



AGENCY AGREEMENT

This Agreement (the “Agreement”), dated as of _____ is by and between XQL Outsource LLC, a Delaware corporation, with its principal office at 1178 Broadway, 3rd Floor, #1244, New York, NY 10001 (“XQL”), and _____ (Name of Agency), a _____ (State in USA where the Agency is incorporated) corporation, with its principal office at _____ (the “Agency”).

WHEREAS, Agency is in the business of providing its employees and/or contractors (“Consultants”) to assist other companies with various technology related projects; and

WHEREAS, XQL or one of its affiliates (collectively with XQL, “XQL Outsource LLC) is soliciting Agency to provide Consultants with computer programming and analysis skills for assignments with clients of XQL or other parties being serviced by XQL’s Client. All such assignments will be under the direction and control of XQL. All work product (the "Work") created by the Consultants shall be governed by the terms and subject to the Conditions set forth herein and the Consultant Agreement (as hereinafter defined).

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agency and XQL agree as follows:

1. Engagement and Duties:

Upon the terms and subject to the conditions of this Agreement, XQL hereby engages Agency to provide Consultants to XQL to assist in the creation of the Work.

2. Term; Termination:

(a) This Agreement shall commence as of the date hereof and shall remain in effect until terminated (the “Term”).

(b) Either party, in its sole discretion, may terminate this Agreement by providing two (2) weeks written notice to the other Party.

(c) In addition to the other termination rights available under this Agreement, either party may terminate this Agreement

- (i) upon any material breach of this Agreement by the other party that is not cured within fifteen (15) days of the date on which written notice is given to such other party of such breach; or
- (ii) immediately without notice if the Work is determined to be Defective in accordance with the terms of Section 6c.
- (iii) if the other party makes an assignment of assets for the benefit of creditors, or commences or has commenced against it any proceeding in bankruptcy, insolvency or reorganization pursuant to applicable bankruptcy laws or debtor’s moratorium.

(d) In the event that any Contract or Work Order under which Agency is providing Consultants to the XQL, is terminated or reduced in scope for any reason, XQL may, without liability, immediately terminate or reduce the scope of the applicable Purchase Order (as hereinafter defined) with Agency without any further notice. Such terminations shall supersede any other terms of termination under this Agreement. Agency shall be paid for the Consultant’s services until the last working date approved by the client, in accordance with the terms of Section 4 of this Agreement as long as Agency or its Consultants are not at fault or a cause of the termination or cancellation of the contract or Purchase Order, and Agency has not otherwise defaulted under or breached any terms of this Agreement.



(e) Upon any termination of this Agreement, the Agency will promptly return to XQL any and all equipment, materials, writings and other papers, documents, property, confidential information and materials furnished to the Agency by XQL or its Clients. If any such mentioned material, property and information is not returned to XQL or its client within three (3) business days following the termination of this Agreement, the Agency shall be liable for a fee of \$1500.00 and expenses incurred by XQL in enforcing this provision. Further, failure of a Consultant to return any such property to XQL or its Clients or their Customers upon completion of an assignment shall result in forfeiture of any outstanding fees relating to the Consultant in question owed by XQL to the Agency. Both parties agree to co-operate in effecting an orderly transition and knowledge transfer if requested by XQL's Client.

(f) The final payment upon any termination of this Agreement is contingent upon receipt of all outstanding invoices supported to approved time sheets from the Client.

(g) Survival: Section 2(d); Section 7 – 15; Section 17 - 22 shall survive termination hereof.

3. The Work:

Each Consultant shall perform the Work described in a written Purchase Order, which shall be substantially in the form attached hereto as Exhibit A (each a "Purchase Order") and which may be submitted by XQL from time to time in accordance with this Agreement. A Purchase Order shall not be effective until duly executed by XQL and Agency. Each Purchase Order shall be governed by the terms and subject to the conditions of this Agreement. Except as may be specifically provided in the Purchase Orders, Agency shall provide and pay for all labor, materials, tools, equipment, travel, living, transportation, parking and all other necessary facilities for the execution and completion of the Work to XQL reasonable satisfaction in accordance with the terms of the Agreement.

