Consulting Master Services Agreement

THIS CONSULTING AGREEMENT (this "Agreement"), made and entered into this 21st day of June, 2002, by and between PrimeContractor, a StateName EntityType, its successors or assigns, located at PrimeContractorStreet, PrimeContractorState, PrimeContractorZip (hereinafter "PRIME"), and SubcontractorPracticeName, SubcontractorPracticeContactInfo, (hereinafter "Consultant"):

Section 1
SCOPE OF SERVICES

1.1 **Services**. Consultant agrees to provide the consulting services described in Exhibit A hereto (hereinafter "SOW"). In the event of any conflict between this Agreement and any SOW, this Agreement shall control.

1.2 **Conduct of Services**. All work shall be performed in a workmanlike and professional manner consistent with industry standards.

1.3 **Method of Performing Services**. Consultant shall have the right to determine the method, details, and means of performing the work to be performed for PRIME. PRIME shall, however, be entitled to exercise general power of supervision and control over the results of work performed by Consultant to assure satisfactory performance, including the right to inspect, the right to stop work, the right to make suggestions or recommendations as to the details of the work, and the right to propose modifications to the work.

1.4 **Scheduling.** The services provided by Consultant are expected to require a substantial part of Consultant's available business time and availability. Consultant will use its best efforts to accommodate work schedule requests.

1.5 **Reporting.** PRIME and Consultant shall develop appropriate administrative procedures for coordinating with each other. PRIME shall periodically provide Consultant with evaluations of Consultant's performance.

1.6 **Place of Work.** Consultant will perform its work for PRIME primarily at Consultant's premises except when such projects or tasks require Consultant to utilize PRIME's facilities or to travel off site.

1.7 **Future Services.** Consultant agrees to make its services available, when, as and to the extent required by Consultant, to complete or provide follow-on support for any work or projects to which Consultant at any time materially contributed pursuant to this Agreement. Unless otherwise agreed, such services shall be made available at Consultant's actual labor rates otherwise applicable to services provided to PRIME pursuant to this Agreement, plus reasonable and actual costs of materials provided or consumed in providing such services, at times and places that are mutually reasonable and convenient. Consultant agrees to maintain agreements or

commitments from key personnel assigned to work or projects for PRIME as reasonably appropriate to ensure quality and efficiency of service to PRIME.

Section 2
TERM AND TERMINATION

2.1 **Term.** The term of this Agreement shall commence on the date set forth above and shall continue for a minimum period of 90 days, and thereafter for so long as PRIME seeks or obtains services from Consultant.

2.2 **Termination.** This Agreement may be terminated by either party upon written notice without cause. Consultant agrees that each and every agreement of Consultant with any subconsultant to perform services under this Agreement shall be terminable not-for-cause, and that all such subcontracts shall be in writing and shall include the provisions under "Curable Default."

2.3 **Curable Default.** All warranties, express or implied, shall inure to the benefit of PRIME and its successors and assigns. Costs for any termination activities shall be determined as follows in this Curable Default section. Consultant shall be in default upon occurrence of one or more of the following Default Events or Default Conditions set forth below and continuation thereof for 5 days following delivery to the Consultant of a notice from PRIME to cure such event or condition; provided, that if such event or condition is susceptible of cure but cannot reasonably be cured within such 5-day period and the Consultant commences cure of the event or condition within such 5-day period and continues to diligently prosecute the cure, then the Consultant shall have a reasonable period of time, not exceeding 15 days, to complete the cure. Default Events and Default Conditions: (a) any breach of the terms and conditions of this Agreement; (b) failure to perform approved work under this Agreement, or significant delay or discontinuance of performance of approved work except as caused by force majeure events; (c) lack of financial responsibility for loss or damage to PRIME or its property.

Section 3
FEES, EXPENSES, AND PAYMENT

3.1 **Fees.** In consideration of the services to be performed by Consultant, Consultant shall be entitled to compensation as described in the SOW. Unless the subject of a bona fide dispute, all compensation shall be paid to Consultant within thirty (30) days after receipt of Consultant's invoice. Consultant may assign its right to receive payments, in whole or in part, to a third party with thirty (30) days advance notice to PRIME.

3.2 **Reimbursement of Expenses.** In addition to the foregoing, and subject to PRIME's policy on reimbursable expenses, PRIME shall pay Consultant its actual out-of-pocket expenses as reasonably incurred by Consultant in furtherance of its performance hereunder. Consultant agrees to provide PRIME such receipts, ledgers, and other records as may be

reasonably appropriate for PRIME or its accountants to verify the amount and nature of any such expenses. Unless the subject of a bona fide dispute, expenses shall be reimbursed within fifteen (15) days after receipt of Consultant's invoice.

Section 4
RESPONSIBILITIES OF CONSULTANT FOR TAXES AND OTHER MATTERS

4.1 **Taxes.** As an independent contractor, Consultant shall pay and report all federal and state income tax withholding, social security taxes, and unemployment insurance applicable to Consultant. Consultant shall not be entitled to participate in health or disability insurance, retirement benefits, or other welfare or pension benefits (if any) to which employees of PRIME may be entitled.

