

Sample Consulting Agreement

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THIS AGREEMENT is between _____, with offices in _____ (hereinafter referred to as "Company") and Wayne Miller Associates, LLC, with offices in Stanhope, New Jersey (hereinafter called WMA).

WHEREAS Company is engaged in the business of _____; and

WHEREAS Company desires to utilize the services of WMA in the furthering of said business, and WMA wishes to provide services to Company in accordance with the terms and conditions hereof;

WITNESSETH: That the parties hereto do mutually agree and covenant as follows:

FIRST: WMA shall furnish professional consulting services and advice to Company or to such third parties as Company may direct, for the benefit of Company, at such times and at such places as may be mutually agreed upon between an authorized representative of Company and WMA.

In so much as Company may be a part of a larger business entity being comprised of other divisions and their subsidiaries, it may be of benefit to Company to direct WMA to perform services for or at these other divisions. If such services are desired, WMA reserves the right to review the requirement to determine if it is in conflict with other work being performed or having been performed by WMA for a third party to whom it is still bound, and to refuse the assignment based on that determination.

Any service performed by WMA for any other related division or for any of their subsidiaries is subject to all of the terms and conditions set forth in this agreement, wherein each division or subsidiary for whom the services are performed is entitled to the same rights and are bound by the same obligations as Company.

Whenever WMA's services are required, advance notice, reasonable under the circumstances, shall be given. However, the parties may, from time to time, establish schedules under which WMA shall furnish services, and such schedules as established and agreed to by the parties shall constitute and satisfy the requirements for advance notice as provided for herein. It is further agreed to that WMA will supply services averaging not less than ____ hours per week, except during vacation and holidays, the combination of which shall not average less than 3 weeks per year nor greater than 6 weeks per year.

WMA agrees not to contact potential customers without the direction of an authorized representative of Company.

In carrying out this Agreement, WMA will report to _____[name], _____[title]. Should _____[name] not be available, WMA may also take direction from _____[alternate], _____[title].

SECOND: The term "consulting services" shall include, but not be limited to: 1) preparation and presentation of technical and sales proposals; 2) preparation and presentation of documentation relating to Company products; 3) participation in or attendance at meetings, conferences, symposiums and the like; 4) direct participation and/or assistance in the design, development, fabrication, and testing of any technical effort; 5) defining new products; 6) assisting on special assignments involving new business; 7) assisting in hiring and/or evaluating personnel; or 8) any other services as may be required to the extent that such services might reasonably be contemplated as being within the scope of this agreement.

THIRD: This Agreement shall commence on the effective date of the Agreement and shall expire on _____, _____, unless terminated by one of the parties in writing on 6 months notice. Upon the expiration or termination of this Agreement by either party as provided for above, the rights and obligations of the parties under this Agreement shall end, except that in the event that termination of this agreement should be initiated by WMA prior to its expiration, a period of one year from the termination date shall be defined as a Grace period during which certain restrictions shall apply as defined herein.

FOURTH: Company shall furnish to WMA, as required and at its own expense, all tools, equipment, materials, facilities, and other items reasonably necessary for the satisfactory performance of WMA's services. Company shall also make available to WMA, as and when reasonably required, such technical and/or supporting personnel and such information and/or data as are deemed necessary for the satisfactory performance of WMA's services. To the extent that WMA utilizes tools, equipment, materials, facilities, and other items furnished by Company, WMA shall at all times and places comply with all provisions pertaining to the use, care, and protection of such items or facilities as established by Company to the same extent as would such provisions be applicable to Company employees under the same or similar circumstances. WMA shall be held accountable for loss, damage, or destruction of any Company property or property in the care of Company or property of or in the care of any of Company's sister and parent companies which results from such acts of WMA as constitutes negligence or willful or wanton conduct. Upon the expiration or termination of this Agreement for any reason, WMA shall immediately return to Company all property furnished to WMA. Pending WMA's full compliance with this provision, the obligations of WMA with regard to such property as provided for herein shall continue in full force and effect. Further, and in addition to any other remedies or procedures available to Company under this Agreement or by law, Company shall have the right to withhold any compensation due and owing WMA as of the date of expiration or termination of this Agreement until WMA has fully complied with the provisions of this paragraph. In addition to the facilities and equipment supplied to WMA under the provisions herein, WMA maintains offices and equipment which are suitable for the performance of many of WMA's services. WMA will use these facilities and equipment in lieu of those provided by Company at WMA's discretion, but with no additional obligation to Company. Likewise, it may be expedient

for WMA to utilize the facilities and equipment provided by Company to conduct activities not relating to Company activities. Such use shall not exceed reasonable limits and shall involve no additional obligation to WMA.