4. Fees; Expenses; Payment Terms:

- (a) During the Term of this Agreement, Agency will earn and XQL will pay to Agency those fees as set forth in a Purchase Order duly executed by both parties hereto; provided, however, that in no event will Agency be paid for more than forty (40) hours during any week of this Agreement for any Consultant (which amount shall be pro-rated for any partial week) without the prior written consent of XQL.
- (b) The Agency will submit to XQL invoices for the performance of the services supported by client approved time sheets. XQL will release payment to the agency only for the hours approved by the client. XQL will not pay for services that are not approved by client and for hours in the timesheet that relate to Vacation, holidays, Sick leave, meal break or any other time off for which Agency's employee(s) and/or contractor(s) is not performing services for the client.
- (c) XQL Shall not be responsible to pay or reimburse the Agency for any out of pocket expenses incurred by the Agency and its Consultants in connection with the performance of Services hereunder unless specifically set forth in the applicable Purchase Order. All approved expenses will be reimbursed at cost (as actually incurred), without mark-up within 5 days of receipt of payment from the client to XQL. Any such expenses must be submitted to XQL within forty- five (45) days after being incurred along with copies of the actual receipts, and XQL shall have the right to reject and not pay any expenses submitted after such date.
- (d) At no time will the Agency or its Consultants deviate, alter or make an agreement with the customer, directly or indirectly to change the fees for the services or expenses provided under this Agreement.
- (e) The Agency will invoice XQL on the 15th and end of each month, or as otherwise agreed upon in writing by the parties. XQL shall have the right to reject and not pay any invoices submitted by the Agency that is over forty-five (45) days from the date of service and the Agency waives all right to payment for services and expenses for such late invoices. Should XQL elect to consider payment of a late invoice, any expenses



associated with the processing of such late invoice will be at the Agency's sole cost and expense, and will be deducted from the payment amount.

- (f) Amounts due from XQL to Agency or Agency to XQL under this Section 4 shall be paid within forty-five (45) days from the receipt of the invoice.
- (g) XQL payment to the Agency shall in no way affect Agency's obligation to pay its Consultants in compliance with local, state and federal laws. It is further agreed that if the Client refuses to accept and pay XQL for Services of this Agreement, XQL has no liability to the Agency and that the Agency and its Consultants may not contact the Client for payment. The Client shall have no obligation to pay any amounts directly or be liable for any amounts owed to the Agency or its Consultants.
- (h) The Agency will maintain adequate books and records to substantiate all invoices and related expenses incurred by the Agency with respect to the Services hereunder for at least a period of one (1) year from the date of final payment.
- (i) If XQL determines that the Agency is not paying its employee/contractor providing services to XQL or its Assigned Client, XQL will notify the Agency of its knowledge of nonpayment. Agency will have seven (7) days from the date of notification to remedy the situation to the satisfaction of XQL. If Agency fails to remedy the situation, it will be viewed as a breach of the Agreement and the Agency's Agreement with XQL will be terminated immediately. XQL's only responsibility to Agency will be for Services provided to XQL or its Client for any PO/SOW that has been completed at the time of the Contractor Agreement termination and for which Client has paid XQL.
- (j) During the Term of this Agreement, if a situation arises where XQL has to introduce the Agency directly to XQL's Client or their Customers, and the nature of Work requires Agency to do contracting/sub-contracting directly with XQL's Client or their Customers for particular Consultants, then Agency shall pay XQL a fee as set forth in the Exhibit B ("Reference Payment Order") and the Section 4(a), 4(b), 4(c), 4(e), 4(g), and 4(i) shall become null and void. The Agency will have to keep XQL in loop for all its communications with the Clients introduced by XQL. Agency will also share the copies of the approved timesheets of the Consultants to XQL's official email.

5. Time of Commencement and Completion:

Consultant shall start and complete performance of the Work/services as outlined in the applicable Purchase Order. All times specified in this Agreement for the completion of Work are of the essence of the Agreement between the parties. Non-compliance of this provision will be construed as a material breach of this Agreement.

