

**CONSULTING SERVICES  
and  
CONTRACT LABOR AGREEMENT**

This Consulting Services and Contract Labor Agreement (“Agreement”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”) by and between Volkswagen Group of America, Inc., and its Affiliates (collectively, “VWGoA”) a New Jersey corporation, with its principal place of business at 3800 Hamlin Road, Auburn Hills, MI 48326 and \_\_\_\_\_, a \_\_\_\_\_ corporation, with its principal place of business located at \_\_\_\_\_ (“Consultant”).

Consultant will provide professional consulting services as agreed between the parties and as set forth in the attached Attachment A, Statement of Work (“SOW”). The following terms govern this Agreement for all consulting services and contract labor provided to VWGoA by Consultant:

**1. Description of Services.**

Consultant agrees to provide the person(s) set forth on the SOW to perform the Services as set forth in the SOW under the direct supervision of VWGoA. The person(s) set forth on the SOW, (“Consultant’s Employee”) is/are employees of Consultant or of Consultant’s sub-Contractor. Under normal circumstances, all hours worked by Consultant’s Employee will be performed on VWGoA’s premises. Any work performed away from VWGoA premises must be pre-approved in writing by VWGoA. VWGoA may advise Consultant in advance and in writing (or so note on the SOW) of any restrictions on the number of hours to be worked by the Consultant’s Employee.

**2. Invoicing.**

Invoices will be rendered monthly, or as otherwise noted in the SOW, based on time slips documenting the hours worked by the Consultant’s Employee. Unless otherwise agreed, time slips, or other proof of hours worked, will be submitted no less frequently than on a weekly basis. Compensation for Consultant's Employee’s services hereunder shall not be due until after such services are actually performed, and to VWGoA’s reasonable satisfaction. The signature (electronic or otherwise) of a VWGoA representative on a time slip shall evidence full performance of such time and Services for the relevant period. VWGoA will be invoiced for all time spent performing the Services at the rates set forth in the SOW and for any other expenses provided in the SOW. In addition, sales tax will be billed in certain locations as mandated by law. Payment will be due within the time period set forth in the SOW.

**3. Term and Termination.**

This Agreement will become effective on the date stated above and shall continue in full force and effect for the duration of the project or as otherwise provided in the SOW, unless terminated by either party pursuant to sections (a) or (b) herein. Notwithstanding such effective date;

- a. This Agreement shall terminate automatically on the occurrence of Consultant's bankruptcy or insolvency, sale of the business, or unauthorized assignment.
- b. Either party may terminate this Agreement and attached Schedules for any reason upon 20 business days written notice to the other party. VWGoA shall pay Consultant for all hours actually performed by Consultant up to and including the date of termination for which the Client has signed a timecard and for which Consultant has submitted an invoice and for which Consultant has paid Consultant's employee.

#### **4. Obligations of Consultant.**

- a. Independent Contractor. Consultant's (and its Employees') status shall be that of an independent contractor, and not that of a servant or employee of VWGoA. Neither Consultant nor its Employees shall represent that it is, nor claim to be, acting in the capacity of an officer, employee, agent, representative or servant of VWGoA, and shall not make any claim, demand or application for any right or privilege which might be claimed, demanded or applied for by a person standing in any such relationship with VWGoA, including, without limitation, workers compensation, group insurance, liability insurance, disability insurance, unemployment insurance, sick leave or other leave, health plans, severance pay, social security, salary, bonuses, payment for overtime, retirement plan membership or credit for any like benefit under applicable law, collective bargaining agreement or custom. Consultant and its Employees shall have no authority to create any obligation of any kind, express or implied, on behalf of VWGoA unless specifically authorized to do so in each particular instance, in writing, signed by a corporate officer of VWGoA. Consultant alone shall be responsible for any obligation to withhold taxes or any other amount from the payments to be made to Consultant hereunder or from the payments to be made by Consultant to personnel. If Consultant's Employee makes any claim against VWGoA based on the allegation that he or she was or is a common law employee (or similar status) of VWGoA, and is therefore entitled to certain employee benefits, then Consultant shall defend and indemnify VWGoA against such allegations.
- b. Insurance and Licenses. Consultant shall obtain and maintain any and all licenses, permits, certificates or other grants or documents that are required by any regulatory body of any State in which such services will be rendered. Consultant shall maintain Workers' Compensation and General Liability insurance in force applicable to its Employees and will insure that VWGoA is named as an additional insured party. Consultant will supply Certificates of Insurance to VWGoA upon request. Consultant guarantees that its Employees are legally able to work in the United States and that all I-9 or similar forms have been completed and retained according to law.

