

**[FOR INDIVIDUAL CONSULTANT
PERFORMING A SINGLE PROJECT]**

CONSULTING AGREEMENT

This Consulting Agreement (“*Agreement*”) is made as of _____, 200_ (“*Effective Date*”), by and between BigDeal.com, Inc., a Delaware corporation having its principal place of business at 164 Townsend Street, Suite 2, San Francisco, CA 94107 (“*Company*”), and _____, a _____, whose address is _____ (“*Consultant*”).

Company desires to have Consultant perform consulting services for Company and Consultant desires to perform such services for Company, subject to and in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. SERVICES.

1.1 Performance of Services. Consultant will perform the consulting services (“*Services*”) described in detail on Exhibit A to this Agreement (“*Statement of Work*”) in accordance with the terms and conditions of this Agreement and the Statement of Work.

1.2 Payment. Company will pay Consultant fees in accordance with the terms set forth in the Statement of Work. If the Statement of Work requires Consultant to complete certain milestones, Company’s payment obligation will be expressly subject to Consultant’s completion of such milestones to Company’s reasonable satisfaction. Unless otherwise specified in the Statement of Work, Company will not reimburse Consultant for any expenses incurred by Consultant in connection with performing Services. Subject to the foregoing, Company will pay each invoice submitted by Consultant within thirty (30) days following receipt thereof.

2. RELATIONSHIP OF PARTIES.

2.1 Independent Contractor. Consultant is an independent contractor and is not an agent or employee of, and has no authority to bind, Company by contract or otherwise. Consultant will perform the Services under the general direction of Company, but Consultant will determine, in Consultant’s sole discretion, the manner and means by which the Services are accomplished, subject to the requirement that Consultant will at all times comply with applicable law. Company has no right or authority to control the manner or means by which the Services are accomplished.

2.2 Employment Taxes and Benefits. Consultant will report as self-employment income all compensation received by Consultant pursuant to this Agreement. Consultant will indemnify Company and hold it harmless from and against all claims, damages, losses, costs and expenses, including reasonable fees and expenses of attorneys and other professionals, relating to any obligation imposed by law on Company to pay any withholding taxes, social security, unemployment or disability insurance, or similar items in connection with compensation received by Consultant pursuant to this Agreement. Consultant will not be entitled

to receive any vacation or illness payments or to participate in any plans, arrangements, or distributions by Company pertaining to any bonus, stock option, profit sharing, insurance or similar benefits for Company's employees.

2.3 Liability Insurance. Consultant will maintain adequate insurance to protect Consultant from the following: (i) claims under workers' compensation and state disability acts; (ii) claims for damages because of bodily injury, sickness, disease or death that arise out of any negligent act or omission of Consultant; and (iii) claims for damages because of injury to or destruction of tangible or intangible property, including loss of use resulting therefrom, that arise out of any negligent act or omission of Consultant.

3. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS.

3.1 Definition of Innovations. Consultant agrees to disclose in writing to Company all inventions, products, designs, drawings, notes, documents, information, documentation, improvements, works of authorship, processes, techniques, know-how, algorithms, technical and business plans, specifications, hardware, circuits, computer languages, computer programs, databases, user interfaces, encoding techniques, and other materials or innovations of any kind that Consultant may make, conceive, develop or reduce to practice, alone or jointly with others, in connection with performing Services or that result from or that are related to such Services, whether or not they are eligible for patent, copyright, mask work, trade secret, trademark or other legal protection (collectively, "**Innovations**").

3.2 Ownership of Innovations. Consultant and Company agree that, to the fullest extent legally possible, all Innovations will be works made for hire owned exclusively by Company. Consultant agrees that, regardless of whether the Innovations are legally works made for hire, all Innovations will be the sole and exclusive property of Company. Consultant hereby irrevocably transfers and assigns to Company, and agrees to irrevocably transfer and assign to Company, all right, title and interest in and to the Innovations, including all worldwide patent rights (including patent applications and disclosures), copyright rights, mask work rights, trade secret rights, know-how, and any and all other intellectual property or proprietary rights (collectively, "**Intellectual Property Rights**") therein. At Company's request and expense, during and after the term of this Agreement, Consultant will assist and cooperate with Company in all respects and will execute documents, and, subject to the reasonable availability of Consultant, give testimony and take such further acts reasonably requested by Company to enable Company to acquire, transfer, maintain, perfect and enforce its Intellectual Property Rights and other legal protections for the Innovations. Consultant hereby appoints the officers of Company as Consultant's attorney-in-fact to execute documents on behalf of Consultant for this limited purpose.

