

CONSULTING AGREEMENT

This Consulting Agreement (the "Agreement") is made as of the 9th day of February, 2006 by and between:

Center for State Enforcement of Antitrust and Consumer Protection Laws, 10 East 40th Street, New York, New York 10016, attn: Stephen D. Houck, Executive Director (the "State Center"), and

Mark J. McCabe [insert consultant name and contact information (the "Consultant"), and

the Attorney General's Office(s) of one or more States and/or of American Samoa, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico and the Virgin Islands whose Work Request has been submitted to and approved by the State Center, pursuant to ¶ 1.3 hereof ("the Beneficiary").

The parties hereto wish to enter into this Agreement pursuant to which the State Center may arrange from time to time for the Consultant to provide his or her services for the Beneficiary, on the terms and conditions hereinafter set forth.

In consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Term; Services.

1.1. Term. This Agreement shall commence effective as of the date a Work Request has been approved by the State Center (the "Effective Date") and shall remain in effect until the work approved in the Work Request has been completed, or one (1) year from the Effective Date, or until terminated in accordance with Section 7 ("Termination") of this Agreement (the "Term"), whichever date is earliest.

1.2. Services. The Consultant will provide to the Beneficiary the consulting services and advice described in the Work Request ("Consulting Services"). The Consultant represents and warrants that the Consulting Services will be performed in a diligent and timely manner, with reasonable care and skill and in accordance with applicable law.

1.3. Work Requests. The State Center shall maintain on its website a list of Consultants who have entered into this Consulting Agreement ("State Center Panel of Consultants"). Before submitting a Work Request to the State Center, the Beneficiary shall secure the consent of a member of the State Center Panel of Consultants to provide the Consulting Services required. It shall be the responsibility of the Beneficiary and the Consultant, not the State Center, to resolve any potential conflicts of interest between

them. The Beneficiary shall deliver a Work Request, describing the Consulting Services to be provided, to the State Center's Executive Director, with a copy to the Consultant, which shall be substantially in the form of Exhibit 1 ("Work Request") attached hereto. The State Center's approval of the Work Request triggers all the rights and obligations of the State Center, the Beneficiary and the Consultant under this Agreement. The Work Request shall be subject to all of the terms and conditions of this Agreement, unless the Work Request specifically includes any additional or different terms and specifically identifies whatever terms in this Agreement that are to be amended by such additional or different term.

2. Compensation. As full compensation for the performance of this Agreement, the State Center shall pay the Consultant, in accordance with the terms hereof, an hourly rate agreed between them for actual time (UP TO A MAXIMUM OF 20 HOURS) spent providing to the Beneficiary the Consulting Services described in a Work Request approved by the State Center's Executive Director. The Consultant shall not receive compensation from the State Center for any services provided to the Beneficiary pursuant to the Work Request until it has been approved in writing by the State Center's Executive Director. The State Center also shall reimburse Consultant for out of pocket expenses and disbursements incurred in the normal course after the Work Request has been approved, such as long distance telephone charges, delivery charges, and reasonable reproduction costs. Reimbursement of out of town travel related charges shall require the pre-approval of the Beneficiary and the State Center's Executive Director. Reimbursement shall be made upon presentation of actual receipts and any other supporting documents therefor as required by the State Center.

2.1. Consultant Invoices. The Consultant shall keep reasonably detailed records of the time spent and activities undertaken by the Consultant while performing Consulting Services (the "Invoices"). The Invoices also shall include receipts or other necessary supporting documentation for any expenses for which reimbursement is sought by Consultant. The Consultant shall deliver a copy of the Invoices on a monthly basis to the Beneficiary. The Consultant shall not be entitled to payment of any fees or reimbursable expenses until the Beneficiary approves the Invoice and transmits a request for payment to the State Center, in accordance with the procedures set forth in ¶ 2.2 hereof.

2.2. Payment Procedure. Beneficiary shall review Invoices presented by the Consultant within three (3) weeks of receipt of such Invoices. Beneficiary shall then notify the State Center in writing that it has received an Invoice from the Consultant (stating both the amount of the fees and reimbursable expenses sought) and the extent to which it has approved payment by the State Center. Upon demand by the State Center, the Beneficiary and/or the Consultant shall provide a copy of the documentation for any expenses for which reimbursement is sought. In no event, however, shall the State Center be entitled to any confidential information of information which is protected by the work product doctrine or attorney-client privilege. The State Center shall pay the Consultant for work performed, and reimbursable expenses that have been approved by the Beneficiary, within three (3) weeks of receipt of written approval for payment of the

same from Beneficiary. The State Center shall have no responsibility to make any payment for work or reimbursable expenses that are not approved in writing by the Beneficiary, and any dispute regarding the approval or disapproval of any payment claimed by Consultant shall be a matter solely between Beneficiary and Consultant.

