

## **CEI Standard Form Consulting Services Agreement**

The parties to this Consulting Services Agreement ("Agreement") are Competitive Energy Insight, Inc., a California Corporation ("CEI") having its principal office at 12025 Blue Diamond Court, San Diego, CA 92131, and \_\_\_\_\_, a \_\_\_\_\_ (State) [Corporation, LLC – circle one)] ("Client") having its principal office at \_\_\_\_\_. Each of CEI and Client are sometimes hereinafter designated as a "Party" and they are collectively hereinafter designated as the "Parties". Unless otherwise specifically expressed in writing, to the extent they exist, this Agreement will supersede and replace all other prior Consulting Services Agreements between the Parties.

The effective date of this Agreement is \_\_\_\_\_, \_\_\_\_\_ (the "Effective Date").

### **RECITALS**

The Parties have been discussing a proposal submitted by CEI to Client for the provision of certain "Services" (as described herein) and have mutually determined that CEI will provide the Services under the terms and conditions set forth in this Agreement.

### **TERMS AND CONDITIONS**

In consideration of the mutual covenants set forth herein, and other valuable consideration, and with the intent to be legally bound hereby, the Parties agree as follows:

1. **Services to be Performed.**

- (a) From time to time, Client may issue to CEI a Task Order which shall set forth the specific Services to be provided by CEI and the compensation for such Services, but CEI shall not be obligated to perform any Services until it has approved each Task Order in writing. The Services may include project development activities, acquisitions analysis, financial analysis, economic analysis, software development, consulting services, program management and support for the development of new business opportunities for Client, or other activities as may be mutually agreed by the Parties. A proposed form of a Task Order is attached hereto as Exhibit A, but no specific form is required to be binding upon the Parties as long as the Party to be bound has so agreed in writing (including an email transmission).
- (b) The specific services set forth in each Task Order are hereinafter designated as the "Services". Any deviation from the agreed Services must be agreed to by both Parties in an amendment to the Task Order before CEI shall be required to perform in accordance with such deviations.
- (c) CEI shall provide the Services while coordinating its effort with the individual designated by Client in the Task Order as Client's designated "Authorized Representative". The Authorized Representative shall be responsible for supplying CEI with additional data and information (beyond that already submitted by Client to CEI) as CEI may reasonably request from time to time.

2. Subcontracting.

CEI may subcontract any portion of the Services as CEI may determine to Approved Subcontractors listed in this Agreement, but CEI shall remain responsible for the performance of all Services. Work activities may be directed verbally by Client or in writing. The scope of work for any particular assignment will be designated by Task Order substantially in the form of Exhibit 1 to this Agreement.

3. Fees for Services

- (a) CEI's compensation shall be set forth in a Task Order (including any written amendments thereto).
- (b) All Services shall be performed on a time and materials basis, as set forth in the applicable Task Order.
- (c) For a period of 12 months after the effective date of this Agreement, CEI shall offer its services and that of its Approved Subcontractors listed in this article at the hourly rates provided below, including travel time. Rates after that period may be adjusted from time-to-time as agreed by the Parties. Rates are:

Steve Provol, Principal - \$275/hr  
Bill Fisher – CPA, Consultant - \$275/hr  
Kevin Carden, Consultant - \$275/hr  
Nick Wintermantel, Consultant - \$275/hr

- (d) Client shall also reimburse CEI for any expenses reasonably incurred by CEI in performing Services, including costs of travel and lodging, provided that Client must approve of any travel in advance. Client shall reimburse CEI for mileage at the then-current rate identified by the U.S. Internal Revenue Service provided that Client must approve of any reimbursement for mileage in advance.
- (e) When Client requests CEI personnel to travel more than 150 miles from their home office, CEI shall be entitled to charge a minimum of 10 hours for each day away from the home office.
- (f) If a Task Order indicates a budgeted price when work is performed on a time-and-material basis, such budgeted price does not represent a guarantee from CEI that the work will be completed within the hours specified. However, CEI will promptly inform Client if CEI forms an opinion that the foregoing Budget may be exceeded by more than 10%. Unless CEI receive prior approval from Client to continue Services beyond the budgeted estimate, CEI will stop work when the budgeted estimate is reached and will provide Client with results achieved during the period that work was performed.

4. Retainer.

CEI shall not be required to commence Services under any Task Order until CEI has received the retention payment specified in the Task Order. As Services are provided and invoiced on a monthly basis, Client shall promptly fund any anticipated shortfalls from the original retention amount and shall also reimburse CEI for its expenses. At the conclusion of the Services under a given Task Order, CEI will either refund any retained amounts that are in excess of amounts due and payable or shall apply such amounts towards other Task Orders under which CEI is currently performing Services.

5. Independent Contractor.

CEI shall perform its duties under this Agreement as an independent contractor, and not as an employee of Client. CEI shall be responsible for payment of all required payroll and related taxes incurred by CEI in relation to this Agreement.

