that other party without restriction, or which is rightfully obtained by the relevant party from sources other than the other party.

Upon termination of Consultant's services to Client, or at either party's request, the other

party shall deliver to the party who makes the request all materials in such other party's possession relating to the business of the party making request.

Each party shall ensure that its employees, agents and sub-contractors are aware of and comply with the confidentiality and non-disclosure provisions contained in this paragraph 18.

### **19. Resolving Disputes**

If a dispute arises under this Agreement, the parties agree to first try to resolve the dispute with the help of a mutually agreed-upon mediator in Los Angeles County, California, USA. Any costs and fees other than attorney fees associated with the mediation shall be shared equally by the parties. If it proves impossible to arrive at a mutually satisfactory solution through mediation, the parties agree to submit the dispute to a mutually agreed-upon arbitrator in Los Angeles County, California, USA. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction to do so. Costs of arbitration, including attorney fees, will be allocated by the arbitrator.

### **20. Applicable Law**

This Agreement will be governed by the laws of the State of Illinois, USA.

### **21. Notices**

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

- when delivered personally to the recipient's address as stated on this Agreement
- three days after being deposited in the United States mail (air mail if the notice or other communication is being sent internationally), with postage prepaid to the recipient's address as stated on this Agreement, or
- when sent by fax or telex to the last fax or telex number of the recipient known to the person giving notice; such notice is effective upon receipt provided that a duplicate copy of the notice is promptly given by first class mail (air mail if the notice or other communication is being sent internationally), or the recipient delivers a written confirmation of receipt.

### **22. No Partnership**

This Agreement does not create a partnership relationship. Consultant does not have authority to enter into contracts on Client's behalf.

### **23. Assignment and Delegation**

Consultant may not assign or subcontract any rights or obligations under this Agreement without Client's prior written approval.

**24. Partial Invalidity.** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**Signatures**

**Client:**  
**CLIENT NAME**

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

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

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

**Consultant:**  
digitalCCT

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

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

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

EXHIBIT "A"

**Services to be performed by Consultant**

- **Provide web site evaluations (both written and verbal) that identify all potential issues contributing to poor search engine listings for all current and future web properties owned and operated by CLIENT NAME.**
- **Collect competitive analysis data on all of CLIENT NAME's competitors.**
- **Develop potential strategies to improve search engine positioning for all current and future web properties owned and operated by CLIENT NAME.**
- **Participate in client conference calls.**
- **Provide training for CLIENT NAME web development staff on how to build web sites that perform well in search engines.**