- c. Duties. Consultant and its Employees shall devote their best efforts, skill, time and attention to performing the services set forth in the SOW. Consultant and its Employees shall abide by all VWGoA rules regarding proper employee conduct, safety, parking, building access, identification badges, etc.
- d. Assignment. Consultant shall not assign in part or in whole any of its obligations under this Agreement without the express written consent of VWGoA, which consent may be withheld at VWGoA's sole discretion.
- e. Indemnity. Consultant agrees to indemnify, hold harmless and defend VWGoA, its parent, subsidiaries and affiliates; their respective predecessors, successors and assigns; and their respective officers, directors, agents, employees and representatives, individually or collectively, from and against any and all suits, actions, legal proceedings, claims, demands, charges, costs and expenses of whatever kind or character including, but not limited to, attorneys' fees and expenses, arising out of or related to (a) a breach by Consultant or any of its Employees of any provision of this Agreement; (b) any act or omission of the Consultant or any of its Employees in performing any Services (whether through negligence, fault or strict liability in tort); or (c) the status of the Consultant or any of its Employees with respect to VWGoA unless such employees reasonably act on representations made by VWGoA, VWGoA's employees or VWGoA's written corporate plans, policies and procedures. Consultant is not responsible for indemnifying VWGoA for any loss caused solely by the negligence of VWGoA employees.

Upon receipt of any claim falling within Consultant's obligation to defend and indemnify, VWGoA will promptly forward such papers to Consultant and will provide reasonable assistance to Consultant. Consultant will reimburse VWGoA for any VWGoA employee time and out-of-pocket expense incurred in providing assistance to Consultant.

- f. Confidentiality. VWGoA may provide to Consultant and its Employees certain confidential information concerning its vehicles or other information that VWGoA deems to be confidential. Consultant agrees that it and its Employees will keep all such materials confidential, except for the following exceptions: disclosures which (a) are consented to in writing in advance by VWGoA; (b) are to professional advisors of Consultant on a need-to-know basis, and then only pursuant to a confidentiality undertaking identical to this one; (c) are of information which has been made public through no act or omission of Consultant; (d) are of information which has been given to Consultant by a person other than VWGoA or any of VWGoA's personnel and who is not bound by any confidentiality obligation with respect thereto; or (e) pursuant to compulsory process, after notice to VWGoA in sufficient time to permit VWGoA to challenge such disclosure at its own expense. Consultant will not copy or reproduce confidential materials except with VWGoA's written permission and will return all materials to VWGoA upon completion of the services.

- g. Non-solicitation. Consultant agrees that neither it nor any of its Employees will endeavor to influence VWGoA's employees to seek employment with Consultant during the term of this Agreement and for one-year thereafter and shall not employ any of VWGoA's employees without prior written approval from VWGoA.
- h. Equal Opportunity Employer. Consultant will not discriminate against any individual based on race, age, sex, disability, national origin, sexual orientation, religion, or any other immutable characteristic, and Consultant will abide by all applicable employment laws.

## **5. Work For Hire**

Consultant agrees that all work performed and services rendered under this Agreement are performed on a “work for hire” basis, meaning that all services, improvements, discoveries, inventions, or reductions to practice made by Consultant or its Employees are the exclusive property of VWGoA. Further, Consultant and its Employees shall promptly disclose to VWGoA any improvements, discoveries, inventions or processes referred to above and, where required, shall take whatever reasonable steps may be required to formally transfer ownership of the same to VWGoA.

“Work For Hire” shall not include inventions, developments and other intellectual property not conceived at the behest of or performed during the service hours contracted by the Client. Examples of areas that do not fall under “ownership of work product clause” may include such items as training courseware material and productivity tools.

## **6. Hiring of Consultant’s Employees.**

VWGoA may hire, (as a full-time, part-time or temporary employee), without penalty or further obligation to Consultant, any of Consultant’s Employees who have been rendering services to VWGoA under this Agreement for at least 180 days. Further, any term or condition in any agreement, past, present or future, between Consultant and Consultant’s Employee that would restrict Consultant’s Employee from accepting such employment at VWGoA is void and Consultant shall not place any restriction on its Employee from accepting an offer of employment from VWGoA. If Consultant terminates this Agreement, VWGoA shall have the immediate right to offer employment to any of Consultant’s Employees who had been providing services to VWGoA under this Agreement without penalty or further obligation to Consultant.

## **7. Replacement of Consultant’s Employee**

Upon VWGoA’s request, Consultant shall replace any Employee who is not performing to VWGoA’s reasonable expectation. In the event of such replacement, VWGoA shall not be charged for any time required by a replacement Employee to become acquainted or familiar with the project to which the Employee is assigned.

