



## FIREEYE, INC.'S CONSULTING AGREEMENT

This Consulting Agreement (this "Agreement") is entered into by and between FireEye, Inc., a Delaware corporation located at 1440 McCarthy Blvd., Milpitas, CA, 95035, including its wholly owned subsidiaries, (the "Company") and \_\_\_\_\_, located at \_\_\_\_\_ ("Consultant") effective as of \_\_\_\_\_ (the "Effective Date").

### **1. SERVICES; PAYMENT; NO VIOLATION OF RIGHTS OR OBLIGATIONS.**

Consultant agrees to undertake and complete the Services (as defined in Exhibit A) in accordance with and on the schedule specified in Exhibit A. As the only consideration due Consultant regarding the subject matter of this Agreement, Company will pay Consultant in accordance with Exhibit A. Unless otherwise specifically agreed upon by Company in writing (and notwithstanding any other provision of this Agreement), all activity relating to Services will be performed by and only by Consultant or by employees of Consultant and only those such employees who have been approved in writing in advance by Company. Consultant agrees that it will not (and will not permit others to) violate any agreement with or rights of any third party or, except as expressly authorized by Company in writing hereafter, use or disclose at any time Consultant's own or any third party's confidential information or intellectual property in connection with the Services or otherwise for or on behalf of Company.

### **2. OWNERSHIP.**

Company shall own all right, title and interest (including patent rights, copyrights, trade secret rights, mask work rights, trademark rights, *sui generis* database rights and all other intellectual property rights of any sort throughout the world) relating to any and all inventions (whether or not patentable), works of authorship, mask works, designations, designs, know-how, ideas and information made or conceived or reduced to practice, in whole or in part, by or for or on behalf of Consultant during the term of this Agreement that relate to the subject matter of or arise out of or in connection with the Services or any Proprietary Information (as defined below) (collectively, "Inventions") and Consultant will promptly disclose and provide all Inventions to Company. Consultant hereby makes all assignments necessary to accomplish the foregoing ownership; provided that no assignment is made that extends beyond what would be allowed under California Labor Code Section 2870 (attached as Exhibit B) if Consultant was an employee of Company. Consultant shall assist Company, at Company's expense, to further evidence, record and perfect such assignments, and to perfect, obtain, maintain, enforce and defend any rights assigned. Consultant hereby irrevocably designates and appoints Company as its agents and attorneys-in-fact, coupled with an interest, to act for and on Consultant's behalf to execute and file any document and to do all other lawfully permitted acts to further the foregoing with the same legal force and effect as if executed by Consultant and all other creators or owners of the applicable Invention. Consultant warrants that all individuals it retains as employees or consultants will have written agreements that contain ownership terms substantially similar as the above sufficient to perfect Company's ownership rights in the Inventions.

### **3. CONFIDENTIALITY.**

3.1 Definition of Confidential Information. As used in this Agreement, the term "Confidential Information" means information pertaining to any aspects of the Company's business, including but not limited to its research, technical data, products, services, plans for products or services, customers and potential customers, suppliers, customer lists and customers (including, but not limited to, customers of the Company on whom Consultant called or with whom Consultant became acquainted during the period of the consulting relationship with the Company), prices and costs, markets and marketing, finances, budgets, financial projections, employees (including employee compensation), trade secrets, know-how, patents, patent applications, developments, software, inventions, licenses, processes, designs, drawings, engineering, formulae, scientific information, business plans, and agreements with third parties, or other business information disclosed

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to Consultant by the Company either directly or indirectly in writing, orally or by drawings or observation of parts or equipment or created by Consultant during the period of the consulting relationship with the Company (whether commenced prior to or upon the date of this Agreement). Consultant further understands that Confidential Information does not include any of the foregoing items which has become publicly and widely known and made generally available through no wrongful act of the Consultant or of others who were under confidentiality obligations as to the item or items involved.

3.2 Confidentiality Obligation. Consultant agrees to hold in strictest confidence and not directly or indirectly to use or disclose to any third person or entity, either during or after termination of the consulting relationship with the Company, any Confidential Information that Consultant obtains or creates during the period of the consulting relationship with the Company (whether commenced prior to or upon the date of this Agreement), whether or not during working hours, except to the extent authorized by the Company. Consultant agrees not to make copies of such Confidential Information except as authorized by the Company.