FIFTH: WMA is an INDEPENDENT CONTRACTOR and is not an employee of Company and thus shall not be entitled to any employee benefits of any type other than as may be expressly provided for in this Agreement. The references herein to Company employee policies or procedures is intended only to establish standards of conduct but shall in no way be construed as establishing WMA's right to compensation or benefits not expressly provided for herein or as establishing WMA as an employee or agent.

SIXTH: WMA shall take all precautions necessary or required by law for the protection of persons and/or property in the performance of services and shall, except if by negligence or willful or wanton conduct on the part of Company or any of its employees, indemnify and hold harmless Company and its employees from and against any and all liabilities and losses whatsoever on account or by reason of any death, injury, loss, or damage suffered or sustained in the course of or in connection with the services performed hereunder. WMA shall maintain at its own expense insurance of the types and in the amounts required by law and as may be determined by Company to be adequate to protect Company and its employees.

SEVENTH: WMA shall be compensated, for services performed hereunder, as follows:

A) For time actually spent by Wayne Miller, proprietor of WMA, with the authorization of an authorized Company representative, the amount of \$ _____ (U.S.) per hour.

B) For time spent by any other individual hired by WMA to perform services authorized by an authorized Company representative, an amount not to exceed that of item A) for a service of equivalent magnitude and quality.

C) Unless expressly provided for in writing by an authorized Company representative, the rate of compensation set forth above shall not be increased on account of any premium payments for overtime, shift differential, location at which services are performed, performance on holidays, or the like. (Nothing contained herein shall preclude WMA from being awarded a bonus for contracts received by Company in which WMA played a principal role during the pre-contract stage.)

D) Time spent under A) and B) above shall include time spent in travel up to a maximum total billing for any one day of 10 hours, including work and travel time. Travel time shall include all days or portions of days when the individual is required to be away from home while performing services for Company.

E) The rate of payment in item A) above is expressed in U.S. dollars as of the effective date of this Agreement and shall be adjusted on each anniversary of the effective date of this Agreement, based on the annual cost of living index published by the U.S. Government for the State of New Jersey.

F) By the third working day of each month that payment is expected, WMA will submit an invoice to Company, broken down by job account in accordance with Company job accounting procedures. In recognition of WMA's status as an independent contractor, the gross amount earned will be mailed or made available at the Company accounting office monthly by the 15th day of the month of the invoice date without deduction of any amounts on account of income taxes, F.I.C.A. payments, or the like, except that Company may, at any time, make deductions of any amounts due and owing Company. WMA shall be responsible to pay all taxes, fees, and the like arising out of the business relationship described in this Agreement.

EIGHTH: In addition to compensation as provided for above, WMA shall be reimbursed for ordinary and necessary travel expensed incurred in connection with the performance of services under this Agreement. Billing for such reimbursement shall be included as part of WMA's normal billing and shall not be broken out separately. Reimbursement shall be at 100 per cent of actual cost and shall include, but not be limited to, the following:

A) Transportation, including airfare, train, car rentals, bus, taxi, and other hired transport. B) Entertainment of Company customers, prospective customers, and vendors (whenever warranted). C) Communication expenses while traveling, including telephone, facsimile, and postal charges. D) Lodging. E) Meals.

WMA shall charge all travel expenses to appropriate Company accounts as part of the service performed for that account. Travel expenses shall not be itemized, however, WMA shall maintain proof of such expenses and shall permit authorized representatives of Company to audit them upon request. Time expended by WMA for such audits shall be billed at the standard rate as set forth herein.