3.3 Moral Rights. Consultant also hereby irrevocably transfers and assigns to Company, and agrees to irrevocably transfer and assign to Company, and waives and agrees never to assert, any and all Moral Rights (as defined below) that Consultant may have in or with respect to any Innovation, during and after the term of this Agreement. "**Moral Rights**" mean any rights to claim authorship of any Innovation, to object to or prevent the modification or destruction of any Innovation, to withdraw from circulation or control the publication or distribution of any Innovation, and any similar right, existing under judicial or statutory law of any country in the

world, or under any treaty, regardless of whether or not such right is called or generally referred to as a “moral right.”

3.4 Related Rights. To the extent that Consultant owns or controls (presently or in the future) any patent rights, copyright rights, mask work rights, trade secret rights, or any other intellectual property or proprietary rights that block or interfere with the rights assigned to Company under this Agreement (collectively, “**Related Rights**”), Consultant hereby grants or will cause to be granted to Company a non-exclusive, royalty-free, irrevocable, perpetual, transferable, worldwide license (with the right to sublicense) to make, have made, use, offer to sell, sell, import, copy, modify, create derivative works based upon, distribute, sublicense, display, perform and transmit any products, software, hardware, methods or materials of any kind that are covered by such Related Rights, to the extent necessary to enable Company to exercise all of the rights assigned to Company under this Agreement.

4. CONFIDENTIAL INFORMATION. For purposes of this Agreement, “**Confidential Information**” means and will include: (i) any information, materials or knowledge regarding Company and its business, financial condition, products, programming techniques, customers, suppliers, technology or research and development that is disclosed to Consultant or to which Consultant has access in connection with performing Services; (ii) the Innovations; and (iii) the existence and terms and conditions of this Agreement. Confidential Information will not include, however, any information that is or becomes part of the public domain through no fault of Consultant or that Company regularly gives to third parties without restrictions on use or disclosure. Consultant agrees to hold all Confidential Information in strict confidence, not to use it in any way, commercially or otherwise, except in performing the Services, and not to disclose it to others. Consultant further agrees to take all action reasonably necessary to protect the confidentiality of all Confidential Information including, without limitation, implementing and enforcing procedures to minimize the possibility of unauthorized use or disclosure of Confidential Information.

5. WARRANTIES.

5.1 Competitive Activities. During the term of this Agreement, Consultant will not, directly or indirectly, in any individual or representative capacity, engage or participate in or provide services to any business that is competitive with the types and kinds of business being conducted by Company.

5.2 Pre-existing Obligations. Consultant represents and warrants that Consultant has no pre-existing obligations or commitments (and will not assume or otherwise undertake any obligations or commitments) that would be in conflict or inconsistent with, or that would hinder Consultant’s performance of its obligations under this Agreement.

5.3 Solicitation of Services. Because of the trade secret subject matter of Company’s business, Consultant agrees that, during the term of this Agreement and for a period of one (1) year thereafter, it will not solicit the services of any of Company’s employees, consultants, suppliers or customers for Consultant’s own benefit or for the benefit of any other person or entity.

6. INDEMNIFICATION. Consultant will indemnify and hold harmless Company from and against all claims, damages, losses and expenses, including court costs and reasonable attorneys' fees, arising out of or resulting from, and, at Company's option, Consultant will defend Company against:

(i) any action by a third party against Company that is based on a claim that any Services, the results of any Services (including any Innovations), or Company's use thereof, infringe, misappropriate or violate a third party's Intellectual Property Rights; and

(ii) any action by a third party against Company that is based on any negligent act or omission or willful conduct of Consultant and that results in: (a) bodily injury, sickness, disease or death; (b) injury or destruction to tangible or intangible property (including computer programs and data) or any loss of use resulting therefrom; or (c) the violation of any statute, ordinance, or regulation.

7. TERM AND TERMINATION.

7.1 Term. This Agreement will commence on the Effective Date and, unless terminated earlier in accordance with the terms of this Agreement, will remain in force and effect for as long as Consultant is performing Services pursuant to the Statement of Work.