6. Warranty:

- (a) Agency agrees to provide a two (2) week performance warranty on each Consultant contracted by XQL and as named in a Purchase Order. Should the Consultant's Work prove to be defective or unsatisfactory, Agency agrees to provide an acceptable replacement Consultant within one (2) business days of being informed of such by XQL.
- (b) In addition, Agency warrants that all Work furnished by Consultant shall be performed in a workmanlike manner and shall comply with all terms and conditions of the contract documents, including, but not limited to, all quality standards set forth in the applicable Purchase Order or those provided by XQL and its Clients.
- (c) Work not conforming to the foregoing warranty, failing to meet professional or failure to perform in accordance with specifications provided by client XQL or its Clients, shall be deemed to be 'Defective'. The Agency shall not be entitled to any compensation for such defective Work and in addition to any other remedies XQL may seek, XQL may set off from other amounts owed to the Agency. The Agency shall



without any additional compensation correct or revise any errors or deficiencies in its reports, drawings, specifications, designs and other terms or services.

- (d) The consultants provided to XQL are currently authorized to work in the United States and the Agency is responsible for maintaining continued work authorization throughout the period of the Consultant is providing services. The Agency agrees to provide evidence of proper work authorization as requested by XQL. The Agency agrees to be solely responsible for completing and maintaining records of Employment Verification such as E-Verify, I-9s etc. pursuant to the Federal Immigration Reform and Control Act for all Consultants assigned to XQL.
- (e) The Agency has an appropriate employment Agreement with each of its employees (or independent contractor Agreements with each of its independent contractors) provided to XQL as Consultants, to require him/her to comply with the terms of this Agreement and/or Client contract, including but not limited to provisions relating to confidentiality, work made for hire, proprietary rights etc. prior to such individual commencing work under this Agreement.

7. Non-Solicitation/Non-Compete:

During the Term of this Agreement and for one (1) year thereafter, Agency and Consultant will not directly or indirectly:

- (a) Compete with XQL by soliciting or accepting any engagement with a XQL's Client other than through XQL.
(If the nature of the Work demands Agency to work directly with XQL's Client as a Contractor/Sub-contractor as termed in Section 4(j), Agency shall only come in engagement with the Client for that specific Work Order for a specific Consultant. The Section 7(a), 7(b) shall sustain otherwise.)
- (b) Hire or assist in soliciting or hiring, any employee or consultant working for XQL or cause any such employee or consultant to leave the services of XQL or assist such employees or consultant to take up employment with a XQL's Client, a competitor of XQL or any other entity or person.

For purposes of this Agreement, "XQL's Client" shall mean any person or entity to which Agency and/or Consultant would be introduced to or would be reporting to, directly or indirectly, for purposes of an assignment hereunder.

In the event of an actual or threatened breach by Agency or a Consultant of any of the provisions of this Section 7, Agency agrees that XQL's remedy at law will be inadequate, and accordingly, XQL shall be entitled to injunctive relief in any action or proceeding brought to enforce the terms of this Section 7. If as a result of Agency's actual or threatened breach of any of the provisions of this Section 7, XQL retains legal counsel for the purpose of enforcing or preventing a breach of any provision hereof including, but not limited to, instituting any action or proceeding to enforce any provision hereof by seeking a declaration of XQL's rights hereunder, or by seeking any other remedy, XQL shall be entitled, in addition to such other relief as may be granted or available, to recover from Agency all costs and expenses, including reasonable attorney's fees incurred by XQL in connection with such proceedings.

8. Independent Contractor:

Personnel supplied by Agency are deemed be employees or contractors of Agency and will to not, for any purpose, be considered employees, subcontractors or agents of XQL. Agency will be solely responsible for complying with all tax and employee protection laws. Agency assumes full responsibility for the actions of its employees while performing services. Agency will be responsible for the payment to its employees of salary, including withholding of income taxes, Social Security, Workers Compensation, Disability Benefits, and the like.



9. Compliance with Laws:

Agency shall comply with the provisions of all applicable Federal, state, and local laws, ordinances, regulations and codes (including procurement of required licenses, permits and certificates and warrants that it is an Equal Opportunity Employer and does not discriminate in recruiting, hiring, transfer, promotion, development, compensation, placement, and termination of its employees on the basis of race, color, sex, age, marital status, national origin, disability, religious belief, veteran status or other protected category as required by applicable Federal, state and local laws.) in Agency's performance under this Agreement and shall provide copies of required licenses, permits, or certificates to XQL upon request.

