

## **Market Viability Report Agreement**

This Agreement (the "Agreement"), is entered into effective as of \_\_\_\_\_, 201\_ (the "Effective Date"), between \_\_\_\_\_ ("Client") and NexGen Range Consulting, LLC, ("Consultant"). Client and Consultant may be referred to collectively in this Agreement as the "Parties" or individually as a "Party." The Parties desire to enter into an agreement setting forth the terms and conditions under which Consultant will provide services to Client. For and in consideration of the mutual covenants and agreements set out in this Agreement, the Parties agree as follows:

1. **Services as a Consultant.** Client agrees to retain Consultant, and Consultant agrees to provide to Client the deliverables and services (the "Scope of Work") of Consultant pursuant to the Proposal(s) attached and incorporated herein, such services to be performed in the capacity of a consulting representative in connection with the Client's project development and operations. It is expressly understood that Consultant has no fiduciary obligation to Client, but instead a contractual one described by the terms of this Agreement.
2. **Term.** The term of this Agreement shall commence on the Effective Date and shall continue for a period of one year (the "Term"), unless terminated sooner pursuant to the provisions of this Agreement. Upon termination or expiration of the Agreement, each Party's rights and obligations with respect to fees payable hereunder, in accordance with Section 6 of this Agreement, and such other provisions that by their nature are intended to survive termination, shall survive the termination of this Agreement
3. **Consulting Fee for Additional Services.** If Client engages Consultant for services in addition to those outlined in the "NSSF Range Development Startup Kit", Client shall execute a separate Proposal(s) provided by Consultant that details the services to be provided. Additionally, Client shall pay Consultant during the term of this Agreement a Fee(s) as stated in such Proposal(s) for services rendered pursuant to the Proposal(s) and this Agreement by Consultant. 50% of the Proposal(s) Fee(s) shall be paid by Client to Consultant upfront, and the remaining 50% is due upon completion. Client shall also timely reimburse Consultant for reasonable, pre-approved in writing expenses associated with travel related to this Agreement and the work provided hereunder. As an independent contractor, Consultant shall not participate in any group health, accident and life insurance plans, or any pension or other benefit plan sponsored by Client.
4. **Personal Services Contract.** Consultant acknowledges and agrees this Agreement is a personal services contract and may not be assigned by Consultant.
5. **Termination.** This Agreement may be terminated prior to the end of the Term:
  - a. By the Parties upon the mutual written consent of both Parties;
  - b. By Client if Consultant breaches any covenant, term, or condition of this Agreement and fails to remedy the breach within a reasonable time following receipt from Client of written notice and an explanation of the breach;
  - c. By Consultant if Client breaches any covenant, term, or condition of this Agreement and fails to remedy the breach within a reasonable time following receipt from Consultant of written notice and an explanation of the breach; or,
  - d. Upon the death of Consultant.

If this Agreement is terminated for any of the reasons stated above, any obligations of Client to pay consulting fees to Consultant as provided above, shall terminate effective as of the date of termination of this Agreement, and those fees will be prorated through the date of termination, which will be determined in relation to the amount of deliverables provided as of the date of termination of this Agreement.

### 6. **Miscellaneous**

6.1 **Independent Contractor.** Nothing contained in this Agreement shall be construed as a partnership agreement, and Consultant shall not be deemed to be an employee or agent of Client. Neither Party has any authority to bind the other in any respect. It is intended, understood, and agreed that Consultant is an independent contractor responsible for its own actions. Additionally, the National Shooting Sports Foundation ("NSSF") shall not be a party to any NexGen Range-Client agreement, shall have no authority or control over NexGen Range or Client, and shall incur no liability with respect to any services provided or requested pursuant to the Agreement, except for any payments NSSF agrees to make to Consultant.

6.2 Confidentiality. The Parties recognize that during the term of this Agreement, each Party may have access to confidential and proprietary information and trade secrets of the other Party. The Parties agree that they will not divulge, distribute, or disseminate any of that information to any third party during or after the term of this Agreement. Additionally, Consultant has and will develop certain proprietary and Confidential Information for Client that has great value to Consultant's business. Confidential Information is broadly defined to include all information that has or could have commercial value or other utility. It also includes, but is not limited to, information developed by Consultant, information from outside sources disclosed by Consultant to Client, any and all information concerning the product and/or services of Consultant, processes, Consultant's documentation and files, materials, formulas, trade secrets, inventions, discoveries, improvements, research or development, data, know-how, formats, marketing plans, reports, coded information, diagrams, flow-charts, business plans, strategies, forecasts, published or unpublished financial information, budgets, projections, and any other tangible and intangible materials of any type whatsoever relating to Consultant and its clients. Client agrees that neither it nor its principals, employees, agents, clients, assigns or affiliates will disclose, divulge, use, appropriate, sell, transfer, publish, broadcast, or transmit directly or indirectly any Confidential Information to any third party during or after the term of this Agreement without Consultant's prior written consent. Notwithstanding the foregoing, Client shall be permitted to use the Confidential Information solely for the purposes contemplated by this Agreement and shall restrict access to Confidential Information to Client's employee(s), legal and financial advisors, lender(s), and prospective investor(s) who need such access in order to carry out such purposes or as required by law; provided that all receiving parties shall hold the Confidential Information received from Client in strict confidence, shall use such information only for the purpose of and in accordance with this Agreement, and shall not further disclose such Confidential Information to any third party without Consultant's prior written consent. Client agrees to take all reasonable security measures to prevent accidental disclosure.