7.2 Termination for Breach. Either party may terminate this Agreement (including the Statement of Work) if the other party breaches any material term of this Agreement and fails to cure such breach within ten (10) days following written notice thereof from the non-breaching party.

7.3 Termination for Convenience. Company may immediately terminate this Agreement (including the Statement of Work) at any time, for any reason or no reason, by written notice to Consultant.

7.4 Effect of Termination.

(a) Upon the expiration or any termination of this Agreement for any reason, Consultant will promptly deliver to Company all Innovations, including all work in progress on any Innovations and all versions and portions thereof.

(b) Upon the expiration or any termination of this Agreement (except termination of this Agreement pursuant by Company pursuant to Section 7.2 for breach by Consultant), Company will pay Consultant any amounts that are due and payable under Section 1.2 for Services performed by Consultant prior to the effective date of expiration or termination.

(c) Upon the expiration or termination of this Agreement for any reason, Consultant will promptly notify Company of all Confidential Information in Consultant's possession or control and will promptly deliver all such Confidential Information to Company, at Consultant's expense and in accordance with Company's instructions.

7.5 Survival. The provisions of Sections 2.2, 3, 4, 5.3, 6, 7.4, 7.5, 8 and 9 will survive the expiration or termination of this Agreement.

8. LIMITATION OF LIABILITY. IN NO EVENT WILL COMPANY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH THIS AGREEMENT, EVEN IF COMPANY HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

9. GENERAL.

9.1 No Election of Remedies. Except as expressly set forth in this Agreement, the exercise by Company of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or available at law or in equity.

9.2 Assignment. Consultant may not assign or transfer any of Consultant's rights or delegate any of Consultant's obligations under this Agreement, in whole or in part, without Company's express prior written consent. Any attempted assignment, transfer or delegation, without such consent, will be void. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties permitted successors and assigns.

9.3 Equitable Remedies. Because the Services are personal and unique and because Consultant will have access to Confidential Information of Company, Company will have the right to enforce this Agreement and any of its provisions by injunction, specific performance or other equitable relief, without having to post a bond or other consideration, in addition to all other remedies that Company may have for a breach of this Agreement.

9.4 Attorneys' Fees. If any action is necessary to enforce the terms of this Agreement, the substantially prevailing party will be entitled to reasonable attorneys' fees, costs and expenses in addition to any other relief to which such prevailing party may be entitled.

9.5 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California, excluding that body of law pertaining to conflict of laws. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in the Northern District of California and the parties hereby irrevocably consent to the personal jurisdiction and venue therein.

9.6 Severability. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

9.7 Notices. All notices required or permitted under this Agreement will be in writing and delivered by confirmed facsimile transmission, by courier or overnight delivery service, or by certified mail, and in each instance will be deemed given upon receipt. All notices will be sent to the addresses set forth above or to such other address as may be specified by either party to the other in accordance with this Section.

9.8 Entire Agreement. This Agreement, together with the Statement of Work, constitutes the complete and exclusive understanding and agreement of the parties with respect to the subject matter hereof and supersedes all prior understandings and agreements, whether written or oral, with respect to the subject matter hereof. In the event of a conflict, the terms and conditions of the Statement of Work will take precedence over the terms and conditions of this Agreement. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by the parties hereto.

9.9 Waiver. The waiver of any breach of any provision of this Agreement will not constitute a waiver of any subsequent breach of the same other provisions hereof.

9.10 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the Effective Date.

COMPANY:

By: _____

Title: _____

Date: _____

CONSULTANT:

By: _____

Title: _____

Date: _____

EXHIBIT A

Statement of Work

This Statement of Work is issued under and subject to all of the terms and conditions of the Consulting Agreement dated as of _____, 200_ by and between BigDeal.com, Inc. ("**Company**") and _____ ("**Consultant**").

1. Description of Services

2. Payment Terms [Include the following if the Consultant will be paid based on the completion of milestones]

Description of Milestones	Milestone Payments:	Milestone Completion Dates:

2. Payment Terms [Include the following if the Consultant will be paid on an hourly basis]

Hourly Consulting Rate: \$ _____

Maximum Number of Hours: _____

Maximum Consulting Fee: \$ _____

Start Date: _____

Required Completion Date: _____

3. Other Terms

AGREED AS OF _____, 200_

COMPANY:

CONSULTANT:

By: _____

By: _____

Title: _____

Title: _____