3.3 Prior Obligations. Consultant represents that his performance of all terms of this Agreement as a consultant of the Company has not breached and will not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by Consultant prior or subsequent to the commencement of Consultant's consultant relationship with the Company, and Consultant will not disclose to the Company, or use, any inventions, confidential or non-public proprietary information or material belonging to any previous client, employer or any other party. Consultant will not induce the Company to use any inventions, confidential or non-public proprietary information or material belonging to any previous client, employer or any other party.

3.4 Third Party Information. Consultant recognizes that the Company has received and in the future will receive confidential or proprietary information from third parties subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. Consultant agrees to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any person, firm or corporation or to use it except as necessary in carrying out Consultant's work for the Company consistent with the Company's agreement with such third party.

3.5 Company Property; Returning Company Documents. Consultant acknowledges and agrees that Consultant has no expectation of privacy with respect to the Company's telecommunications, networking or information processing systems (including, without limitation, stored company files, e-mail messages and voice messages) and that Consultant's activity and any files or messages on or using any of those systems may be monitored at any time without notice. Consultant further agrees that any property situated on the Company's premises and owned by the Company, including disks and other storage media, filing cabinets or other work areas, is subject to inspection by Company personnel at any time with or without notice. Consultant agrees that, at the time of termination of Consultant's consulting relationship with the Company, Consultant will deliver to the Company (and will not keep in Consultant's possession, recreate or deliver to anyone else) any and all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, laboratory notebooks, materials, flow charts, equipment, other documents or property, or reproductions of any of the aforementioned items developed by Consultant pursuant to such relationship or otherwise belonging to the Company, its successors or assigns.

#### **4. NON-SOLICITATION.**

As additional protection for Proprietary Information, Consultant agrees that during the period over which it is to be providing the Services: (i) and for one year thereafter, Consultant will not directly or indirectly encourage or solicit any employee or consultant of Company to leave Company for any reason; and (ii) Consultant will not engage in any activity that is in any way competitive with the business or demonstrably anticipated business of Company, and Consultant will not assist any other person or organization in competing or in preparing to compete with any business or demonstrably anticipated business of Company. Without limiting the foregoing, Consultant may perform services for other persons, provided that such services do not represent a conflict of interest or a breach of Consultant's obligation under this Agreement or otherwise.

## **5. PUBLICITY.**

To the extent allowed by law, Section 2 and any license granted Company hereunder includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights," "artist's rights," "droit moral," or the like. Furthermore, Consultant agrees that notwithstanding any rights of publicity, privacy or otherwise (whether or not statutory) anywhere in the world, and without any further compensation, Company may and is hereby authorized to (and to allow others to) use Consultant's name in connection with promotion of its business, products or services. To the extent any of the foregoing is ineffective under applicable law, Consultant hereby provides any and all ratifications and consents necessary to accomplish the purposes of the foregoing to the extent possible. Consultant will confirm any such ratifications and consents from time to time as requested by Company. If any other person is in any way involved in any Services, Consultant will obtain the foregoing ratifications, consents and authorizations from such person for Company's exclusive benefit.

## **6. LICENSE.**

If any part of the Services or Inventions or information provided hereunder is based on, incorporates, or is an improvement or derivative of, or cannot be reasonably and fully made, used, reproduced, distributed and otherwise exploited without using or violating technology or intellectual property rights owned by or licensed to Consultant (or any person involved in the Services) and not assigned hereunder, Consultant hereby grants Company and its successors a perpetual, irrevocable, worldwide royalty-free, non-exclusive, sublicensable right and license to exploit and exercise all such technology and intellectual property rights in support of Company's exercise or exploitation of the Services, Inventions, other work or information performed or provided hereunder, or any assigned rights (including any modifications, improvements and derivatives of any of them).

## **7. WARRANTIES AND OTHER OBLIGATIONS.**

Consultant represents, warrants and covenants that: (i) the Services will be performed in a professional and workmanlike manner and that none of such Services nor any part of this Agreement is or will be inconsistent with any obligation Consultant may have to others; (ii) all work under this Agreement shall be Consultant's original work and none of the Services or Inventions nor any development, use, production, distribution or exploitation thereof will infringe, misappropriate or violate any intellectual property or other right of any person or entity (including, without limitation, Consultant); (iii) Consultant has the full right to allow it to provide Company with the assignments and rights provided for herein (and has written enforceable agreements with all persons necessary to give it the rights to do the foregoing and otherwise fully perform this Agreement and, in addition, Consultant will have each person who may be involved in any way with, or have any access to, any Services or Proprietary Information will enter into (prior to any such involvement or access) a binding agreement for Company's benefit that contains provisions at least as protective as those contained herein); (iv) Consultant shall comply with all applicable laws and Company safety rules in the course of performing the Services; and (v) if Consultant's work requires a license, Consultant has obtained that license and the license is in full force and effect.

