# Service Agreement

THIS AGREEMENT is made by and between ("Client"), and Scherck Consulting, LLC d/b/a Elevated Talent Consulting, a Wisconsin limited liability company ("Contractor")
(collectively referred to as "Parties" or individually referred to as "Party").

WHEREAS, Client has expressed interest in the purchase of consulting services from Contractor, and requires the expertise of Contractor to perform the services described in the accepted proposal signed by Client and Contractor and incorporated by reference herein; and

WHEREAS, Client desires to directly contract with Contractor to provide the services described in the accepted proposal signed by Client and Contractor and incorporated by reference herein, and further agrees to the terms of this Service Agreement ("Agreement").

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Client and Contractor hereby agree as follows:

1. Services Provided by Contractor. Contractor agrees to perform the services described in the accepted proposal signed by Client and Contractor and incorporated by reference herein. Services may be provided by Contractor's agents, employees, or those individuals who are qualified to provide the specific services requested by Client.

2. Additional Services. If additional services are requested by Client, or otherwise provided during the term of this Agreement, this Agreement shall remain in full force and effect and legally binding. The scope and duration of Contractor's services may be extended by means of an addendum to this Agreement, which defines the scope of work, fees, and approval of Client and Contractor.

3. Required Contributions by Client. Upon Contractor's request, Client shall make available to Contractor all its mangers, employees, and agents for the performance of the services provided by Contractor to Client. This shall include, but is not limited to, the scheduling of meetings and training events, Client information and data, personnel records, technology access, facility access, and travel. If the services provided by Contractor requires advance preparation by Client, Client shall hold all its managers, employees, and agents accountable for internal communication, preparation and completion as needed or otherwise requested by Contractor.

4. Fees Invoices and Payment.

A. Fees. As full and complete compensation for services provided by Contractor under this Agreement, Client shall pay Contractor as agreed upon by the Parties in the accepted proposal signed by Client and Contractor and incorporated by reference herein.

B. Expenses and Costs. Client shall pay for all reasonable and pre-authorized expenses and costs incurred in connection with the Contractor's performance of this Agreement. Such expenses and costs shall be expressly defined in Exhibit A or approved by Client.

# Service Agreement

C. Invoice and Payment. Client shall be responsible for paying Contractor for all services, expenses and costs as defined in the accepted proposal signed by Client and Contractor and incorporated by reference herein. Client shall be responsible to submit payment to contractor within 15 days of receipt of invoice. Any outstanding balance after the expiration of 15 days is subject to a late charge at a rate of 5% of the outstanding balance exclusive of interest charges. If Client's outstanding balance is more than thirty (30) days past due, Contractor, at its sole discretion, reserves the right to suspend service or terminate this Agreement under Paragraph 13 of this Agreement.

5. Term. This Agreement will commence on the effective date hereof and shall remain in full force and effect and legally binding on the Client and Contractor for a period of twelve (12) months from the date of this Agreement, unless earlier terminated in accordance with the provisions of this Agreement. This Agreement may be extended upon written agreement of Client and Contractor.

6. Ownership and Reservation of Rights. Contractor owns all proprietary rights, title and interest in the intellectual property, processes, procedures, policies and documentation related to the services provided to Client. With the exception of any expressly provided rights to Client as defined in this Agreement, Contractor reserves all proprietary rights, title and interest related to the services provided to Client. No such proprietary rights, title and interest are granted to Client except as expressly provided herein.

7. Assignment of Rights. All work performed under this Agreement ("Work Product"), which includes but is not limited to all notes, reports, documentation, drawings, computer programs, inventions, creations, works, devices, models, work-in-progress and deliverables shall be the sole property of Contractor. Client shall assign to Contractor all right, title and interest therein, including but not limited to all tangible and intangible property and other copyrights, patent rights, trade secret rights and other proprietary rights therein. Client retains no right to use Contractor's Work Product except as otherwise expressly agreed to by Contractor. Client further agrees that it shall not challenge the validity of Contractor's ownership in its Work Product. Client hereby assigns to Contractor all right, title, and interest in any and all tangible and intangible property made by Contractor under this Agreement, including, but not limited to, any royalties, proceeds, or other benefits derived from such tangible or intangible property.

8. Contractor's Grant of Rights. Contractor grants Client a non-exclusive, non-transferable right to use the services as agreed upon by the Parties in the accepted proposal signed by Client and Contractor and incorporated by reference herein.

