

CONSULTING AGREEMENT

This Consulting Agreement (this “Agreement”) is made on this __ day of __, 2017 by and between ABC Japan Corporation, a corporation duly formed and existing under the laws of Japan and having its head office at _____, Japan and having its principal office at _____, (the “Company”) and DEF US Inc., a corporation duly formed and existing under the laws of the State of New York (the “Consultant”)

RECITALS:

WHEREAS, the Company has agreed to engage the Consultant and its affiliates, successors and assigns, as appropriate to act as its exclusive financial consultant with respect to the Company’s proposed Acquisition (as defined below) in [the xxx business of XYZ Ltd] (the “Target Business”); and

WHEREAS, the Consultant has agreed to render advised to the Company on and subject to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. Consulting Services

1.1 The Consultant shall, when appropriate and when requested:

- (a) undertake, in consultation with members of management, a comprehensive business and financial analysis of the Target Business, including, upon further request, a transaction feasibility study and pricing analyses;
- (b) assist the Company in developing a strategy to effectuate the Acquisition, including financing alternatives;
- (c) assist the Company, upon further request, in structuring and negotiating the Acquisition;
- (d) be available at the Company’s request to meet with its Board of Directors to discuss the proposed Acquisition and its financial implications.

1.2 In connection with the Consultant’s engagement, the Company shall furnish the Consultant with all information concerning the Company and, to the extent available to the

Company, the Target Business which the Consultant reasonably deems appropriate and shall provide the Consultant with access to the officers, directors, employees, accountants, counsel and other representatives (collectively, the “Representatives”) of the Company and, as practicable, the Target Business, it being understood that the Consultant will rely solely upon such information supplied by the Company, the Target Business and their respective Representatives without assuming any responsibility for independent investigation or verification thereof.

1.3 In addition, the Company agrees to promptly advise the Consultant of any material event or change in the business, affairs, condition (financial or otherwise) or prospects of the Company or, to the knowledge of the Company, the Target Business that occurs during the term of the Consultant’s engagement hereunder.

2. Fees and Expenses

2.1 As compensation for the Consultant’s services hereunder, the Company agrees to pay the Consultant as follows:

(1) a financial Advisory fee equal to \$_____, payable upon execution of this agreement (the “Financial Advisory Fee”).

(2) a transaction fee equal to ___% of the Aggregate Consideration (as defined below) in connection with the Acquisition (the “Transaction Fee”).

The compensation pursuant to Clause (2) above shall be payable by the Company to the Consultant upon each closing of a merger, asset acquisition or other form of acquisition or investment transaction with respect to the Target Business.

2.2 For purposes of this Agreement;

(a) “Acquisition” shall include, without limitation, any investment in or acquisition (whether in one or a series of transactions) of all or a substantial amount of the capital stock, assets or other interests of the Target Business by the Company or its affiliates, regardless of the form any such investment or acquisition takes; and

(b) the term “Aggregate Consideration” shall mean the total fair market value (on the date of payment) of all consideration (including cash, securities, property, all debt remaining on the Target Business’s financial statements and other indebtedness and obligations assumed by the Company and any other form of consideration) paid or payable, or otherwise to be distributed, directly or indirectly, to the selling entity and its security holders in connection with the Acquisition.

2.3 In addition, the Company agrees to periodically reimburse the Consultant for all expenses, including the fees and expenses of its legal counsel, if any, and any other Consultant retained by the Consultant (it being understood that the retention of any such Consultant, other than legal counsel, will be made with the prior approval of the Company), resulting from or arising out of this Agreement.

2.4 All fees and expenses payable hereunder are net of all applicable withholding and similar taxes.

3. Confidentiality

3.1 All non-public information concerning the Company or the Target Business which is given to the Consultant shall be used solely in the course of the performance of its services hereunder and shall be treated confidentially by the Consultant for so long as it remains non-public. Except as otherwise required by applicable law or judicial or regulatory process, the Consultant shall not disclose this information to a third party without the Company's consent.

3.2 No advice rendered by the Consultant, whether formal or informal, may be disclosed, in whole or in part, or summarized, excerpted from or otherwise referred to without its prior written consent. In addition, the Consultant may not be otherwise referred to without its written consent.

4. Indemnity

4.1 In the event that the Consultant or any of its affiliates, the respective directors, officers, partners, agents or employees of the Consultant or any of its affiliates, or any other person controlling the Consultant or any of its affiliates (collectively, "Indemnified Persons") becomes involved in any capacity in any action, claim, suit, investigation or proceeding, actual or threatened, brought by or against any person, including stockholders of the Company, in connection with or as a result of this Agreement or any matter referred to in this Agreement, the Company shall reimburse such Indemnified Person for its reasonable and customary legal and other expenses (including without limitation the costs and expenses incurred in connection with investigating, preparing for and responding to third party subpoenas or enforcing the engagement) incurred in connection therewith as such expenses are incurred.

4.2 The Company shall also indemnify and hold harmless any Indemnified Person from and against, and the Company agrees that no Indemnified Person shall have any liability to the Company or its owners, parents, affiliates, security holders or creditors for, any losses, claims, damages or liabilities (including actions or proceedings in respect thereof) (collectively, “Losses”) (A) related to or arising out of (i) the Company’s actions or failures to act (including statements or omissions made or information provided by the Company or its agents) or (ii) actions or failures to act by an Indemnified Person with the Company’s consent or in reliance on the Company’s actions or failures to act or (B) otherwise related to or arising out of this Agreement or the Consultant’s performance thereof.

5. Limitation of the Consultant’s Liability

To the extent permitted by applicable law, the Consultant shall not be responsible for amounts which in the aggregate are in excess of the amount of all fees actually received by the Consultant from the Company in connection with this Agreement.

6. Termination

The Consultant’s engagement hereunder may be terminated at any time, with or without cause, by either the Consultant or the Company upon [ten] days’ prior written notice thereof to the other party; *provided, however*, that in the event of any termination of the Consultant’s engagement hereunder, the Consultant will continue to be entitled to its full Transaction Fee provided for herein in the event that at any time prior to the expiration of [two] years after any such termination the Company consummates, or enters into an agreement providing for, an Acquisition; and *provided, further*, that no termination of the Consultant’s engagement hereunder shall affect the Company’s obligation to pay the Financial Advisory Fee, other fees and expenses to the extent provided for herein, and to indemnify the Consultant and certain related persons and entities as provided in “4. Indemnity” referred to above.

7. No Agency

In connection with this Agreement, the Consultant is acting as an independent contractor and not in any other capacity, with duties owing solely to the Company.

8. Miscellaneous Clauses

1) Assignment

The parties to this Agreement shall not assign whole or in part, its respective duties or obligations under this Agreement without the prior written consent of the other party.

2) Entire Agreement

This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and representations.

3) Waiver

The failure, delay or omission of either party to perform any right or remedy provided in this Agreement shall not be a waiver.

4) Applicable Law and Venue

This Agreement shall be governed by [] law. Each of the parties under this Agreement agrees that the [] courts shall have non-exclusive jurisdiction in relation to any dispute arising out of or in respect of this Agreement.

5) Notice

Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon personal delivery or mailing to the address hereinabove.

6) Counterparts

This Agreement may be executed in any number of counterparts, each of which when executed shall constitute an original, but all of which when taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Company and the Consultant have executed these presents on the day and year first above written.

ABC Japan Corporation

DEF US Inc.