6. Record Keeping.

CEI shall keep accurate written records of time spent on work performed under this Agreement on a time-and-materials basis and will provide such records as Progress Reports to Client, which will accompany invoices issued for the Services performed hereunder. CEI will maintain such records for a period of one year from the date of expiration or termination of this or any successor Agreement. As appropriate or as directed by Client, CEI will also provide additional written reports on activities performed under this Agreement. Such reports may be issued memoranda, emails or other report documents.

7. Corrective Action / No Warranty / Limitation on liability.

- (a) CEI agrees to perform the Services in accordance with all applicable industry standards but provides no warranty to Client with respect to the accuracy or fitness for purpose of CEI's work. If Client is dissatisfied with the quality of any Services, Client may request CEI to re-perform the Services but CEI shall not be required to do so until the Parties have issued a mutually acceptable amendment to the Task Order under which such Services were provided.
- (b) Client expressly acknowledges and understands that CEI and its Approved Subcontractors are not licensed accounting, finance or legal advisors. Client agrees to use all advice provided by CEI and its Approved Subcontractors at Client's sole risk, and Client understands that CEI recommends that Client's seek advice of licensed council to validate any analysis provided by CEI. Client further hereby fully releases CEI and its Approved Subcontractors of any and all liabilities related to Client's use of analysis or advice related to work performed under this Agreement.
- (c) Notwithstanding anything to the contrary elsewhere in this Agreement, neither Party shall in any event be liable to the other Party under this Agreement for any direct, indirect, incidental, special, consequential, or other damages, including but not limited to loss of revenue, loss of profit, cost of capital, loss of business reputation or opportunity whether

such liability arises out of contract, tort (including negligence), strict liability or otherwise.

8. Payment Terms / Invoices.

- (a) Payment for software will be due in advance of initiation of the licenses.
- (b) Invoices for remaining Services (including requests for the payments of additional retention amounts) and fees will be submitted by CEI to Client on a monthly basis. Payment of invoices for amounts exceeding any Retainer will be due not later than 30 days from the date of issue of the invoice; but CEI may cease work under any Task Order until the applicable Retainer has been replenished. Late payments will accrue a fee of 5.0% for the first month plus 1.5% for each additional month that any payment is past due.

9. Confidentiality.

Subject to any more restrictive requirements of any other written confidentiality agreements between the Parties, the Parties shall be subject to the following obligations of Confidentiality:

- (a) Each Party shall hold in confidence any information received from the other Party which has been marked as "Confidential", "Proprietary", or with another designation of similar import. So long as such information is not available to the public, such information shall be deemed to be "Confidential Information" hereunder.
- (b) The Receiving Party shall treat such Confidential Information in the same manner as it treats its own proprietary information and shall use such Confidential Information only for purposes of negotiating or performing under this Agreement (including any Task Order issued pursuant hereto) (collectively, the "Permitted Use").
- (c) The Receiving Party shall restrict disclosure of Confidential Information to its employees, contractors and other representatives who have a need to know Confidential Information for the Permitted Use, and who are obligated to similar terms of Confidentiality to the Receiving Party. The Parties agree that they will not disclose such Confidential Information to any other third party without the express written approval of the Disclosing Party.
- (d) The foregoing obligations of confidentiality with respect to any specific item of Confidential Information shall survive for two years from the date of initial disclosure of such Confidential Information.

10. Ownership of Intellectual Property

- (a) Proprietary Rights. CEI shall retain ownership to any idea, invention, work of authorship, drawing, design, formula, algorithm, utility, tool, pattern, compilation, program, device, method, technique, process, improvement, enhancement, modification, development, discovery, trade secret, patent, copyright or intellectual property, including without limitation work product (hereinafter, collectively, "Proprietary Rights") related to the EconExpert branded software models ("CEI's Financial Models"), whether or not patentable, or copyrightable, or entitled to legal protection as a trade secret or otherwise, that CEI may

conceive, make, develop, create, reduce to practice, or work on, in whole or in part, in the course of performing the Services (“Intellectual Property”) with the exception of Client Proprietary Data and Work Product which shall be owned by Client and shall be delivered to Client upon completion of the Services.

- (b) CEI Material. Unless specifically intended to be transferred to Client as provided elsewhere in this Agreement, any Proprietary Right conceived, developed or reduced to practice by CEI prior to the performance of the Services (“CEI Material”) shall remain the property of CEI, provided that if any such CEI Material are used in and become integral with the Services or any Work Product, CEI shall deliver to Client reports that will allow Client to utilize such Work Product results performed under this Agreement. Client understands that in some instances, compilation of new results using reports provided by CEI may require the Client to access and license CEI’s Financial Models.
- (c) Third-Party Proprietary Rights. If the Services or Work Product includes the Proprietary Rights of third parties, Client shall be responsible to procure, at no cost to CEI all necessary licenses regarding such third-party Proprietary Rights. Such Third-Party Proprietary Rights may for example include Microsoft Excel<sup>®</sup>.

11. Force Majeure.

Neither Party will be responsible for any failure to perform due to unforeseen circumstances or to causes beyond a Party's reasonable control which would make it impracticable or unreasonable for a Party to continue to perform hereunder as a result of such circumstances or causes, including but not limited to acts of God, war, riot, terrorism, embargoes, acts of civil or military authorities, earthquake fire, floods, accidents, strikes, or shortages of transportation, facilities, fuel, energy, labor or materials.

12. Entire Agreement; Waivers.

This Agreement contains the entire Agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior understandings, correspondence and agreements, oral or written, between the Parties with respect thereto. No change, amendment or modification of this Agreement shall be valid or binding upon the Parties unless such change, amendment or modification shall be in writing and duly executed by the Party to be bound. No waiver of any obligation under this Agreement shall be binding unless given in writing. No single waiver shall be deemed to be a continuing waiver.

13. Governing Law and Venue.

The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of California without regard to any principles of California law which would require the application of the law of another jurisdiction. Any legal proceedings initiated by either Party to resolve any dispute or controversy hereunder shall be brought only in a court of competent jurisdiction situated in San Diego County, California.

14. Notices.

- (a) Any formal notice of breach or default shall be in writing and delivered to an officer or director of a Party by any reasonable means where the receiving Party acknowledges receipt of the notice. Client shall use all reasonable efforts to deliver a formal notice to CEI by addressing such notice to the attention of Steve Provol. CEI shall use all reasonable efforts to deliver a formal notice to Client by addressing such notice to the attention of the individual who signed this Agreement on behalf of Client, provided that such individual is still working for Client.
- (b) Notices regarding budget modifications or changes in scope of work may be delivered as above, or may also be memorialized by email to the individuals described above; provided that both Parties, through their designated representatives, affirmatively agree to the contents of such email. In other words, an email notice shall not be sufficient to establish a claim for promissory estoppel or to validate a claim under the doctrine of laches.
- (c) The contact information for CEI, for purposes of giving formal notices pursuant to clause (a) above, shall be as follows:

Competitive Energy Insight, Inc.  
Attn: Mr. Steve J. Provol  
President  
12025 Blue Diamond Court  
San Diego, California 92131

Mr. Provol's email address, for purposes of giving notices pursuant to clause (b) above, is SProvol@CEInsight.com.

- (d) The contact information for Client, for purposes of giving formal notices pursuant to clause (a) above, shall be as follows:

\_\_\_\_\_  
Tel) \_\_\_\_\_

The individual and his/her email address, for purposes of giving notices pursuant to clause (b) above, is: \_\_\_\_\_

15. Severability.

In the event any of the provisions of this Agreement is held by a court to be unenforceable, the other provisions of this Agreement will remain in full force and effect and this Agreement shall be interpreted and construed, to the fullest degree legally permissible, in accordance with its original intent.

16. Survival.

In the event of termination or expiration of this Agreement for any reason the obligations of the Parties under the following sections of this Agreement shall nevertheless survive termination or expiration:

- 6. Record Keeping.
- 7. Corrective Action / No Warranty / Limitation on liability.
- 8. Payment Terms / Invoices.
- 9. Confidentiality.
- 10. Ownership of Intellectual Property
- 13. Governing Law and Venue.

17. Execution; Multiple Counterparts.

This Agreement may be executed in several counterparts and all such executed counterparts shall constitute a single agreement, binding on all Parties and their successors and permitted assigns, notwithstanding that not all Parties may be signatories to the original or to the same counterpart. Each counterpart signature page so executed may be attached to another counterpart of this Agreement and such counterparts, when so attached, shall constitute a single agreement. Delivery of an executed counterpart of a signature page of this Agreement by telephonic facsimile transmission or by email with a copy of the signature page attached in a .pdf or other format shall be as effective as delivery of a manually executed original counterpart of this Agreement. Duplicate originals, copies, or facsimile copies may be executed in lieu of the original.

This Consulting Services Agreement is effective as of the date specified above although it may be executed by both Parties on a date subsequent thereto.

COMPETITIVE ENERGY INSIGHT, INC.

By: \_\_\_\_\_  
Name: Steve J. Provol  
Title: President  
Date: \_\_\_\_\_

CLIENT:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Exhibit 1 Example Task Order

The undersigned Client hereby authorizes CEI to provide the following services:

1.     Services:     Project and Partnership Modeling and Project Development Support
2.     Deliverables: Populated EconExpert Models and advice / consultation regarding deal structuring.
3.     Budget.     Client approves CEI's initial estimated costs for the Service as being TBD based on scope of work, subject to scope of work agreed by the Parties and which may be modified as the parties discuss the progress of CEI's work.
4.     Retainer:    Upon CEI's receipt of a retainer for [\$5000] from Client, CEI will commence the performance of the Services. The amount and replenishment of the retainer will be as agreed by the Parties.

CLIENT:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Accepted and Agreed:

COMPETITIVE ENERGY INSIGHT, INC.

By: \_\_\_\_\_  
Name: Steve J. Provol  
Title: President  
Date: \_\_\_\_\_