Enterprise Knowledge, LLC
3100 Clarendon Boulevard
Suite 500
Arlington, VA 22201

www.enterprise-knowledge.com
info@enterprise-knowledge.com
(t) +1.571.800.9803

ENTERPRISE KNOWLEDGE

Terms & Conditions

The Contracting Agreement below sets out Enterprise Knowledge's standard terms and conditions. We recognise that public sector buyers may require specific contractual terms, and we are open to reviewing and agreeing to reasonable amendments where required. Any variations will be discussed and mutually agreed upon in advance of contract award.

Consulting Agreement

This CONSULTING AGREEMENT ("Consulting Agreement") is made and entered into as of this ______ day of OCTOBER, 2016, by and between Enterprise Knowledge, LLC, a Virginia limited liability company with principal offices at 3100 Clarendon Blvd. Suite 300, Arlington, VA 22201 ("ENTERPRISE KNOWLEDGE"), and ___________________, a _________________ with principal offices at _____________________ ("CLIENT").

WHEREAS, CLIENT desires to retain ENTERPRISE KNOWLEDGE as an independent contractor, and ENTERPRISE KNOWLEDGE has agreed to assist CLIENT in certain operational matters described below; and

WHEREAS, CLIENT wishes to utilize ENTERPRISE KNOWLEDGE's consulting services for the CLIENT projects as defined mutually by ENTERPRISE KNOWLEDGE and CLIENT in the Attachments to this agreement,

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, CLIENT and ENTERPRISE KNOWLEDGE hereby agree as follows:

1. <u>Retention of ENTERPRISE KNOWLEDGE; Scope of Services</u>

(a) Subject to the terms and conditions of this Agreement, CLIENT shall retain ENTERPRISE KNOWLEDGE, working through its employees, representatives, agents and subcontractors ("AGENTS") to provide software consulting support services to CLIENT as specified in Attachments to this agreement. ENTERPRISE KNOWLEDGE is solely responsible for determining the hours and method of its AGENTS' work, as well as for providing all necessary training and instruction to its AGENTS so that they are able to satisfy ENTERPRISE KNOWLEDGE's obligations contemplated by this Agreement.

(b) CLIENT acknowledges and agrees that ENTERPRISE KNOWLEDGE will not be required to devote all of its time, attention, knowledge and skills solely to CLIENT's business and to the services to be rendered hereunder, however, ENTERPRISE KNOWLEDGE shall be available to work at reasonable times and for reasonable periods of time to perform services required by CLIENT at locations throughout the United States.

2. Compensation

(a) For ENTERPRISE KNOWLEDGE's performance of services, CLIENT shall pay ENTERPRISE KNOWLEDGE the compensation as specified on the Attachments to this agreement;

(b) ENTERPRISE KNOWLEDGE shall invoice CLIENT monthly in arrears on a Time and Materials basis for (a) the number of hours worked at the applicable rate for each personnel, and (b) associated reimbursable expenses agreed upon in the applicable Attachment. Travel expenses shall include travel, lodging, parking and meals. If the CLIENT pays for services on other than a Time and Materials basis, the timing and format of the invoice shall be as specified in the applicable Attachment. CLIENT agrees to pay all invoices within thirty (30) days of invoice date provided, however, that if this day is a Saturday, Sunday or legal holiday, then payment shall be made on the first business day following the due date. Payments not received within this time shall bear interest at the rate of 1 ½% per month. ENTERPRISE KNOWLEDGE reserves the right to withhold performance of services in the event of any nonpayment by the due date;

(c) Excluding taxes based on ENTERPRISE KNOWLEDGE income, CLIENT is liable for all taxes, duties and customs fees relating to the services, whether or not ENTERPRISE KNOWLEDGE invoices CLIENT for the same, unless CLIENT provides ENTERPRISE KNOWLEDGE with a valid tax exemption certificate which exempts CLIENT from such payments.