6.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma. Client and Consultant agree that in the event of a dispute arising between the Parties, the Parties agree to subject themselves to the jurisdiction of the State Courts of Oklahoma County, Oklahoma.

6.4 Modifications. No provision of this Agreement may be changed or modified, except by written agreement signed by the Parties.

6.5 Legal Compliance. Consultant agrees to abide by all applicable laws and regulations in the performance of its duties provided for in this Agreement.

6.6 Indemnity. The services and deliverables provided to Client pursuant to this Agreement and incorporated Proposal(s) are intended to provide Client with information believed to be reasonable and accurate by Consultant, and helpful to Client in making informed business decisions. However, no representation, statement, projections, guarantee of financial results or warranty, express or implied, is made as to the accuracy or completeness of the information provided by Consultant or the NSSF, and nothing contained herein is, or should be relied upon as a warranty, promise or guarantee of success, whether as to the past or the future. Additionally, Client understands and agrees that Consultant is not responsible for the operations of Client's business, and that nothing contained herein is intended as legal, accounting or investment advice, nor should it be taken as such. Client should consult its own legal counsel and/or financial advisor with respect to Client decisions. The Client agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless the Consultant, its officers, directors, employees and sub-consultants (collectively, Consultant) against all damages, liabilities, claims or costs including reasonable attorneys' fees and defense costs, whether sought by a third party, government agency or otherwise, arising out of or in any way connected with this Agreement or the performance by any of the Parties of the services under this Agreement and incorporated Proposal(s), excepting only those damages, liabilities, claims or costs directly attributable to the willful and grossly negligent acts by the Consultant. In no event shall the liability of Consultant for any claims relating to this Agreement or work hereunder exceed in the aggregate Fees received by Consultant hereunder. Further, Consultant will not be liable for any indirect or consequential damages or lost profits relating to this Agreement or work hereunder. Consultant hereby disclaims any warranty that the services performed or good delivered under this agreement will be fit for a particular purpose.

6.7 Trade Libel. At anytime after termination and for any geographical area, the Parties shall make no false, defamatory, misleading, inaccurate, half-truth, malicious, false innuendo, or disparaging statements which may

injure the reputation of the other Party, its employees, or its services. Nor shall the Parties take any action that disturb a customer or otherwise cause a customer to cease or limit doing business with the other Party.

6.8 Reasonable Restraints. The Parties agree that the restraints imposed under this Agreement are necessary for the reasonable and proper protection of each Party and such restraints are reasonable with respect to subject matter, length of time and geographical area. Any provision which is considered unenforceable shall not affect the viability of any other provision. In the event a provision is determined by a court or arbitrator of competent jurisdiction to be unenforceable by reason of its being extended over too great a time, too large a geographical area, or too great a range of activities, such provision shall be deemed modified to permit its enforcement to the maximum extent permitted by law.

6.9 Arbitration. Any and all disputes between the Parties, on any basis, whether at law or equity, and pertaining to any causes of action, whether equitable, contractual, or tortious, and pertaining to any alleged damages shall be determined by private, binding arbitration. This shall include issues as to the interpretation, enforcement, breach, and performance of this Agreement. Said binding arbitration shall be conducted by a single arbitrator. Parties waive discovery under any Discovery Act with the exception of (1) each side having the right to propound a single set of Request for Production of Documents and (2) each side having one day set for depositions of the other parties' representatives and employees. The Parties confer jurisdiction upon the arbitrator for any and all pre-judgment provisional remedies, including but not limited to temporary restraining orders, preliminary injunctions, reformation, and specific performance. The Parties waive their rights to any law and motion matters. Any award from the arbitrator shall become a judgment of any court of competent jurisdiction. All Parties will bear equally the cost paid to the arbitrator which will be considered costs of suit to the prevailing party.

6.10 Limitation of Remedies. In the event of Consultant's liability, whether based on contract or tort (including but not limited to, negligence, strict liability or otherwise), Client's sole and exclusive remedy will be limited to, at the Consultant's option, replacement or correction of any Services not in conformance with this Agreement or to the repayment of the portion of compensation paid by Client attributable to the nonconforming Services. The Consultant will not be liable for any other damages, either special, direct, indirect, incidental, consequential or otherwise, and in no event shall the Consultant's liability exceed the compensation for the nonconforming services.

6.11 Entire Agreement. This Agreement, together with the incorporated Proposal(s), contains the entire understanding of the Parties in connection with its subject matter and supersedes all previous verbal or written agreements.

6.12 Notices. Any notice required or permitted to be given under this Agreement shall be in writing and shall be considered to have been given if sent by certified mail to;

Consultant at: NexGen Range Consulting, LLC _____ _____	Client at: _____ _____ _____
--	---------------------------------------

6.13 Invalidity. If any of the provisions of this Agreement shall be held invalid, that invalidity shall not affect any other provisions which can be given effect without the invalid provisions. To this end, the provisions of this Agreement are intended to be and shall be deemed severable. This Agreement has been executed as of the Effective Date.

6.14 Successors. This Agreement and the rights and obligations of the Parties shall bind and inure to the benefit of any successor of the other Party, whether by reorganization, merger, consolidation, sale, or otherwise.

6.15 Survival. The provisions of this Section 6 shall survive the expiration of the Term or the termination of this Agreement.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement effect the date first stated above.

NexGen Range Consulting, LLC, by Jeff Swanson

Client, by

\_\_\_\_\_

\_\_\_\_\_