9. Limitations of Liability. Client acknowledges that Contractor shall incur no liability to Client or any other Party on account of this Agreement, on account of any acts or omissions arising out of or related to the actions of Contractor under this Agreement or on account of the performance or failure to perform any services to be provided by Contractor under this Agreement except that Contractor shall remain liable for the intentional or willful misconduct of Contractor. Likewise, Contractor shall have no liability whatsoever with

respect to the decisions made or the actions taken by Client in reliance upon the advice or recommendations of Contractor or as a result of any of the services provided by Contractor pursuant to this Agreement. This provision shall survive the termination of this Agreement.

If the Contractor becomes liable or responsible for the payment of any debt, encumbrance, liability or judgment arising out of or resulting from Contractor's performance under this Agreement, and the payment of such debt, encumbrance, liability or judgment did not arise through Contractor's intentional or willful misconduct, Client shall indemnify Contractor for any and all debt, encumbrance, liability or judgment and other such expenses, including Contractor's attorney's fees.

10. Independent Contractor Relationship and No Agency Created. It is expressly acknowledged by the Parties hereto that Contractor is an independent contractor with respect to Client and that nothing in this Agreement is intended nor shall be construed to create an employer/employee relationship, a joint venture relationship, a partnership or other relationship, nor to allow Client to exercise control or direction over the manner or method by which Contractor performs its work. Employees of Contractor shall not be treated as employees of Client for any purpose, including participation in any benefit plan of Client. Client shall not withhold, on behalf of Contractor, any sums for income tax, unemployment insurance, social security or any other withholding pursuant to any law or requirement of any governmental body. All such payments and withholdings, if any, are the sole responsibility of Contractor.

11. Mutual Indemnification. Both Client and Contractor ("Indemnifying Party") shall indemnify, defend, and hold the other Party, its officers, directors, employees, and/or shareholders, harmless from and against any and all damages (whether ordinary, direct, indirect, incidental, special, consequential, or exemplary), judgments, liabilities, fines, penalties, losses, claims, actions, demands, lawsuits, costs, and expenses including, without limitation, reasonable attorney's fees, which arise out of or relate to any material breach of this Agreement by the Indemnifying Party or its employees or agents, or from any acts or omissions of negligence, willful misconduct, or fraud of the Indemnifying Party or its employees or agents, including, but not limited to, third Party claims and claims for property damage or personal injury to the other Party's Personnel ("Personnel" defined as employees, agents, independent contractors and subcontractors). The Indemnifying Party's liability under this Section shall be reduced proportionally to the extent that any act or omission of the other Party or its employees or agents contributed to such liability. The Indemnifying Party's obligations hereunder are subject to being provided with prompt written notice of the event giving rise to an indemnity obligation, providing reasonable cooperation and assistance in the defense or settlement of any claim, and granting the Indemnifying Party control over the defense and settlement of the same. The obligations of indemnification set forth in this Agreement shall survive the termination of this Agreement.

12. Confidentiality, Non-Disclosure and Data Processing.

A. Confidential Information. Client and Contractor acknowledge that by reason of their relationship hereunder, each Party may disclose or provide access to the other certain Confidential Information. "Confidential Information" shall mean (i) information concerning a Party's products, business and operations including, but

not limited to, information relating to business plans, financial records, employees, personnel, clients, suppliers, vendors, products, product samples, costs, sources, strategies, inventions, procedures, sales aids or literature, technical advice or knowledge, contractual agreements, pricing, product specifications, trade secrets, procedures, distribution methods, inventories, marketing strategies and interests, algorithms, data, designs, drawings, work sheets, blueprints, concepts, samples, inventions, manufacturing processes, computer programs and systems and know-how or other intellectual property, of a Party and its affiliates that may be at any time furnished, communicated or delivered to a Party, whether in oral, tangible, electronic or other form; (ii) the terms of any agreement and the discussions, negotiations and proposals related to any agreement; (iii) information acquired during any tours of or while present at a Party's facilities; and (iv) all other non-public information provided by a Party hereunder. All Confidential Information shall remain the exclusive property of the disclosing Party.