3. Independent Contractor.

3.1. Consultant is Not an Employee. The Consultant shall be providing his or her services under this Agreement strictly as an independent contractor, under the direction and supervision of the Beneficiary, and not as an employee or agent of the State Center or the Beneficiary, and as such, the Consultant shall have no authority to act for or on behalf of the State Center or the Beneficiary or to bind either party to any agreement, or in any other manner, without the express written consent of the State Center or the Beneficiary as applicable.

3.2. No Employee Taxes or Benefits. Neither the Consultant nor any of his or her representatives, if any, shall be entitled to any employee benefits of the State Center or the Beneficiary. Neither the State Center nor the Beneficiary shall be obligated to withhold from, pay for or otherwise provide the Consultant, or any of his or her representatives, if any, workers' compensation, disability benefits, any employee benefit offered or available, or required to be offered or available, to employees of the State Center and/or the Beneficiary, federal or state withholding taxes, social security or any other deductions, withholding or benefits required by the Internal Revenue Service, Social Security Administration or other state or federal agency or governmental authority ("Taxes or Benefits"). The Consultant shall indemnify, defend and hold the State Center and the Beneficiary, and their officers, directors, employees and agents, harmless from and against any and all demands, claims, causes of action, damages, expenses, losses or liability including reasonable attorneys' fees arising from or in any way connected with the State Center's or the Beneficiary's failure to withhold or deduct from compensation payments to the Consultant, or its representatives, if any, or to pay or to provide any Taxes or Benefits. In the event any state or federal government agency demands that the State Center or the Beneficiary make deductions or withholdings from compensation payable to the Consultant, or its representatives, if any, the Consultant hereby authorizes the State Center to make the required deductions or withhold from future compensation any amounts that should have been deducted or withheld, if such arrangement for future withholdings is acceptable to the agency making such demand.

4. Work Requirements. The Consultant shall abide by any and all Beneficiary rules, policies and regulations governing the conduct of the Consultant that are provided to the Consultant in writing (the "Beneficiary Rules"). The Beneficiary (and not the State Center) shall be solely responsible for communicating and enforcing said rules, policies, regulations and safety procedures to the Consultant. The Beneficiary (and not the State Center) may consult with the Consultant to determine the method, means and technical details and progress of the Consultant's work for the Beneficiary, but at all times the Consultant (and not the State Center) is responsible for the means and methods by which he or she performs work for the Beneficiary. The Beneficiary (and not the State Center)

is solely responsible for ensuring that the Consultant's work is performed to the Beneficiary's satisfaction.

5. Reassignment of Consultant. The Beneficiary reserves the right at any time to remove the Consultant for any breach of the Beneficiary Rules or otherwise failing to perform the Consulting Services in accordance with Section 7 below. The Beneficiary shall notify the State Center immediately when any decision is made by the Beneficiary to remove the Consultant and the reasons therefor. Although the State Center may do so from time to time, it shall not be obligated to offer to replace the Consultant if so removed.

6. Confidentiality.

6.1. Treatment of Confidential Information and Materials of the Beneficiary.

(a) The Consultant will maintain the confidentiality of any Confidential Information he or she receives from the Beneficiary while providing Consulting Services pursuant to this Agreement. "Confidential Information" shall mean all documents, data or information obtained by the Beneficiary from others during the course of an investigation, enforcement action or lawsuit, as well as all proprietary, closely held, and/or trade secret information or data (including all materials containing or embodying such information or data) belonging to the Beneficiary. The foregoing shall include, but not be limited to, all facts, legal theories, details, identities of individuals, and other information regarding the Beneficiary's investigations, enforcement actions and lawsuits, either pending or anticipated. The Consultant will not, without the Beneficiary's written consent, use the Confidential Information for any purpose other than to fulfill his or her obligations under this Agreement. At the Beneficiary's request, as applicable, the Consultant shall return to the Beneficiary or destroy (if and only if the Beneficiary requests destruction in writing) all Confidential Information then in the Consultant's possession or control. If any Confidential Information must be destroyed, the Consultant shall certify to the Beneficiary (i) the type of such Confidential Information so destroyed, (ii) that such destruction has taken place, and (iii) the means by which such Confidential Information was destroyed.