(d) CLIENT and ENTERPRISE KNOWLEDGE acknowledge that the compensation to be paid ENTERPRISE KNOWLEDGE pursuant to this Agreement has been established at an amount believed to be reasonable for both the availability of ENTERPRISE KNOWLEDGE on behalf of CLIENT and the services to be performed by ENTERPRISE KNOWLEDGE hereunder.

3. Independent Contractor Status

(a) The parties hereby acknowledge and covenant that:

(i) ENTERPRISE KNOWLEDGE is an independent contractor and will act exclusively as an independent contractor and not as an employee of CLIENT in performing the duties assigned hereunder; and

(ii) the parties do not intend, and will not hold out that there exists, any Corporation, joint venture, undertaking for a profit or other form of business venture or any employment relationship among the parties other than that of an independent contractor relationship.

(b) All payments to ENTERPRISE KNOWLEDGE pursuant to this Agreement shall be due and payable in the Commonwealth of Virginia, even if services of ENTERPRISE KNOWLEDGE are performed outside the Commonwealth of Virginia;

(c) CLIENT will not withhold any social security tax, Medicare tax, federal unemployment tax, federal income tax, or state income tax from any compensation paid to ENTERPRISE KNOWLEDGE. All such taxes, if due, are the responsibility of ENTERPRISE KNOWLEDGE;

(d) ENTERPRISE KNOWLEDGE agrees to waive any claims to any welfare or retirement benefits available to qualified employees of CLIENT. ENTERPRISE KNOWLEDGE acknowledges that as an independent contractor it is not eligible to participate in any welfare or retirement benefit programs provided by CLIENT for its employees;

4. Termination.

This Agreement shall begin as stated in Attachment A and shall remain open, unless terminated by either party as provided for herein, until implementation of services is complete; provided, however, that this Agreement may be terminated by either party in the event the other party has breached a covenant, obligation, or warranty under this Agreement and such breach remains uncured for a period of thirty (30) days after written notice thereof is sent to such other party. No other representation or communication shall be effective to create any contract for services for any specified period of time contrary to the provisions of this paragraph.

5. Obligation upon Termination.

Except for the provisions of Paragraphs 6, 7, 8, 9 10, and 11 which shall survive the termination of this Agreement, in the event this Agreement is terminated hereunder, CLIENT shall pay ENTERPRISE KNOWLEDGE's invoices through the date of termination and the thirty day notice period, and thereafter CLIENT shall have no further liability under this Agreement to ENTERPRISE KNOWLEDGE and ENTERPRISE KNOWLEDGE shall have no further obligations to CLIENT.

6. Warranties

(a) ENTERPRISE KNOWLEDGE warrants that all services performed under this Agreement shall be performed consistent with generally prevailing professional or industry standards. CLIENT must report any deficiencies in the WORK PRODUCT of ENTERPRISE KNOWLEDGE in writing within 10 days of the performance and delivery of the WORK PRODUCT or the WORK PRODUCT will be deemed accepted by CLIENT.

(b) CLIENT's exclusive remedy for any breach of the above warranty shall be commercially reasonable re-performance of the service as soon as reasonably practical. If ENTERPRISE KNOWLEDGE cannot re-perform the service according to the prevailing professional or industry standards, CLIENT shall be entitled to recover any fees paid to ENTERPRISE KNOWLEDGE for the deficient service. CLIENT may not offset the cost of the deficient service against other services previously billed and accepted by CLIENT.

(c) In no case can CLIENT's damages, either direct or indirect, in contract or in tort, for breach of warranties, failure to perform, infringement of intellectual property rights, loss of profits, special, incidental or other consequential damages arising from ENTERPRISE KNOWLEDGE's performance under this Agreement exceed the total value of fees actually paid to ENTERPRISE KNOWLEDGE by CLIENT. CLIENT waives its right to claim or receive any punitive damages against ENTERPRISE KNOWLEDGE.

(d) EXCEPT FOR THE EXPRESS WARRANTY SET FORTH ABOVE, THE SERVICES ARE PROVIDED "AS IS" WITH ALL FAULTS AND THE ENTIRE RISK AS TO SATISFACTION, QUALITY, PERFORMANCE, ACCURACY, AND EFFORT IS WITH THE CLIENT. CLIENT ACKNOWLEDGES THAT THERE IS NO WARRANTY AGAINST INTERFERENCE WITH ENJOYMENT OR INFRINGEMENT IN CONNECTION WITH THE SERVICES, AND THAT NEITHER ENTERPRISE KNOWLEDGE NOR ANY OF ITS AFFILIATES, EMPLOYEES, AGENTS OR LICENSORS WARRANT THAT THE SERVICES ARE FREE FROM ERROR OR WILL FUNCTION WITHOUT INTERRUPTION. EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, ENTERPRISE KNOWLEDGE, ITS EMPLOYEES, AGENTS, AND LICENSORS MAKE NO WARRANTIES IN CONNECTION WITH THE SERVICES, EITHER EXPRESSED, STATUTORY, OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, INTERFERENCE WITH QUIET ENJOYMENT, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR ANY AND ALL WARRANTIES IMPLIED FROM COURSE OF DEALING, COURSE OF PERFORMANCE, CUSTOM OR USAGE OF TRADE.

7. <u>Indemnification</u>

(a) Intellectual Property Infringement

A. Subject to the limitations and contingencies set forth below and to the extent CLIENT is not in default under this Agreement, ENTERPRISE KNOWLEDGE shall at its expense defend (including paying all reasonable attorneys' fees) any claim brought against CLIENT, its agents, officers or employees by a third party alleging that a deliverable provided as part of the Work Product infringes any United States, patent, copyright, or trademark rights of any third party. In the event a Work Product is held by a court of competent jurisdiction to infringe the aforementioned intellectual property rights and CLIENT's use of the Work Product is enjoined, or ENTERPRISE KNOWLEDGE concludes that the Work Product infringes the foregoing intellectual property rights, ENTERPRISE KNOWLEDGE will, at its option and expense either: (i) procure for CLIENT the right to continue using the Work Product in accordance with this Agreement, (ii) replace the infringing components of the Work Product with other components with the same or similar functionality that are reasonably acceptable to CLIENT, or (iii) modify the Work Product so that it is non-infringing and reasonably acceptable to CLIENT. If options (i), (ii) and (iii) are not commercially viable in ENTERPRISE KNOWLEDGE's reasonable discretion, ENTERPRISE KNOWLEDGE may terminate CLIENT's license to use the infringing Work Product and refund to CLIENT the the fee that CLIENT actually paid ENTERPRISE KNOWLEDGE for the infringing Work Product.

B. Limitation. Notwithstanding the provisions of section 8(a) above, ENTERPRISE KNOWLEDGE assumes no liability for (i) infringement arising from combinations of a Work Product with non-ENTERPRISE KNOWLEDGE services, data, material, information, software or hardware products, including any of CLIENT's products, (ii) modifications to a Work Product made by any party other than ENTERPRISE KNOWLEDGE, or (iii) trademark infringements involving any marking or branding not applied by ENTERPRISE KNOWLEDGE or involving any marking or branding applied at the request of CLIENT.

C. Entire Liability. The foregoing provisions of this section 8 state the entire liability and obligations of ENTERPRISE KNOWLEDGE and the exclusive remedy of CLIENT with respect to any alleged or actual infringement of patents, copyrights, trademarks or other intellectual property rights by a Work Product, or any part thereof.