## **8. TERM; TERMINATION.**

Company may terminate this Agreement at any time, with or without cause, but, if (and only if) such termination is without cause, Company shall upon such termination pay Consultant all unpaid, undisputed amounts due for the Services completed prior to notice of such termination. Sections 2 through 9 of this Agreement and any remedies for breach of this Agreement shall survive any termination or expiration. Company may communicate the obligations contained in this Agreement to any other (or potential) client or employer of Consultant.

## **9. RELATIONSHIP OF THE PARTIES; INDEPENDENT CONTRACTOR; NO EMPLOYEE BENEFITS.**

Notwithstanding any provision hereof, Consultant is an independent contractor and is not an employee, agent, partner or joint venturer of Company and shall not bind nor attempt to bind Company to any contract. Consultant shall accept any directions issued by Company pertaining to the goals to be attained and the

results to be achieved by Consultant, but Consultant shall be solely responsible for the manner and hours in which the Services are performed under this Agreement. Consultant shall not be eligible to participate in any of Company's employee benefit plans, fringe benefit programs, group insurance arrangements or similar programs. Company shall not provide workers' compensation, disability insurance, Social Security or unemployment compensation coverage or any other statutory benefit to Consultant. Consultant shall comply at Consultant's expense with all applicable provisions of workers' compensation laws, unemployment compensation laws, federal Social Security law, the Fair Labor Standards Act, federal, state and local income tax laws, and all other applicable federal, state and local laws, regulations and codes relating to terms and conditions of employment required to be fulfilled by employers or independent contractors. Consultant will ensure that its employees, contractors and others involved in the Services, if any, are bound in writing to the foregoing, and to all of Consultant's obligations under any provision of this Agreement, for Company's benefit and Consultant will be responsible for any noncompliance by them. Consultant agrees to indemnify Company from any and all claims, damages, liability, settlement, attorneys' fees and expenses, as incurred, on account of the foregoing or any breach of this Agreement or any other action or inaction by or for or on behalf of Consultant.

#### **10. EXPORT.**

Consultant represents and warrants that it shall comply with all laws and regulations applicable to Consultant with respect to the purchase and use of the Products. Consultant further acknowledges and agrees that the Products purchased, and Software licensed, under this Agreement may be subject to restrictions and controls imposed by the United States Export Administration Act and the regulations thereunder. Consultant agrees to comply with all applicable export and reexport control laws and regulations, including the Export Administration Regulations ("EAR") maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations ("ITAR") maintained by the Department of State. Specifically, Consultant covenants that it shall not, directly or indirectly, sell, export, reexport, transfer, divert, or otherwise dispose of any products, software, or technology (including products derived from or based on such technology) received from FireEye under this Agreement to any destination, entity, or person prohibited by the laws or regulations of the United States, without obtaining prior authorization from the competent government authorities as required by those laws and regulations. These prohibitions include, but are not limited to the following: (i) the Products cannot be exported or re-exported to any countries embargoes by the United States (currently including Cuba, Iran, North Korea, Sudan or Syria) which includes nationals of these countries employed by Consultant; (ii) the Products cannot be exported or re-exported for military use in country group 'b' prior to valid 'export license' or valid 'license exception'; (iii) engineers cannot have access to FireEye's proprietary encryption source code; and (iv) the Products cannot be used for any prohibited end uses including any 'nuclear, biological or chemical weapon related activities'. Consultant agrees to notify FireEye of any suspicious activities by any employee related to the Products. Consultant agrees to indemnify, to the fullest extent permitted by law, FireEye from and against any fines or penalties that may arise as a result of Consultant's breach of this provision. This export control clause shall survive termination or cancellation of this Agreement

#### **11. ANTICORRUPTION LAWS.**

Consultant acknowledges that it is familiar with and understands the provisions of the U.S. Foreign Corrupt Practices Act ("the FCPA") and the U.K. Bribery Act of 2010 ("UKBA") and agrees to comply with its terms as well as any provisions of local law or the Company's corporate policy and procedures related thereto. Consultant further understands the provisions relating to the FCPA and UKBA's prohibitions regarding the payment or giving of anything of value, including but not limited to payments, gifts, travel, entertainment and meals, either directly or indirectly, to an official of a foreign government or political party for the purpose of influencing an act or decision in his or her official capacity or inducing the official to use his or her party's influence with that government, to obtain or retain business involving the Company's products. Consultant agrees to not violate or knowingly let anyone violate the FCPA or UKBA while working on behalf of the Company, and Consultant agrees that no payment made on behalf of the Company will constitute a bribe, influence payment, kickback, rebate, or other payment that violates the FCPA, the UKBA, or any other applicable anticorruption or antibribery law. Upon the Company's request, Consultant agrees to provide the Company with written

certifications of Consultant's FCPA and UKBA compliance and permit the Company to inspect Consultant's books and records upon request.