10. Insurance:

Agency shall maintain at its expense:

- (a) Workers' Compensation to comply with statutory limits;
- (b) Employer's Liability Insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000) per accident or injury, One Million Dollars (\$1,000,000) per disease, to include an Alternate Employer Endorsement naming XQL Outsourcing LLC and its Client;
- (c) Commercial General Liability Insurance for Subcontractor, its agents, and Subcontractor Employees, in an amount not less than One Million Dollars (\$1,000,000) per occurrence;
- (d) Commercial Automobile Liability Insurance in an amount not less than One Million Dollars (\$1,000,000), covering all owned, leased, hired and non-owned automobiles used in connection with this Agreement, if driving is required;
- (e) Professional Liability/Errors and Omissions Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence, if any Services other than clerical and light industrial are being provided under this Agreement;
- (f) Umbrella/Excess Liability with limits of not less than One Million Dollars (\$1,000,000) per occurrence; and
- (g) Commercial Blanket Bond/Fidelity Bond of not less than One Million Dollars (\$1,000,000) per occurrence.

Agency shall list XQL Outsourcing LLC. and each Client as additional insured on its Commercial General Liability Insurance. If agency's insurance policy is to be canceled or materially changed by insured or insurer so as to affect the coverage required by this Agreement, at least thirty (30) days prior written notice of such cancellation or material change shall be sent to XQL Outsourcing LLC at the address to which invoices are to be sent by the agency. Agency shall provide XQL Outsourcing LLC with a certificate or certificates of insurance evidencing the coverage's set forth above upon execution of this Agreement.

If a Prime Contract for a Client for which Agency provides Services requires limits that are higher than those listed above, or requires other coverage or endorsements, Agency shall maintain such coverage in those Client required amounts for the duration of Agency's provision of services to such Client. Agency will supply evidence of this coverage by providing XQL Outsourcing LLC with copies of the appropriate coverage certificates or renewals.

11. Confidentiality:

Except for the purpose of carrying out Agency's duties with XQL and only with XQL authorization, Agency shall not communicate or disclose to any person



- a. any information or material designated as confidential or proprietary by XQL or that by its nature should be deemed to be confidential or proprietary or
- b. any information relating to the financial affairs or position of XQL, any negotiations, agreements, contracts, or transactions of XQL, any of XQL trade secrets, including secret processes, equipment, specifications, drawings, designs, formulae, software, customer agreements, and data, and any of XQL processes, equipment, specifications, drawings, designs, formulae, software, customer agreements, and data whether trade secrets or not, save insofar as the same are common knowledge amongst persons carrying on business similar to that carried on by any such company.

Agency shall be under a similar obligation as regards the aforementioned matters in respect of any affiliate of XQL or any licensor, licensee or customers of XQL or any firm or company collaborating with XQL in business or acting as a subcontractor.

12. XQL Property:

In consideration of payments made or to be made by XQL to Agency, Agency hereby covenants and agrees that to the extent that Agency has any rights with respect to the Work performed or to be performed by Consultants, XQL does and shall own all right, title and interest in and to the Work developed and to be developed by Consultants for XQL, including all additions to, deletions from, alterations or revisions of the Work, and all drafts, notes, source and object code, concepts, ideas, suggestions, approaches related thereto or contained therein, and all other documentation and materials developed or furnished or to be developed or furnished by Consultants, and each element and part thereof (collectively, for purposes of this Agreement, the "XQL Property").

13. Works Made for Hire:

Without limiting the foregoing, Agency hereby acknowledges that Consultants' work and services for XQL and all results and proceeds thereof, including, without limitation, the XQL Property and the Work, are and were works done under XQL direction and control and that all such services, results and proceeds shall be considered works made for hire. Agency acknowledges that as between Consultants and XQL, XQL shall be considered the author of the XQL Property and the Work for all purposes and the sole and exclusive owner of all of the rights comprised in the copyright and of all possible copyright registrations, patents, trademarks, and of all applications for or renewals of any of the foregoing, and of any other intangible intellectual property embodied in the XQL Property and the Work.

