

Options Consulting Agreement

Agreement made this day ____ of _____, 20____ (hereinafter referred to as the "Effective Date"), by and between the Georgia Institute of Technology, a unit of the University System of Georgia (hereinafter referred to as "GIT"), and _____, (hereinafter referred to as "Consultant") whose principal place of business is located at _____
(Name Listed on Vendor Profile)

(Current Mailing Address)

In consideration of the mutual covenants and promises contained herein, the parties agree the follows:

1. **Services:** Consultant agrees to perform for GIT the services set forth in the Course Proposal(s) (Attached) which is appended hereto and incorporated herein by reference. Such services are hereinafter referred to as the "Services"

2. **Payment:** GIT shall pay consultant within 30 days of conclusion of the then current term provided that the Services have been accepted by GIT as hereinafter provided.

3. **Independent Contractor:**

a. Consultant is an independent contractor and shall not be deemed to be employed by GIT. GIT is hereby contracting with Consultant for the Services, and Consultant reserves the right to determine the method, manner and means by which the services will be performed. Consultant is required to perform the Services during the times specified in Exhibit A, and if the Services will be performed. Consultant is required to perform the Services during the times specified in Exhibit A, and if the Services are performed at GIT's premises, then Consultant's time spent at the premises is to be at the discretion of consultant, subject to GIT's normal business hours and security requirements. Consultant hereby confirms to GIT that GIT will not be required to furnish or provide any training to Consultant or to any employees of Consultant to enable Consultant to perform the Services. The Services shall be performed by Consultant and GIT shall not be required to hire, supervise or to perform the Services. The order and sequences in which the work is to be performed shall be under the control of the Consultant Except to the extent that Consultant's work must be performed on or with GIT's resources, all equipment used in providing the Services shall be provided by the Consultant. GIT will not withhold any amount that would normally be withheld from an employee's pay and neither Consultant or any employee of Consultant shall participate in any benefits of any sort which GIT offers to its employees.

b. Inasmuch as GIT and Consultant are contractors independent of one another, neither has the authority to bind the other to any third person or otherwise to act in any way as the representative of the other, unless otherwise expressly agreed to in writing signed by both parties hereto. Consultant agrees not to represent himself or herself at GIT's agent for any purpose to any party or to allow any employee of Consultant to do so, unless specifically authorized, in advance and in writing to do so, and then only for the limited purpose stated in such authorization. Consultant shall assume full liability for any contracts or agreements Consultant enters into on behalf of GIT without the express knowledge and prior written consent of GIT.

4. **Term:** The term of this Agreement shall be from date of signature and automatically renew for each subsequent teaching term.

5. **Warranty:** Consultant warrants that in performing the Services:

a. Consultant will strictly comply with the descriptions and representations as to the Services (including, performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, functions, and requirements) which appear herein and Consultant and any employees of Consultant will perform the services on time;

b. Consultant's products, if any, will conform to generally applicable standards in the industry;

c. The services will not be in violation of any applicable, rule or regulation, and Consultant will obtain all permits required to comply with such laws and regulations;

d. The services will not violate or in any way infringe upon the rights of third parties, including proprietary information and non-disclosure rights, or any trademark, copyright or patent rights;

e. Consultant is the lawful owner or licensee of all proprietary material or intellectual property used in the performance of the Services contemplated hereunder, such programs have been lawfully developed or acquired by the Consultant, and the Consultant has the right to permit GIT access to or use of such intellectual property or proprietary material. Consultant hereby grants to GIT a non-exclusive, irrevocable, perpetual, worldwide, royalty-free right and license to (i) use, execute, reproduce, display, perform, and distribute copies of such intellectual property or proprietary material and derivative works thereof and to prepare derivative works based upon such intellectual property or proprietary material and (ii) authorize others to do any or all of the foregoing;

f. With respect to any individual designated as "Instructor" in Exhibit A, the assignment of Consultant to perform the Services will be continuous throughout the term of the Agreement;

g. Consultant shall assign to GIT the manufacturers' warranties for material furnished to GIT.

h. Consultant will testify that he/she is fully qualified to perform the Services and if required by law of ordinance, is validly licensed and/or has obtained all requisite permits to perform such Services for GIT.

6. **Proprietary Information:** Consultant acknowledges that in order to perform the Services called for in this Agreement, it shall be necessary for GIT to disclose Consultant certain Proprietary Information developed by GIT. Consultant further acknowledges that the Services including any deliverables will of necessity incorporate such Proprietary Information. Consultant agrees that it shall not disclose, transfer, use, copy, or allow access to any such Proprietary Information to any employees or to any third parties excepting those who have a need to know such Proprietary Information in order to allow Consultant to perform the Services and who have executed a nondisclosure agreement consistent with the provisions hereof.