(b) Information shall not be considered Confidential Information, or be subject to this Agreement, if it can be demonstrated to be or to have become (i) part of the public domain, except via unauthorized act or omission of the Consultant; (ii) rightfully in the Consultant's possession free of any obligation of confidence at or subsequent to the time it was communicated to the Consultant; or (iii) developed by employees or agents of the Consultant independently of and without reference to any of the Confidential Information. Nothing herein shall prohibit disclosure in response to a valid order by a court or other governmental body, or disclosure otherwise required by law. However, the Consultant will give the Beneficiary notice, if reasonably possible, prior to any such permitted disclosure so that the Beneficiary may seek a protective order or other similar remedy.

6.2. Work Product. Any work product that is first developed under this Agreement and prepared by the Consultant for the Beneficiary (the "Work Product"), shall be deemed to be the property of the Beneficiary as a work made for hire. To the extent any Work Product is deemed by any court or similar authority not to be the property of the Beneficiary as a work made for hire, the Consultant hereby assigns to the Beneficiary the ownership of such Work Product. At the Beneficiary's request and expense, the Consultant will cooperate with the Beneficiary, including executing assignments and other documentation, in such a manner as is necessary to vest the Beneficiary with the entire right, title and interest in the Work Product.

6.3. State Center; No Right of Access. The State Center shall have no right of access to any Confidential Information or Work Product without the express authorization of the Beneficiary.

7. Termination. This Agreement may be terminated: (i) by any party upon the breach by another party of a material provision hereof after written notice of the same and failure to cure such breach within thirty (30) days after such notice; or (ii) by any party upon another party's bankruptcy, insolvency, moratorium, reorganization or other similar events involving creditors' rights generally.

8. Effect of Termination. Upon the termination or expiration of this Agreement, the parties' obligations under this Agreement or any Work Request shall terminate, except for those obligations set forth in this Agreement or a Work Request which are expressly stated to survive after the termination or expiration of this Agreement; provided, however, that any rights or remedies accruing prior to such termination or expiration, including the right of the Consultant to any unpaid fees or reimbursable expenses owed to it for services rendered, shall survive the termination or expiration of this Agreement. Sections 3.2, 6, 9, 11, 12, 13, 14, 15 and 17 shall survive any termination or expiration of this Agreement.

9. Notices. Any notice or other communication to be given hereunder by any party to another shall be in writing and delivered to the following addresses personally, by personal delivery, facsimile transmission, by postage prepaid first class mail or by a nationally recognized overnight courier:

(a) if to the State Center to: Center for State Enforcement of Antitrust and Consumer Protection Laws, Inc., 10 East 40th Street, New York, New York 10016, attn. Stephen D. Houck, Executive Director (Facsimile No: (212) 545-1656)

(b) if to the Beneficiary at the address and facsimile number indicated on the Work Request.; and

(c) if to the Consultant at the address and facsimile number indicated on the signature page of this Agreement.

Notice will be deemed given (i) immediately upon personal delivery, (ii) immediately upon successful fax transmission (confirmation of delivery received), (iii) four business days following the date on which such notice is mailed by first class mail in accordance with this section, or (iv) the next business day following the date on which such notice is sent by nationally recognized overnight courier. Each party may change his, her or its address for receipt of notice by giving notice of such change to each of the other parties pursuant to this Section.

10. Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns, provided, however, that this Agreement and a party's rights or obligations hereunder shall not be assignable, delegable, or subcontracted by any party without the prior written consent of each other party. Any purported assignment, delegation or subcontract in violation of this Section 10 shall be void and of no binding effect.

11. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to its choice of law or conflicts of law principles. The parties agree that all actions or proceedings arising in connection with this Agreement and/or any documents and instruments contemplated by this Agreement shall be tried and litigated only in the state and federal courts located in the County of New York, State of New York.

12. Representation, Warranties; Limitation on Liability.

12.1. THE STATE CENTER MAKES NO REPRESENTATION OR WARRANTY REGARDING THE CONSULTANT'S QUALIFICATIONS OR CREDENTIALS, AND THE CONSULTANT IS BEING REFERRED TO THE BENEFICIARY BY THE STATE CENTER ON AN "AS IS" BASIS. THE STATE CENTER SHALL HAVE NO OBLIGATION TO OVERSEE, MONITOR OR IN ANY WAY SUPERVISE THE QUALITY OF THE CONSULTANT'S WORK OR HIS OR HER PERFORMANCE. THE STATE CENTER MAKES NO REPRESENTATION OR WARRANTY EITHER AS TO THE AVAILABILITY OF THE CONSULTANT TO PERFORM SERVICES OR THAT THERE ARE NO CONFLICTS OF INTEREST BETWEEN THE BENEFICIARY AND THE CONSULTANT .