14. Further Grants:

Further, to the extent Agency has any rights with respect to any aspect of the Work or the XQL Property (and XQL and Agency agree that Agency has no such rights), Agency further grants and assigns and transfers to XQL all of its right, title, and interest in and to the Work and the XQL Property, and all material contained therein or prepared therefore and the results and proceeds thereof, including, but not limited to, the copyright, all possible copyright registrations, patents, trademarks, all possible applications for or renewals of any of the foregoing, and any and all other intangible, intellectual property embodied in the Work and the XQL Property. XQL shall have the sole and exclusive right throughout the world in all languages and in perpetuity to use and exploit all or any part of the XQL Property and the Work and all or any part of any material contained therein or prepared therefore, whether or not used therein, in any format or version, by any means and in any media, whether now known or hereafter developed.

15. Claims:

Without limiting the foregoing, Agency hereby waives any and all claims that Agency may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of "droit moral" with respect to the XQL Property, the Work, and all results and proceeds of Consultants' services for XQL.

16. Further Instruments:



Agency shall also execute such further instruments as XQL may request to establish, maintain or protect XQL rights in and ownership of the XQL Property and the Work.

17. Indemnification:

Agency assumes the entire responsibility and liability for, and shall indemnify, defend, and forever hold harmless XQL and its agents, employees, officers and directors (collectively, the “XQL Parties”) and XQL’s Client and their respective agents, employees, officers and directors (collectively, the “Client Parties” and, collectively with the XQL Parties, the “Indemnified Parties”) from and against all claims, damages, losses, costs and expenses, including reasonable attorneys’ fees and costs (collectively, “Losses”), arising out of, in connection with, or resulting from any act or omission in the performance of any Work and/or services hereunder by Agency, or its agents or employees, including, without limitation, any Losses

- a. for bodily injury, sickness or death, or from any injury to or destruction of property,
- b. for breach of any warranty, covenant or undertaking of Agency, or its agents or employees,
- c. by Agency’s agents or employees, except where such Losses result from the willful misconduct or gross negligence of XQL as finally determined by a court of competent jurisdiction, or
- d. from claims that the Work and/or services performed hereunder infringe upon the rights of any third party.

Contractor shall defend, at its own expense; any proceedings brought against the Indemnified Parties on account thereof, and shall pay all expenses incurred and satisfy all judgments rendered against the Indemnified Parties in connection therewith.

18. Entire Agreement; Amendment; Waiver; Invalidity:

This Agreement, together with any schedules and exhibits attached hereto and made a part hereof, constitutes the entire Agreement between the parties as to the subject matter hereof, and shall supersede all prior understandings, letters, agreements, contracts and other documents.

This Agreement may not be amended except by an instrument in writing signed on behalf of the parties hereto. Either party hereto may extend the time for the performance of any of the obligations or other acts of the other party hereto or waive compliance by the other party hereto with any of the agreements or conditions contained herein; provided, that the waiver by either party hereto of any condition or of a breach of any other provision of this Agreement shall not operate or be construed as a waiver of any other condition or any other provision or subsequent breach. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, all of which shall remain in full force and effect.

19. Governing Law; Construction:

This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to conflict of law provisions. The construction and interpretation of this Agreement shall not be strictly construed against the drafter.

20. Successors and Assigns; No Third-Party Beneficiaries; Assignment:

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, permitted assigns and legal representatives. Nothing in this Agreement is intended to confer any rights or remedies on any person or entity that is not a party to this Agreement. Neither this Agreement nor any right or obligation hereunder may be assigned, transferred or delegated, voluntarily or by operation of law, by either party hereto without the prior written consent of the other party hereto; provided, that no such consent shall be necessary for such an assignment, transfer or delegation by either party to any entity controlling it, controlled by it, or under common control with it, or to any entity that succeeds to the XQL business by purchase, merger, consolidation or other corporate transfer.



Vendor will not, without express prior written consent of XQL, assign this agreement or any amounts payable pursuant to this agreement (excepting in an event when XQL defaults payment)

21. Counterparts:

This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

22. Headings:

The headings and subheadings in this Agreement are for reference only, and shall not affect the interpretation of this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered on behalf of each of the parties hereto as of the date first above written.

XQL Outsource, LLC.

By: _____

Name:
Title:
Date:

By: _____

Name:
Title:
Date: