

# Consulting Agreement

**Consultation Services** - CLIENT hereby contracts UGUtech Consulting LLC (hereafter called "Consultant") to provide any of the following services: Training, System Administration, Network Administration, Desktop/Server Support, or Consulting Services (which may include: thinking, researching, meeting, preparing, documenting, communicating, emailing, writing, or any other activity performed by the Consultant on behalf of or for the CLIENT). These activities will be collectively known hereafter as the "Work".

**Fees** - For all service fees not specified or quoted, regular Consultant rates as posted at <http://ugutech.com/rates/> apply. Consultant reserves the right to adjust rates as Consultant sees fit. Consultant will inform monthly subscription clients at least one month in advance of such adjustments, per-incident clients will not receive advance notice.

**Term and Termination** - Unless terminated as provided herein, this Agreement will be in effect until the Work is completed. CLIENT may end this Agreement without cause by giving two (2) days written notice to Consultant. In the event of termination for any reason, CLIENT agrees to pay Consultant for all work, purchases made on behalf of CLIENT, and expenses accrued and owing up to the date of termination. Consultant may end this Agreement without cause at any time, without notice.

**Payment Terms** - Consultant will be paid at the rates agreed for the Work performed in accordance with this agreement unless otherwise agreed to in writing. CLIENT will pay for services immediately when invoiced. Consultant will email or mail an invoice setting forth the time spent for services rendered. If CLIENT has not challenged an invoice within 10 days of receipt, it shall forfeit any right to thereafter challenge said invoice.

**Default** - "Default" shall mean the non-payment of sums due according to the terms of this Agreement. In the event of Default on the part of CLIENT, Consultant may cease all further performance under this agreement and shall not be liable for any losses or damage suffered by CLIENT as a result of Consultant's cessation of services. After such Default, Consultant shall not be obligated to provide any additional services unless mutually agreed to in writing between the parties. In the event CLIENT believes Consultant is in default or breach of this agreement, CLIENT shall provide Consultant with timely written notice of the default or breach and expressly identify the nature of the default or breach in that notice. Further, Consultant shall have ten (10) days to cure ("Cure Period") that default or breach, failing which this agreement shall automatically terminate without any further obligation by one party to the other. Notwithstanding the above, Consultant shall be entitled to full payment for all services and equipment provided to CLIENT as of the expiration of the Cure Period.

**Client Obligations** - Licensed Software: CLIENT is required to own a current, licensed copy of any software on which we are asked to work, and also certain software programs which are useful for diagnosing and repairing computers at CLIENT's site. Consultant can assist CLIENT in its purchase of the necessary software. Consultant cannot and does not knowingly work on non- licensed copies of software. CLIENT agrees to indemnify, defend and hold harmless Consultant against any liability (including attorney's fees and court costs) arising from Consultant's use of CLIENT's non-licensed software on CLIENT's behalf.

**Backup** - It is the CLIENT's responsibility to back up all data to ensure protection of CLIENT's data. Consultant will be happy to review your backup system and make recommendations for improving it. Consultant can arrange for CLIENT to purchase the necessary hardware and/or software and can install and configure it. Consultant cannot be responsible for any loss of data due to CLIENT's failure to back up that data properly, and CLIENT agrees to indemnify and hold Consultant harmless against any liability arising from such loss or damage to CLIENT's data

**Warranties and Representations** - Consultant does not make and hereby disclaims, and CLIENT hereby waives, any representations or warranties, arising by law or otherwise, regarding the Services described in this Agreement, or any portion thereof, including, without limitation implied warranties of merchantability, fitness for a particular purpose, non-infringement, or arising from course of dealing, course of performance or usage in trade. Without limiting the foregoing, Consultant specifically does not warrant the Services described herein (a) against failure of performance including, without limitation, any failure due to computer hardware or communications systems, or (b) any economic or other benefit that CLIENT might obtain through its participation in this Agreement. With respect to any equipment supplied, only the manufacturers warranty, if any, shall apply to any repair or maintenance, unless expressly set forth to the contrary in this Agreement.

**Release and Indemnification** - CLIENT hereby releases and agrees to hold harmless, defend and indemnify Consultant, from any and all claims, actions, proceedings, suits, liabilities, damages (actual, consequential, or incidental), settlements, penalties, fines, costs or expenses (including without limitation, reasonable attorney's fees and other litigation expenses) of every kind, whether known or unknown, incurred by CLIENT arising out of this Agreement.