12.2. THE STATE CENTER IS NOT MAKING AND SHALL NOT BE DEEMED TO MAKE ANY REPRESENTATION OR WARRANTY TO THE CONSULTANT AS TO THE AMOUNT, QUALITY OR NATURE OF WORK REQUESTED BY THE BENEFICIARY.

12.3. THE STATE CENTER WILL NOT HAVE ANY LIABILITY TO THE BENEFICIARY OR THE CONSULTANT FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, LOSS OF PROFIT OR BUSINESS OPPORTUNITIES, WHETHER OR NOT THE STATE CENTER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12.4. THE MONETARY LIABILITY OF THE STATE CENTER FOR ALL CLAIMS FOR ACTUAL, DIRECT DAMAGES RESULTING FROM ITS PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), WARRANTY OR OTHER LEGAL OR EQUITABLE GROUNDS, WILL BE LIMITED TO ONE HUNDRED (\$100.00) DOLLARS FOR ANY AND ALL CLAIMS. THE FOREGOING SHALL NOT APPLY TO ANY AMOUNTS ACTUALLY DUE TO CONSULTANT ACCORDING TO THE TERMS OF THIS AGREEMENT.

13. Severability and Enforceability. If any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable as to any party then the remaining provisions in this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted. If any of the provisions contained in this Agreement are determined to be unenforceable because of the duration of such provision, the area or scope covered thereby or for some other reason the parties agree that the court, arbitrator or other tribunal making such determination shall have the power to reduce the duration, area or scope of such provision or to otherwise amend such provision to the minimum extent necessary to allow such provision to be enforceable under applicable law and, in its reduced or amended form, such provision shall then be enforceable and shall be enforced, provided that no such provision shall be reduced or amended if such reduction or amendment materially changes the intent and purpose of such provisions.

14. Heading. All headings herein contained are inserted for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.

15. Non-Waiver. Any failure of any party to enforce any provision of this Agreement shall not constitute waiver of such provision or prejudice the right of any party to enforce such provision at any subsequent time. No such provision shall be deemed waived unless the waiver is in writing and signed by authorized representatives of all of the parties.

16. Counterpart Execution. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any of the parties may execute this Agreement by signing any such counterpart. A facsimile copy of this Agreement showing the signatures of each of the parties, or, when taken together, multiple facsimile copies of this Agreement showing the signatures of each of the parties, respectively, where such signatures do not appear on the same copy, will constitute an original copy of this Agreement requiring no further execution.

17. Entire Agreement; Amendment. This Agreement, including the Exhibits attached hereto, and any Work Request issued pursuant to this Agreement, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior understandings, agreements, or representations by or between the parties, written or oral, to the extent they relate in any way to the subject matter hereof.

SIGNATURE PAGE TO CONSULTING AGREEMENT

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

**Center for State Enforcement
of Antitrust and Consumer
Protection Laws, Inc.**

By: _____
Name: Stephen D. Houck
Title: Executive Director
10 East 40th Street
New York, NY 10016
Tel.No.(212) 545-1894
Fax No (212)545-1656
Email:

[Insert Consultant's Name]

MARK J. McCabe

By: Mark J. McCabe
Name: **MARK J. McCABE**
Title: **Professor of Economics**
Address: **781 Marietta St. NW Atlanta, GA
30318**
Tel.No. **404-385-0512**
Fax No. **404-544-1890**
Email: **mark.mccabe@econ.gatech.edu**

EXHIBIT 1

WORK REQUEST

To: Stephen D. Houck, Executive Director, State Center

Date:

The services described below are to be provided by _____ [insert Consultant's name] (the "Consultant"), who has consented to provide such services if this Work Request is approved by the State Center.

1. Beneficiary or Beneficiaries:

2. Description of Consulting Services:

3. Anticipated Start Date of Project:

4. Hours (if less than 20):

5. NOTICE: APPROVAL OF THIS WORK REQUEST BY THE STATE CENTER MAKES THE SUBMITTING ATTORNEY GENERAL'S OFFICE A PARTY (BENEFICIARY) TO THE AGREEMENT BETWEEN THE STATE CENTER AND THE CONSULTANT.

Submitted by:

Beneficiary: _____

By: _____

Title:

Address:

Tel. No.:

Fax No:

cc: [Insert Consultant's Name]