D. CLIENT Indemnity. CLIENT shall at its expense defend (including paying all reasonable attorneys' fees) any claim brought against ENTERPRISE KNOWLEDGE by a third party alleging that any software, code, data, material or other information provided to ENTERPRISE KNOWLEDGE by CLIENT in connection with ENTERPRISE KNOWLEDGE's performance of the services infringe any rights of any third party, subject to the limitations and contingencies set forth in this Section 8, mutatis mutandis.

(b) Personal Injury/Property Damage. Subject to the limitations and contingencies set forth below, each Party agrees to indemnify, defend and hold harmless the other Party, and its agents, officers and employees from and against any and all liability, expense, including reasonable defense costs and reasonable legal fees, and claims for damages, in each case solely for third party claims for bodily injury, death or damage to real or tangible personal property, to the extent directly and proximately caused by the negligence or willful misconduct of the indemnifying Party while engaged in the provision or receipt of services; provided, however, that if there also is fault on the part of indemnified Party, the foregoing indemnification shall be on a comparative fault basis.

(c) Contingencies. As a condition to the foregoing indemnity obligations, the indemnified Party shall provide the indemnifying Party with prompt notice of any claim for which indemnification shall be sought hereunder and shall cooperate in all reasonable respects with the indemnifying Party in connection with any such claim. The indemnifying Party shall be entitled to control the handling of any such claim and to defend or settle any such claim, in its sole discretion, with counsel of its own choosing; provided, however, that the indemnifying Party may not agree to any settlement other than the payment of money or release of any claim without the indemnified Party's written permission, which shall not be unreasonably withheld, conditioned or delayed.

8. Ownership of Work Product

(a) Upon payment of all amounts due, creation, modifications, enhancements, improvements or other work first produced or created by ENTERPRISE KNOWLEDGE on any work product (including documentation and any other form of expression fixed in an intangible media) at CLIENT's expense and delivered to CLIENT (the "WORK PRODUCT") shall be owned by CLIENT.

(b) In the event ENTERPRISE KNOWLEDGE's pre existing intellectual property rights, including all data, documentation, software, and information in any form not first produced or created by or for ENTERPRISE KNOWLEDGE as a result of or related to the rendition of services under this Agreement and all derivative works thereof ("ENTERPRISE KNOWLEDGE's Related Rights"), are incorporated into the Work Product or are necessary for the CLIENT to use such Work Product solely in accordance with the scope defined in the Attachment, ENTERPRISE KNOWLEDGE hereby grants a royalty-free, irrevocable, worldwide, nonexclusive, perpetual license to CLIENT for whom ENTERPRISE KNOWLEDGE performs the Project to which the ENTERPRISE KNOWLEDGE's Related Rights pertain, to make, have made, use, disclose, reproduce, sublicense, modify, prepare derivative works from, distribute, copy, perform and display ENTERPRISE KNOWLEDGE's Related Rights pertaining to the Work Product.

(c) ENTERPRISE KNOWLEDGE agrees that without prior written consent of CLIENT, ENTERPRISE KNOWLEDGE will not use or disclose the know-how, or other information of a confidential nature, in any WORK PRODUCT, or any portion thereof, or any information of any kind delivered from such WORK PRODUCT for the benefit of any competitor or potential competitor of CLIENT.

9. Confidentiality

A Party disclosing Confidential Information to the other Party is referred to herein as the "Disclosing Party". A Party receiving Confidential Information from the other Party is referred to herein as the "Receiving Party". The Parties acknowledge that in the course of training and providing other services under this Agreement, the Receiving Party may have access to valuable information of a confidential and proprietary nature relating to customers, marketing strategies, business processes and technology ("Confidential Information"). All written material, customer lists or other properties, tangible or intangible, arising out of or resulting from the performance of this Agreement, and all proprietary rights, including copyrights therein, are considered confidential and shall belong to the Disclosing Party. The Parties agree that during the time period this contract is in effect, and for three (3) years thereafter, the Receiving Party shall not, without the written consent of the Disclosing Party, disclose to any person, other than an employee of the Receiving Party or a person to whom disclosure is reasonably necessary or appropriate in connection with the performance of ENTERPRISE KNOWLEDGE's services for CLIENT, any confidential information obtained by the Receiving Party with respect to any of the Disclosing Party's customers, products, systems, strategies or organization, or otherwise.