7. **Indemnification:**

a. Consultant does hereby indemnify and shall hold harmless GIT, its agents, servants and employees, the Board of Regents of the University System of Georgia and its agents, servants, and employees (each of the foregoing being hereinafter referred to individually as "Indemnified Party") against all claims, demands, causes of actions, actions, judgments, or other liability including attorneys fees (other than liability solely the fault of the Indemnified Party) arising out of, resulting from or in communication with (1) the violation of any third party's trade secrets,

proprietary information, trademarks, copyright, patents rights, or other intellectual property rights. (2) all injuries or death to persons or damage to property, including theft; (3) Consultant's failure to perform all obligations owed to Consultant employees including any claim Consultant employees might have or make for privilege, compensation, or benefits under any GIT employee benefit plan (4) any and all sums that are due and owing to the Internal Revenue Service for withholding FICA and unemployment or other state and federal taxes.

b. Consultant's obligation to indemnify any Indemnified Party will survive the expiration or termination of this Agreement by either party for any reason.

8. Acceptance of Services: Consultant shall provide written notification of completion of Services hereunder. In addition GIT shall have thirty (30) days from the date of receipt of the notice of completion to provide Consultant with written notification of acceptance or rejection due to unsatisfactory performance. Consultant, shall as quickly as is practicable, correct at its expense all deficiencies caused by Consultant.

9. Termination or Cancellation.

a. Each party has the right to terminate this Agreement if the other party breaches or is in default of any obligation hereunder which default is incapable of cure, or which, being capable of cure has not been cured within thirty (30) days after receipt of notice of such default (or such additional cure period as the non-defaulting party may authorize). In addition if at any time after commencement of the Services, GIT shall in its sole reasonable judgment, determine that such services are inadequate, unsatisfactory, no longer needed or substantially not conforming to the description, warranties, or representations contained herein, GIT may terminate this Agreement upon thirty (30) days written notice Consultant.

b. GIT may terminate this Agreement by written notice to Consultant and may regard Consultant in default of this Agreement if Consultant becomes insolvent, makes a general assignment of the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated, voluntarily or otherwise.

c. In the event that an insufficient number of participants register for the course, GIT or Consultant may cancel the class no later than the 2nd class session provided that such cancellation is first agreed upon by GIT.

10. Taxes. GIT will pay all taxes lawfully imposed upon it with respect to the Services or this Agreement. Consultant will pay all taxes lawfully imposed upon it with respect to the Services or this Agreement. By this paragraph, GIT makes no representation whatsoever as to the liability or exemption from liability of Consultant to any tax imposed by any governmental entity.

11 Consequential Damages: In no event shall either party be liable to the other for consequential damages. The provisions of this paragraph shall not apply to consultant's obligations to indemnify any Indemnified Party.

12. Assignment: Consultant shall not assign or subcontract the whole or any part if this Agreement without GIT's prior written consent.

13. Drug Free Work Place:

a. If Consultant is an individual, he or she hereby certifies that he or she will not engage in the unlawful sale, distribution, dispensation, possession or use of a controlled substance or marijuana during the performance of this Agreement.

b. If Consultant is an entity other than an individual, it hereby certifies that:

(1) A drug free work place will be provided for the Consultant's employees during the performances of the Agreement;

(2) and It will secure from any subcontractor hired to work in a drug free work place the following written certification: "As part of the subcontracting agreement with (Consultant's Name), certifies to Consultant that a drug free work place will be provided for subcontractor's employees during the performance of this Agreement pursuant to paragraph 7 of subsection B of Official Code of Georgia Annotated Section 50-24-3"

c. Consultant may be suspended, terminated or debarred if it is determined that:

(1) Consultant has made false certification hereinabove.

(2) Consultant has violated such certification by failure to carry out the requirements of Official Code of Georgia Annotated Section 50-24-3

14. Insurance: Consultant shall insure against all losses and damages which are the result of the fault or negligence of Consultant in the performance of the Services, including workers' compensation, public liability, property damage and automobile liability.

15. Waiver: The waiver by GIT of any breach of any provision contained in this Agreement shall not be deemed to be a waiver of such provision on any subsequent breach of the same or any other provision contained in this Agreement. Any such waiver must be in writing in order to be effective and no such waiver or waivers shall serve to establish a course of performance between the parties contradictory to the terms hereof.

16. Applicable Law: This Agreement shall be governed by the laws of the state of Georgia.

17. Uniform Commercial Code: All services performed hereunder shall, to the greatest extent possible, be deemed "goods" within the meaning of the Uniform Commercial Code of Georgia.

18. Entire Agreement: This agreement constitutes the entire agreement between the parties with respect to the subject matter.

IN WITNESS WHEREOF the parties have executed this Agreement on the date first written above.

GEORGIA INSTITUTE OF TECHNOLOGY

OPTIONS CONSULTANT:

By: _____
Rich Steele
Acting Executive Director Auxiliary Services

By: _____
Printed: _____
Semester: _____