B. Use of Confidential Information and Standard of Care. The receiving Party shall maintain the disclosing Party's Confidential Information in strict confidence and disclose the Confidential Information only to its employees, subcontractors and representatives who (i) have a need to know such Confidential Information in order to conduct business operations and transactions between Client and Contractor as set forth in this Agreement; (ii) have been informed of the confidential nature of the Confidential Information furnished by the disclosing Party and the receiving Party's obligations with respect thereto; and (iii) are under confidentiality obligations no less restrictive as these confidentiality provisions. The receiving Party shall at all times remain responsible for breaches arising from the acts of its employees, subcontractors and representatives. Receiving Party shall use the same degree of care as it uses with respect to its own similar information, but no less than a reasonable degree of care, to protect the Confidential Information from any unauthorized use, disclosure, dissemination, or publication. Each Party shall only use the Confidential Information in furtherance of its performance of its obligations under this Agreement and agrees not to use the other Party's Confidential Information for any other purpose or for the benefit of any third-party.

C. Exceptions and Required Disclosures. Confidential Information does not include information that: (i) was lawfully in the receiving Party's possession before receipt from the disclosing Party, as established by competent evidence; (ii) at or after the time of disclosure, becomes generally available to the public other than through any act or omission of the receiving Party; (iii) is received by the receiving Party from a third-party free to make such disclosure without, to the best of the receiving Party's knowledge, breach of any legal or contractual obligation; (iv) is independently developed by the receiving Party without use of the Confidential Information, as demonstrated by competent evidence; or (v) is disclosed by receiving Party with the disclosing Party's prior written approval. If the receiving Party is confronted with legal action to disclose Confidential Information received this Agreement, it shall, unless prohibited by applicable law, provide prompt written notice to the disclosing Party to allow the disclosing Party an opportunity to seek a protective order or other relief it deems appropriate, and the receiving Party shall reasonably assist the disclosing Party in such efforts. If disclosure is nonetheless required, the receiving Party shall limit its disclosure to only that portion of the Confidential Information which it is advised by its legal counsel must be disclosed.

D. Unauthorized Use or Disclosure of Confidential Information and Equitable Relief. In the event the receiving Party discovers that any Confidential Information has been used, disseminated or accessed in violation of Client and Contractor's confidentiality and non-disclosure contractual obligations, it will immediately notify the disclosing Party; take all commercially reasonable actions available to minimize the impact of the use, dissemination or publication; and take any and all necessary steps to prevent any further breach. The receiving Party agrees and acknowledges that any breach or threatened breach regarding the treatment of the Confidential Information may result in irreparable harm to the disclosing Party for which there may be no adequate remedy at law. In such event the disclosing Party shall be entitled to seek an injunction, without the necessity of posting a bond, to prevent any further breach, in addition to all other remedies available in law or at equity.

E. Data Processing Addendum. Client and Contractor agree to be bound by the terms and obligations set forth in the Parties' Data Processing Addendum for Support & Consulting Services.

F. Return of Confidential Information and Survival. The receiving Party shall promptly return or, at the disclosing Party's option, certify destruction of all copies of Confidential Information at any time upon request or within thirty (30) days following the expiration or earlier termination of this Agreement. Notwithstanding any expiration or termination of this Agreement, the receiving Party's obligations to protect the Confidential Information pursuant to this Section will survive the expiration of this Agreement.

13. Termination.

A. Termination for Breach. Either Party may terminate this Agreement at any time in the event of a breach by the other Party of a material covenant, commitment or obligation under this Agreement that remains uncured for thirty (30) days following written notice thereof.
Such termination shall be effective immediately and automatically upon the expiration of the notice period, without further notice or action by either Party. Termination shall be in addition to any other remedies that may be available to the non-breaching Party.

B. Termination for Convenience. Either Party may terminate this Agreement at any time with or without cause by giving thirty (30) days prior written notice, in which case this Agreement shall terminate upon the later of the date specified in the termination notice or the completion of any work which is still in progress.

C. Obligations upon Termination. Termination of this Agreement for any reason shall not discharge either Party's liability for obligations incurred hereunder and unpaid amounts for services provided at the time of such termination. Upon termination, each Party shall return the other Party's Confidential Information and any other materials or property of the other Party that is in its possession at the time of termination.