**8. General Provisions.**

- a. Notices. All notices, requests, demands and other communications hereunder must be in writing and sent prepaid by Certified Mail, Return Receipt Requested, or by overnight delivery service having a reliable means of delivery confirmation, addressed as follows:

If to VWGoA: Volkswagen of America, Inc.  
3800 Hamlin Road  
Auburn Hills, MI 48326  
Attention: \_\_\_\_\_

If to Contractor: (Contractor Name)  
(Contractor Address)  
(Contractor City, State & Zip)  
Attention:

Notices shall be deemed given when received.

- b. Complete Agreement. This Agreement supersedes all prior understandings and agreements of the parties with reference to the matters set forth herein and there shall be no modification of this Agreement unless in writing signed by all parties.
- c. Partial Invalidity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- d. Arbitration. Any controversy or claim arising out of or relating to this Agreement or breach thereof will be settled by arbitration in accordance with the rules of The National Center for Dispute Resolution, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.
- e. Attorney's Fees. Should either party bring any action, either in court or in arbitration to enforce or adjudicate any of the terms of this Agreement, the losing party shall pay to the prevailing party its costs and reasonable attorney's fees.

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f. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan applicable to agreements entered into and full performed therein. Without waiving or otherwise compromising the agreement to arbitrate, the parties irrevocably submit to the exclusive jurisdiction of the state and federal courts located in the County of Oakland, State of Michigan.

IN WITNESS WHEREOF, Contractor and VWGoA have executed this Agreement as of the date first set forth above.

**Volkswagen of America, Inc.**

\_\_\_\_\_  
By:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print:

\_\_\_\_\_  
Its:

**Consultant**

\_\_\_\_\_  
By:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print:

\_\_\_\_\_  
Its:

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## **Attachment A Statement of Work**

This Statement of Work (“SOW”) is made and subject to the Consulting Services and Contract Labor Agreement between VWGoA and \_\_\_\_\_ (“Consultant”) with an Effective Date of \_\_\_\_\_ (“Agreement”).

### **Services**

Consultant shall provide the Services of the following Consultant’s Employee(s), and VWGoA shall pay for such services at the monthly rates set forth below. (Attach additional pages describing nature of services, time tables, deliverables, other expectations, etc.)

Because VWGoA is closed on certain holidays, Consultant’s Employees are not able to access the building and are not expected to work on those days. The monthly rate will not be adjusted for any month where VWGoA corporate offices are closed for holidays.

In addition to days where VWGoA is not open for business, VWGoA will allow each of Consultant’s Employees to miss no more than 15 days, for any reason, over the course of a 12-month period. Notwithstanding such absences, however, VWGoA expects that project(s) be completed on time and on budget and if absences jeopardize project schedules, VWGoA may ask to have Consultant’s Employee(s) removed from the project.

Consultant’s Employees are expected to complete assigned work within the standard 40-50 hours per work week.

Any excessive overtime (as defined by VWGoA) must be pre-approved by VWGoA, the rate for which will not have a premium of more than 25% of the standard monthly rate. Consultant and VWGoA agree that the services to be provided herein are considered exempt from the Federal Labor Standards Act and therefore, hourly-based overtime will not be paid. If at any time, either party disagrees with this classification, it will immediately notify the other and the parties will meet and confer as to a proper hourly wage with appropriate overtime. Further, Consultant will defend and indemnify VWGoA for any damages arising out of a claim, charge or determination that Consultant’s Employees should have been paid as a non-exempt employee.

**Consultant Name   Hourly Rate   Role Title   Start Date   End Date**

### **Expenses**

VWGoA will reimburse Consultant for actual and reasonable business expenses. All travel and related expenses must be pre-approved by VWGoA in writing. Consultant will abide by

VWGoA's travel and expense policies, copies of which have been provided to Consultant. All travel must be booked through a travel agency/service of VWGoA's choosing. All business and travel expense will be documented by properly completed and approved expense reports, including adequate original supporting documentation for the expense incurred.

**Invoicing Terms**

Invoices will be submitted on a weekly basis for the prior week's work.

**Payment Terms**

Any and all payments due hereunder shall be due within 30 days of the date of invoice.

**VWGoA Information:**

The VWGoA hereby designates \_\_\_\_\_ as VWGoA Manager (Phone No. \_\_\_\_\_) and who shall have overall responsibility for directing and managing the Services performed and all interaction with Consultant. VWGoA shall give prompt written notice of any change in designee.

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