Section 5
CONFIDENTIALITY

5.1 The Mutual Confidentiality and Nondisclosure Agreement is hereby incorporated by reference.

Section 6
RIGHTS IN WORK PRODUCT

6.1 **Ownership of Work Product.** All Work Product shall be considered work(s) made by Consultant for hire for PRIME and shall belong exclusively to PRIME. If by operation of law any of the Work Product, including all related intellectual property rights, is not owned in its entirety by PRIME automatically upon creation thereof, then Consultant agrees to assign, and hereby assigns, to PRIME the ownership of such Work Product, including all related intellectual property rights.

6.2 **Incidents and Further Assurances.** PRIME may obtain and hold in its own name copyrights, registrations, and other protection that may be available to the Consultant. Consultant agrees to provide any assistance required to perfect such protection. Consultant agrees to take sure further actions and execute and deliver such further agreements and other instruments as PRIME may reasonably request to give effect to this Section 6.

6.3 **Pre-existing Materials.** Consultant may include in the Work Product pre-existing work or materials only if either they are provided by PRIME or if they are owned or licensable without restriction by Consultant. To the extent that pre-existing work or materials owned or licensed by Consultant are included in the Work Products, Consultant shall identify any such work or materials prior to commencement of the Services involving such work or materials. Consultant grants to PRIME a perpetual, irrevocable, nonexclusive, worldwide, royalty-free right and license to use, execute, reproduce, display, perform, sublicense and

distribute (internally and externally) copies of, and prepare derivative works based upon, such work and materials, and the right to authorize others to do any of the foregoing.

Notwithstanding any provision of this Agreement to the contrary, but subject to the provisions hereof respecting confidentiality, Consultant shall be free to use any ideas, concepts or know-how developed or acquired by Consultant during that performance of this Agreement to the extent obtained and retained by Consultant's personnel as impressions and general learning. Subject to PRIME's intellectual property rights, nothing in this Agreement shall be construed to preclude Consultant from acquiring, developing, marketing or enhancing for itself or others similar technology performing the same or similar functions as the technology used or created pursuant to this Agreement.

6.4 **Work Product Defined.** As used herein, the term "Work Product" shall mean any programming, documentation, data compilations, reports, and any other media, materials, or other objects produced as a result of Consultant's work or delivered by Consultant in the course of performing that work.

Section 7
ASSURANCES

7.1 **No Conflict.** Consultant represents and warrants that it has no obligations to any third party which will in any way limit or restrict its ability to perform consulting services to PRIME hereunder. Consultant agrees that it will not disclose to PRIME, nor make use in the performance of any work hereunder, any trade secrets or other proprietary information of any third party, unless Consultant may do so without Consultant or PRIME incurring any obligation (past or future) to such third party for such work or any future application thereof.

7.2 **No Recruiting.** During the term of this Agreement and for a period of one (1) year thereafter, Consultant shall not knowingly solicit, entice, or persuade any employees of PRIME to terminate their employment with PRIME or hire any such employees.

Section 8
MISCELLANEOUS

8.1 **Force Majeure.** Consultant shall not be liable to PRIME for any failure or delay caused by events beyond Consultant's control, including, without limitation, PRIME's failure to furnish necessary information, sabotage, failure or delays in transportation or communication, failures or substitutions of equipment, labor disputes, accidents, shortages of labor, fuel, raw materials or equipment, or technical failures.

8.2 **Governing Law.** This Agreement shall be governed and construed in all respects in accordance with the laws of the State of Colorado as they apply to a contract entered into and performed in that State.

8.3 **Independent Contractors.** The parties are and shall be independent contractors to one another, and nothing herein shall be deemed to cause this Agreement to create an agency, partnership, or joint venture between the parties. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between PRIME and either Consultant or any employee or agent of Consultant.

8.4 **Notices.** All notices required or permitted hereunder shall be in writing addressed to the respective parties as set forth herein, unless another address shall have been designated, and shall be delivered by hand or by registered or certified mail, postage prepaid.

8.5 **Entire Agreement.** This Agreement constitutes the entire agreement of the parties hereto and supersedes all prior representations, proposals, discussions, and communications, whether oral or in writing. This Agreement may be modified only in writing and shall be enforceable in accordance with its terms when signed by the party sought to be bound.

8.6 **Indemnification.** PRIME shall defend, indemnify and hold harmless Consultant from and against all claims, liability, losses, damages and expenses (including attorneys' fees and court costs) arising from or in connection with the use or application of Consultant's work by PRIME or any direct or indirect purchaser or licensee of PRIME. Consultant shall indemnify, defend and hold harmless PRIME, its directors and employees from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, expenses (including attorney's fees) and liabilities of, by, or with, respect to, third parties ("any claims"), to the extent they arise, or are alleged to arise, from intentional or negligent acts or omissions of the Consultant, Consultant's subconsultants, Consultant's suppliers, and/or Consultant's employees, arising under this Agreement or in any way related to performance hereof. The Consultant shall provide PRIME with indemnifications as may be reasonably required by PRIME and in a form reasonably satisfactory to PRIME, covering the entities with whom the PRIME contracts. The obligations of the indemnifications extended by the Consultant to PRIME shall survive the termination or expiration of this Agreement. In no event shall either Party be liable to the other for payment of any special, incidental, indirect or consequential damages, even if the other Party has been informed in advance of the possibility of such damages.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, on the date and year first above written.

SubcontractorPracticeName		**Prime**
_____	Signatures	_____
_____	Names	_____
_____	Titles	_____
_____	Dates of Signatures	_____