10. Nonsolicitation Agreement

(a) CLIENT recognizes that services performed under this Agreement will be done through ENTERPRISE KNOWLEDGE's AGENTS (which shall include its employees, representatives, agents and subcontractors that have been so identified to CLIENT or that CLIENT had direct contact with or knowledge of) and, thus, CLIENT will likely have numerous contacts with said AGENTS. CLIENT agrees that during the period of this Agreement and for a period of one (1) year following the termination of this Agreement for any reason, CLIENT shall not, without the express written consent of ENTERPRISE KNOWLEDGE, solicit or otherwise contract (either directly or indirectly) with any AGENT. Furthermore, CLIENT shall not become engaged in, either as a partner, officer, director, shareholder, agent, employee, manager, owner or advisor, or in any other way carry on, be concerned with, or permit its associates, business partners, or employees to solicit or otherwise contract any AGENT for a period of one (1) year following the termination of this Agreement for any reason.

(b) In the event that the prohibitions of paragraph 10(a) are challenged by CLIENT in a court of law, ENTERPRISE KNOWLEDGE reserves the right to petition the court to reform this paragraph in accordance with the Virginia Business and Commerce Code, as amended, by reforming the covenants to the extent necessary to cause the limitations on restraint contained herein as to time, geographical area, and scope of activity to be reasonable and to impose a restraint that is not greater than necessary to protect ENTERPRISE KNOWLEDGE's business interests and to enforce the covenant as reformed.

11. Equitable Relief.

The parties acknowledge that the obligations of CLIENT and ENTERPRISE KNOWLEDGE under this Agreement are incapable of valuation with any reasonable degree of certainty. In the event that either party should fail to fulfill any of the obligations of this Agreement, the other party may bring an action to enforce specific performance of all obligations under this Agreement or enjoin certain actions by a party hereto. This remedy shall not exclude the availability of other remedies provided by law. It is also agreed to by the parties that time is of the essence in enforcing the rights of the parties hereto.

12. Miscellaneous.

(a) Validity. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect;

(b) No Waiver. The failure or neglect of any party hereto to insist, in any one or more instances, upon the strict performance of any of the terms or conditions of this Agreement, or waiver by any party of strict performance of any of the terms or conditions of this Agreement, shall not be construed as a waiver or relinquishment in the future of such term or condition, but the same shall continue in full force and effect;

(c) Successors and Assigns. The benefits of this Agreement shall inure to the benefit of the Parties, their respective successors, assigns and representatives, and the obligations and liabilities assumed in this Agreement by the parties shall be binding upon their respective successors and assigns;

(d) VENUE. CLIENT AND ENTERPRISE KNOWLEDGE HEREBY AGREE THAT ANY DISPUTE WHICH MAY ARISE BETWEEN OR AMONG THEM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL BE ADJUDICATED BEFORE A VIRGINIA STATE COURT LOCATED IN ARLINGTON COUNTY, VIRGINIA OR BEFORE THE FEDERAL DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AND THEY HEREBY SUBMIT TO THE EXCLUSIVE PERSONAL JURISDICTION OF THE COURTS OF THE STATE LOCATED IN ARLINGTON COUNTY, VIRGINIA AND OF THE FEDERAL DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA WITH RESPECT TO ANY ACTION OR LEGAL PROCEEDING COMMENCED BY ANY PARTY, AND THEY IRREVOCABLY WAIVE ANY OBJECTION THEY NOW OR HEREAFTER MAY HAVE RESPECTING THE VENUE OF ANY SUCH ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR RESPECTING THE FACT THAT SUCH COURT IS AN INCONVENIENT FORUM, RELATING TO OR ARISING OUT OF THIS AGREEMENT, AND CONSENT TO THE SERVICE OF PROCESS IN ANY SUCH ACTION OR LEGAL PROCEEDING BY MEANS OF REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, IN CARE OF THE ADDRESS SET FORTH IN PARAGRAPH 13(k);