**Limitation of Liability** - In no event shall Consultant be liable for indirect, special or consequential damage suffered by CLIENT in connection, directly or indirectly, with the action or inaction of Consultant under or in relation to this Agreement.

**Liability for Data Loss** - CLIENT understands that there are inherent risks in providing support to computer systems which include but are not limited to data loss, data corruption, or complete loss of files or directories. CLIENT agrees that Consultant will not be held liable for damages in the case of data loss.

**Independent Contractor** - Both CLIENT and Consultant agree that Consultant will act as an independent contractor in the performance of duties under this contract. Accordingly, Consultant shall be responsible for payment of all taxes including Federal and Provincial taxes arising out of Consultant's activities in accordance with this contract. Nothing contained in this Agreement is intended to constitute the Parties as partners or joint venturers in the legal sense. Neither party intends that a partnership, joint venture or similar relationship be formed by this Agreement or any performance hereunder. Neither party shall have any express or implied right or authority to assume or create any obligations on behalf of, or in the name of, the other or to bind the other to any contract, agreement or undertaking with any third party.

**Confidentiality** - Each party agrees that the Confidential Information of the other party will be held in confidence to the same extent and the same manner as each party protects its own Confidential Information,

but each party agrees that in no event will less than reasonable care be used. Each party shall, however, be permitted to disclose relevant aspects of such Confidential Information to its officers or employees on a need-to-know basis, provided they have undertaken to protect the Confidential Information to the same extent as required under this Agreement. "Confidential Information" means each party's trade secrets, financial information, formulas, specifications, programs, instructions, technical know-how, methods of operation, testing benchmarks, any other information identified by a party as Confidential Information, and any other information that should reasonably be understood to be confidential or proprietary. The confidential Information referred to in this Section shall not apply in the following cases: If it was already known to the other party, if it was disclosed-without obligation to keep the information confidential, if it was publicly known or became publicly known through no-fault of the receiving party, if it was independently developed by the receiving party without use of the other party's Confidential Information, or if it is required to be disclosed by a court of competent jurisdiction and in that case, the disclosing party shall be granted a reasonable opportunity to obtain a protective order.

**Governing Law and Jurisdiction** - This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois applicable to agreements made regardless of the place of physical execution of the agreement within such state, without regard to its conflict of laws rules. CLIENT hereby irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Cook County, Illinois in respect of any dispute under this agreement.

**Entire Agreement** - The terms set forth in this Agreement are intended by the Parties as a final, complete and exclusive expression of their agreement with respect to the Services contemplated by this Agreement and may not be contradicted, explained or supplemented by evidence of any prior agreement, any contemporaneous oral agreement, or any consistent additional terms. There are no restriction, promises, representations, warranties, covenants, or undertakings, other than those expressly set forth or referred to herein. This Agreement is not intended to confer upon any person other than the parties hereto any rights or remedies hereunder.

**Severability** - Should any term or provision hereof be deemed invalid, void or unenforceable either in its entirety or in a particular application, the remainder of this Agreement shall nonetheless remain in full force and effect, and, if the subject term or provision is deemed to be invalid, void or unenforceable only with respect to a particular application, such term or provision shall remain in full force and effect with respect to all other applications.

**Modifications** - All modifications to this Agreement must be in writing and signed by all Parties.

**Force Majeure** - Consultant shall be excused from performance to the extent that performance is prevented, delayed, or obstructed by causes beyond Consultant's reasonable control, including delays in performance by CLIENT, acts of Nature (fire, storm, floods, earthquakes, etc.) civil disturbances, disruption of telecommunications, power or essential services.

**Assignment** - Neither of the parties may sell, transfer, assign or otherwise dispose of any of its rights or obligations under this Agreement to any person without the express written consent of the other party, except

that Consultant may, at its sole discretion, hire or sub-contract out portions or all of the services to be provided hereunder.

**Claim Limitation** - CLIENT agrees, regardless of any statute or law to the contrary, that any claim or cause of action arising out of or relating to this Agreement must be filed within one (1) year after such claim of action arose or be forever barred. If any party brings an action arising out of this Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees, and any court costs incurred in such action or proceeding, in addition to any other damages or relief awarded.

**Consents and Waivers** - Failure of any party at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same, unless the same is waived in writing. No waiver by a party of any condition or any breach of any term, covenant, representation, or warranty contained in this Agreement shall be effective unless in writing, and no waiver of any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in other instances.