**12. ASSIGNMENT.**

This Agreement and the services contemplated hereunder are personal to Consultant and Consultant shall not have the right or ability to assign, transfer any rights or obligations under this Agreement without the written consent of Company. Any attempt to do so shall be void. Company may fully assign and transfer this Agreement in whole or in part.

**13. NOTICE.**

All notices under this Agreement shall be in writing and shall be deemed given when personally delivered, or three days after being sent by prepaid certified or registered U.S. mail to the address of the party to be noticed as set forth herein or to such other address as such party last provided to the other by written notice.

**14. MISCELLANEOUS.**

Any breach of Section 2 or 3 will cause irreparable harm to Company for which damages would not be an adequate remedy, and therefore, Company will be entitled to injunctive relief with respect thereto in addition to any other remedies. The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights. No changes or modifications or waivers to this Agreement will be effective unless in writing and signed by both parties. In the event that any provision of this Agreement shall be determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to the conflicts of laws provisions thereof. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. Headings herein are for convenience of reference only and shall in no way affect interpretation of the Agreement. FireEye, Inc. is committed to the provisions outlined in the Equal Opportunity Clauses of Executive Order 11246, the Rehabilitation Act of 1973, the Vietnam Era Veterans Readjustment Act of 1974, the Jobs for Veterans Act of 2003, as well as any other regulations pertaining to these orders.

**IN WITNESS WHEREOF**, the undersigned have entered into this Consulting Agreement as of the Effective Date.

**FIREEYE, INC.**

**CONSULTANT**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## EXHIBIT A

### SERVICES

#### FEES/EXPENSES

\_\_\_ Hourly fee of \$\_\_\_\_\_ (exclusive of travel time; payable monthly in arrears \_\_\_ after invoice detailing hours), with a cap of \$\_\_\_\_\_ in the aggregate.

\_\_\_ Flat fee of \$\_\_\_\_\_ payable \_\_\_ days after timely completion of the following milestones prior to termination:

\_\_\_ Expense reimbursement is (1) limited to required, reasonable telephone expenses and long distance coach class (or equivalent) travel (transportation, lodging and meals) authorized in writing by Company in advance, and (2) payable \_\_\_ days after itemized invoice and delivery of receipts).

**[IF GRANTING STOCK OPTIONS AS COMPENSATION TO CONSULTANT, PLEASE CONTACT ALEXA KING:]**

**[OPTIONS]** Subject to the approval of Company's Board of Directors and the terms and conditions of the Company's 2008 Stock Plan (the "Plan") and in conjunction with the Consultant's provision of the Services described above, Consultant shall be granted an option to purchase \_\_\_\_\_ shares of the common stock of the Company to vest as follows: \_\_\_\_\_ of the shares shall vest when the Consultant completes each month of continuous service under this Agreement or until the Agreement is terminated pursuant to Section 4. The exercise price per share shall be equal to the fair market value per share on the date the option is granted.

**[STOCK]** Subject to the approval of Company's Board of Directors and the terms and conditions of the Company's 2008 Stock Plan (the "Plan") and in conjunction with the Consultant's provision of the Services described above, Consultant shall receive \_\_\_\_\_ shares of the common stock of the Company to vest as follows: \_\_\_\_\_ of the shares shall vest when the Consultant completes each month of continuous service under this Agreement or until the Agreement is terminated pursuant to Section 8. Such shares shall be subject to the Company's right of first refusal, exercisable in the event that Consultant proposes to sell or otherwise transfer such shares prior to the initial public offering of the Company's common stock. The terms pursuant to which such shares may be repurchased by the Company under such right of first refusal shall be substantially as set forth in the applicable form of Stock Grant Agreement.]

## EXHIBIT B

California Labor Code Section 2870. **Application of provision providing that employee shall assign or offer to assign rights in invention to employer.**

(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or

(2) Result from any work performed by the employee for his employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.