NINTH: It is expected that in the course of performing its services for Company, WMA shall generate drawings, designs, specifications, proposals, technical descriptions, memoranda, computer programs, pictorial representations, other graphical representations and work of similar nature, all of which relate directly and specifically to the activities and products of Company, such material hereinafter referred to collectively as "Company Data". Company shall have all right, title, and interest in such Company Data, including without limitation, the literary property interest therein and the right to secure copyright in the name of Company for such terms and renewal terms as are permitted by the laws governing copyright. Further, WMA warrants that none of the Company Data shall infringe upon or violate the literary property right or copyright of any third person, firm, or corporation, and that no such Company Data shall invade the right of privacy or be defamatory of any such third person, firm, or corporation. WMA shall report promptly to Company each notice or claim of copyright infringement received by them in respect of any Company Data delivered to Company under this Agreement and for the duration of this Agreement.

Excluded from the body of material described above as "Company Data" shall be any similar materials not specifically generated as part of the service provided to Company and shall exhibit all of the following attributes:

A) The excluded material shall be of a general nature and bear no direct reference to any of Company's products, business contacts, or activities.

B) The excluded material shall bear a WMA copyright notice.

WMA hereby grants to Company a royalty-free license to use, copy, and reproduce any of the above described excluded material in any manner considered desirable by Company, providing the copyright notice is maintained in accordance with the laws governing copyright. Company shall be responsible for notifying WMA of any copyright infringement on any such material published by Company under this Agreement. Further, Company shall bear responsibility for defending against such infringement. Monetary settlements for such infringements shall be divided equally between Company and WMA.

TENTH: Company shall have the right to secure, for itself, or for the benefit of its customers or other third parties full and complete right, title, and interest to all inventions made by WMA:

A) under, in connection with, or as a result of any services performed by WMA hereunder;

B) with or through the use of information developed or otherwise acquired by Company or any of its employees, the use of which may contribute, in any material way, to such invention.

Included in the term "invention" shall be any development or discovery, relating to any art, machine, manufacture, design or composition of matter, or any new and useful improvement thereof, which is directly related to the services performed by WMA for Company and which is or may be patentable under the laws of the United States of America or any foreign country. Company shall, in the process of filing for such patents, not have title to any claims beyond those relating to the specific application for which it was developed by WMA while performing services for Company.

ELEVENTH: Pursuant to the provisions of paragraph TENTH of this Agreement:

A) WMA shall, at all times, during the performance of any services provided for hereunder, maintain a record of all inventions which are made, within the scope of this Agreement, such records to become the property of Company;

B) WMA shall promptly and fully disclose all such inventions to an authorized representative of Company;

C) WMA shall, at all times, either during or subsequent to the term of this Agreement, refrain from the exercise of any independent action with regard to any such invention which would violate the spirit or intent of this Agreement or which, in any way, may adversely affect or interfere with the rights and/or obligations of Company thereto;

D) WMA shall, upon request of Company or any of its duly authorized agents, either during or subsequent to the term of this Agreement, execute or cause to be executed all instruments of assignment and all other instruments or documents, convey all information, and perform, or cause to be performed all other things reasonably deemed by Company to be necessary or desirable to secure to Company rights to such inventions as for the purpose and intent of this Agreement;

E) Company shall compensate WMA for the services provided for in paragraph Eleventh per the provisions of paragraph Seventh during the term of this Agreement;

F) Company shall notify WMA within 30 days of the expiration or termination of this Agreement of any and all inventions to which it has right or believes to have right as of the expiration or termination of the Agreement;

G) Subsequent to the expiration or termination of this Agreement, Company shall compensate WMA for the services provided for in paragraph Eleventh at a rate to be negotiated, based upon WMA's rate structure at the time the services are performed.

TWELFTH: WMA shall not, either during or subsequent to the term of this Agreement, directly or indirectly, publish or otherwise divulge, to any unauthorized person, any information, whether acquired by WMA in the course of the performance of services, hereunder, or obtained from employees of Company, which:

A) is known by WMA to be designated as Top Secret, Secret, or Confidential by any Department of the United States Government;

B) is known by WMA to be designated confidential information, or to be in the nature of a trade secret, or to be of the type not usually divulged to the public by Company or is of the type not known to the general public; or

C) relates directly or indirectly to any invention to which Company may have right within the scope of this agreement.