14. Alternative Dispute Resolution. Both Parties agree to make good faith reasonable efforts to resolve any and all disputes that may arise between the Parties. If the Parties are unable to resolve any and all disputes, these disputes shall be submitted to binding arbitration with the American Arbitration Association ("AAA") in accordance with its commercial rules for the resolution of disputes. The Parties agree

that the selected arbitrator shall be an attorney actively licensed to practice law in a jurisdiction located in the United States. A copy of the commercial arbitration rules and fee schedule for AAA can be obtained by contacting the AAA at 100 S 5th St Suite 1900, Minneapolis, MN 55402 or at www.adr.org

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Prior to initiating arbitration as set forth above, Client and Contractor shall first attempt to resolve any disputes or claims informally between the Parties. Within five (5) business days upon receipt of a written request by either Client or Contractor, the Parties shall meet to resolve the dispute. Client and Contractor shall in good faith exchange all appropriate and relevant information to facilitate a resolution of any disputes or claims. Client and Contractor shall negotiate in good faith to resolve any disputes or claims prior to initiating arbitration with AAA.

15. Governing Law and Venue. This Agreement shall be governed by the Laws of the State of Wisconsin. The Parties agree that all disputes shall be resolved as set forth in paragraph 14. The Parties agree that any and all claims submitted to arbitration shall be held at a location in Rock County, Wisconsin.

16. Severability. In the event that any provision of this Agreement shall be held to be invalid or unenforceable for any reason whatsoever, it is agreed that such invalidity or unenforceability shall not affect any other provision of this Agreement and the remaining covenants, restrictions and provisions hereof shall remain in full force and effect and any court of competent jurisdiction may so modify the objectionable provision as to make it valid, reasonable and enforceable.

17. Notice. All notice or other communications required under this Agreement shall be in writing and shall be deemed effective when received and made in writing by either (i) hand delivery, (ii) registered mail, (iii) certified mail, return receipt requested, or (iv) overnight mail, addressed to the Party to be notified. Contractor's address for all Notice is the following:

CONTRACTOR
Scherck Consulting, LLC Attention:
Traci Scherck 635 3rd Street
Beloit, WI 53511

18. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument, without necessity of production of the others. An executed signature page delivered via facsimile transmission or electronic signature shall be deemed as effective as an original executed signature page.

19. Survival. Each term and provision of this Agreement that should by its sense and context survive any termination or expiration of this Agreement, shall so survive regardless of the cause and even if resulting from the material breach of either Party to this Agreement.

# Service Agreement

20. **Waiver.** No waiver of any term or right in this Agreement shall be effective unless in writing, signed by an authorized representative of the waiving Party. The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver or modification of such provision, or impairment of its right to enforce such provision or any other provision of this Agreement thereafter.

21. **Electronic Signatures.** Client and Contractor intend to have the option for either Party or both Parties, to enter into this Agreement with electronic signatures or with signatures signed, scanned to Portable Document Format ("PDF") and delivered via email or electronically over the internet and, if so, each Party hereby consents to the other Party entering into this Agreement with electronic signatures or with signatures signed, scanned to PDF and delivered via email or electronically over the internet. The Parties hereby agree that the electronic signature of Client and Contractor to this Agreement or with signatures signed, scanned to PDF and delivered via email or electronically over the internet shall be as valid as an original handwritten signature of such Party to this Agreement and shall be effective to bind such Party to this Agreement.

22. **Entire Agreement.** This Agreement, the accepted proposal signed by Client and Contractor and incorporated by reference herein, Exhibit A attached hereto and the Parties' Data Processing Addendum for Support & Consulting Services constitute the entire understanding of the Parties concerning its subject matter and supersedes all prior Agreements, whether oral or written. No modification shall be binding on either Party unless reduced to writing and signed by both Parties. This Agreement is entered into and becomes effective on the date first written above. It is understood that the signatures below legally bind the Parties to this contract and that without both Parties' signatures, this contract shall be void.

IN WITNESS WHEREOF, Client and Contractor have executed this Agreement as of the date hereof, understand the terms set forth in this Agreement and agree to be fully bound by the terms of this Agreement.

Exhibit A

| Description | Amount |
|---|---|
| Messenger Services | Cost |
| Postage | Cost |
| Research Databases | Cost |
| Telephone/Facsimile | Cost |
| Mileage Reimbursement for Business Travel | Cost |
| Accommodations/Lodging for Business Travel | IRS rate/adjusted annually |
| Per Diem | IRS rate/adjusted annually |