(e). Dispute Resolution. Except for action seeking a temporary restraining order or injunction, or suit to compel compliance with this dispute resolution process, the parties agree to use the dispute resolution procedures set forth in this Section 13(e) with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

(i) *Informal Dispute Resolution*. For a period of thirty (30) days after notice from either Party, the parties shall attempt in good faith to resolve the dispute by direct negotiation of non-lawyer representatives of the parties.

(ii) *Mediation*. If the parties do not resolve the dispute within such 30-day period, either Party may submit the matter to mediation with a professional mediation service selected by the parties. Good faith mediation is a condition precedent to arbitration or litigation. If the parties do not resolve the dispute through mediation or if ninety (90) days have passed since the parties submitted the dispute to mediation and the parties are not in active negotiations, either party may submit the dispute to the next step in the dispute resolution process.

(iii) *Arbitration*. If the cumulative dollar value of all claims between the parties is under $75,000, either party may submit the dispute to binding arbitration before an arbitrator of the parties' choice. If the parties cannot agree on an arbitration service, such service shall be provided pursuant to the American Arbitration Association Rules; however, unless otherwise agreed by the Parties, discovery shall be limited to a total of two (2) depositions, of no longer than six (6) hours each, and fifteen (15) combined interrogatories and request for production of documents. The Parties agree that the arbitrator shall have no power or authority to make any award that provides for punitive or exemplary damages. The arbitrator's decisions shall be final and binding. The award may be confirmed and enforced in any court of competent jurisdiction. Unless otherwise agreed to by the Parties, any arbitration proceeding shall be conducted in Arlington, VA.

(iv) *Litigation.* If the cumulative dollar value of all claims between the Parties is $75,000 or over, either Party may submit the dispute to litigation.

(v) *Expenses.* The prevailing Party in any mediation, arbitration or litigation to enforce this Agreement shall be entitled to recover from the other Party all reasonable costs, including reasonable attorney fees.

(f) Descriptive Headings. The descriptive headings herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement;

(g) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement;

(h) Amendments. This Agreement may not be modified, amended, altered or supplemented except upon the execution and delivery of a written agreement executed by each of the parties hereto;

(i) Attorneys' Fees. In the event legal action is instituted by a party to this Agreement against the other party to enforce, or as a result of the breach of, any of the terms of this Agreement, the prevailing party in such legal action shall be entitled to such sum as the court may judge reasonable as attorneys' fees in such legal action, in addition to damages and all other remedies established therein;

(j) Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof;

(k) Notices. Any notice, request, demand or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if delivered or sent by facsimile transmission, upon confirmation of receipt, or if sent by registered or certified mail, upon the sooner of the expiration of three days after deposit in United States post office facilities properly addressed with postage prepaid or acknowledgment of receipt. All notices and payments to a party will be sent to the addresses set forth below or to such other address or person as such party may designate by notice to each other party hereunder:

To ENTERPRISE KNOWLEDGE:
Enterprise Knowledge, LLC
3100 Clarendon Blvd.
Suite 300
Arlington, VA 22201

To CLIENT:
[Address]
Identification Number: ______________________

(l) Export Restrictions. Customer agrees to use the Work Product in accordance with all applicable export and re-export restrictions, laws and regulations of the United States.

(m) Force Majeure. Neither Party shall be liable to the other Party for any delay nor failure to perform (except for the payment of money) due to causes beyond its reasonable control. Performance times shall be considered extended for a period equivalent to the time lost because of any such delay.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

____

Zach Wahl, CEO
Enterprise Knowledge, LLC

____

Client