It is further agreed that WMA will not, during the term of this Agreement, sell for, represent, work for, or take compensation from any other firms, persons, corporations, or other entities involving services that are in direct competition to the services performed by WMA for Company. In this regard, WMA shall take every precaution not to enter into a conflict of interest situation. Should Company choose to increase the scope of its activities during the term of this Agreement such that it is in conflict with other work

being performed or having been performed by WMA for a third party to whom it is still bound, WMA will notify Company of this conflict and avoid completely any involvement in such activities at Company.

WMA further agrees that during the Term of this Agreement and/or any Grace period as defined herein, it will not, directly or indirectly, 1) encourage employees of Company to leave the employ of Company for the purpose of seeking or obtaining employment in any other activity with which WMA is or intends to become affiliated; 2) encourage employees of Company to leave the employ of Company for any other benefit to WMA; or 3) cause agents and/or independent contractors of Company to cease their relationships with Company.

WMA further agrees that during the Term of this Agreement and/or any Grace period as defined herein, it will not, directly or indirectly, take or use any Company property, such as drawings, reports, data, or proposals, design or manufacturing information, wage and salary information, records or the like nor disclose any information of a privileged nature, without the prior written consent of Company.

WMA further agree that during any Grace period as defined herein, it will not, directly or indirectly, participate (on WMA's behalf or on behalf of any other firm, person, corporation, or other entity) in any matters which were the subject of Company bids, of which WMA had knowledge, and which were submitted or in preparation during or prior to the termination of the Agreement.

WMA further agrees that the provisions of this Clause Twelfth are of vital importance to Company and incorporate crucial Company policies for safeguarding valuable proprietary rights and interests of Company. Accordingly, WMA agrees that Company shall be entitled to injunctive relief, in addition to all other remedies permitted by law, to enforce the provisions of this Clause Twelfth.

THIRTEENTH: WMA shall not, except as required to perform his services or with the consent of an authorized representative, remove from the premises, data, records, or the like relating to Company products, research, or other activities, and if, at the expiration or termination of this Agreement, any such property, data, records or the like are in WMA's possession, WMA shall return the same to Company on the date on which the expiration or termination of this Agreement is effective.

FOURTEENTH: To the extent that Company policies and/or procedures are referenced herein and made applicable, in whole or in part, to this Agreement, Company certifies that all such procedures have been made available to WMA and WMA certifies that he has had the opportunity to review all procedures submitted and concurs in their application.

FIFTEENTH: WMA warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee. WMA understands that Company will pay it no commission, percentage, brokerage, or contingent fee. WMA understands

that Company may disclose this Agreement to its customers and to the U.S. Government, and WMA agrees to be bound by the laws of the Government insofar as they relate to this Agreement.

SIXTEENTH: In the event any services performed hereunder require access to information of the kind set forth in Paragraph Twelfth, WMA shall safeguard all such information made available to him and shall provide and maintain a secure system of controls in accordance with prevailing customs and security requirements to protect such information. Designated representatives of the Government responsible for inspection pertaining to industrial security shall have the right to inspect, at reasonable intervals, the procedures, methods, and facilities utilized by WMA in complying with the requirements contained herein and WMA agrees to effect compliance with any requirements necessary by said Government representatives.

SEVENTEENTH: This Agreement, or any rights, obligations, or claims hereunder, shall not be assigned to any third party by either WMA or Company without the written agreement of an authorized representatives from both parties, and any such assignment in violation of this prohibition shall be null and void.

EIGHTEENTH: This Agreement constitutes the entire agreement of the parties hereto, and all previous communications between the parties, whether written or oral, with reference to the subject matter of this Agreement, are hereby canceled and superseded.

NINETEENTH: No modification of this Agreement shall be binding upon the parties hereto, or either of them, unless in writing and duly signed by the respective parties hereto. This Agreement shall be binding upon the date of the latest of the signatures below.

TWENTIETH: It is the intent of both parties that this Agreement shall be a transaction occurring in the State of New Jersey and shall be construed and interpreted, in accordance with the laws of New Jersey notwithstanding its choice of law rules. Any litigation hereunder by either party shall be brought in a Court of the State of New Jersey unless such Court decides that it does not have jurisdiction. Both parties by their signature agree hereby to submit to the jurisdiction of the Courts of the State of New Jersey.

Wayne Miller Associates, LLC	_____ [Company]
By: _____	By: _____
Wayne Miller	_____ [name]
Proprietor	_____ [title]
Date: _____	Date: _____