

AICNCC STANDARD CONTRACT

PREFACE TO CONSULTING AGREEMENT

This sample agreement is posted for educational purposes. It is meant to provide the technical consultant with an outline of the important issues relating to the business relationship between a client and a technical consultant. This sample agreement is the result of a committee of experienced consultants combining portions of agreements they have successfully used over the years. It includes issues that they felt needed to be addressed in such an agreement. The reader of this "template" is encouraged to learn from what is presented here and to take into consideration the teachings of those portions that apply to the particular relationship that the consultant wishes to establish with his client. It is important to note that each agreement to conduct business with a different client will need to be tailored for that particular client and will require modifications from this "template." You and the client may discuss and agree to some other wording for any particular paragraph, or you will need to include special terms not included in the sample agreement. "One size does not fit all", but be sure that at least the issues covered in this "template" agreement have been addressed in appropriate fashion.

To have a successful relationship, it is imperative that both parties agree to the terms of their relationship before they start doing business with each other. A properly negotiated agreement will lay out all of the rights and obligations of both parties clearly and will seldom have to be referred to again by either party and, hopefully, never by a court. Additionally, it is important to document as much of this relationship as possible to avoid any potential misunderstandings. However you choose to memorialize your understandings, be certain that you and the client agree to the terms of a written agreement. Do not rely on some oral representations such as "don't worry."

Lastly, it is important to review any agreement carefully before signing it. Often, the client will have an agreement that was prepared for him by his lawyer. Be aware that an agreement offered by the client may be incomplete or ambiguous, or worse, very one sided in favor of the client. There will probably be subjects omitted that the consultant needs for his/her protection. Moreover, if a "Purchase Order" is issued by the client, be sure that it does not supercede or negate any part of the written agreement you choose to use (see Section 10(c)).

BE AWARE THAT THE WRITERS OF THIS DOCUMENT HAVE NO LICENSE TO GIVE LEGAL ADVICE IN ANY STATE, AND THE POSTING OF THIS SAMPLE AGREEMENT ON THE WEB IS NOT INTENDED TO OFFER LEGAL ADVICE.

THERE ARE MANY VARIATIONS AMONG STATE AND LOCAL LAWS. AN AGREEMENT CREATES LEGALLY ENFORCEABLE RIGHTS AND RESPONSIBILITIES AND WILL AFFECT YOUR OWNERSHIP OF INTELLECTUAL PROPERTY. NOTE, TOO, THAT THE SAMPLE AGREEMENT CONTEMPLATES THAT THE CLIENT AND THE CONSULTANT WILL BE INDEPENDENT CONTRACTORS AND NOT EMPLOYER AND EMPLOYEE. THE TAX COSTS AND REPORTING RESPONSIBILITIES DIFFER GREATLY BETWEEN THESE TWO FORMS OF LEGAL RELATIONSHIPS. HOW THE RELATIONSHIP YOU ENTER WITH A CLIENT WILL BE VIEWED BY THE INTERNAL REVENUE SERVICE WILL DEPEND UPON A VARIETY OF FACTORS, INCLUDING THE FINAL TERMS OF YOUR AGREEMENT. FOR THESE REASONS, AMONG OTHERS, WE STRONGLY RECOMMEND THAT YOU ALWAYS HAVE AN ATTORNEY WHO HAS YOUR INTEREST IN MIND REVIEW YOUR AGREEMENT BEFORE YOU SIGN IT.

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CONSULTING AGREEMENT

This Agreement, dated as of [Date], is between (*Consultant's business name and address*) _____ ("*CONSULTANT*"), a [state] corporation, and (client's business name and address) _____ ("*CLIENT*"), a [state] corporation.

RECITALS

A. *CLIENT* desires to retain *CONSULTANT* to render consulting and advisory services for *CLIENT* on the terms and conditions set forth in this Agreement and *CONSULTANT* desires to be retained by *CLIENT* on such terms and conditions.

NOW, THEREFORE, *CLIENT* and *CONSULTANT* agree as follows:

1. Retention of Consultant; Services to be Performed. *CLIENT* hereby retains *CONSULTANT* for the term of this Agreement to perform the consulting services set forth in Schedule A for *CLIENT* ("*Services*").

Schedule A should list all services to be performed and deliverables to be provided, and a time schedule for completion, if appropriate. Be complete. This is the section that controls the scope of the work. All estimates or fixed price quotations are based on this statement of scope.

In rendering Services hereunder, *CONSULTANT* shall be acting as an independent contractor and not as an employee or agent of *CLIENT*. As independent contractors, neither *CONSULTANT* nor *CLIENT* shall have any authority, express or implied, to commit or obligate the other in any manner whatsoever, except as specifically authorized from time to time in writing by an authorized representative of *CONSULTANT* or *CLIENT*, as the case may be, which authorization may be general or specific. Nothing contained in this Agreement shall be construed or applied to create a partnership. *CONSULTANT* shall be responsible for the payment of all federal, state or local taxes payable with respect to all amounts paid to *CONSULTANT* under this Agreement.

2. Compensation for Consulting Services. For Services hereunder, *CLIENT* shall pay to *CONSULTANT* a fee of \$xxxx per [unit of time]. [Alternative: provide a table of fees and a schedule of payments.] The minimum time to be billed for any one day for work performed at *CONSULTANT'S* location will be [number of hours]. The minimum time to be billed for any one day for work performed at *CLIENT'S* location will be [number of hours].

3. Expenses. *CLIENT* shall reimburse *CONSULTANT* for all reasonable travel and other out-of-pocket expenses incurred by *CONSULTANT* in rendering Services hereunder. Travel expenses shall include the cost of any travel by personal vehicle to a location more than [number of] miles from *CONSULTANT'S* primary work location [or residence], the costs of any travel requiring public transportation, the costs of meals, and the costs of necessary lodging. The costs of time required for traveling shall be paid for all time *CONSULTANT* is away from *CONSULTANT'S* primary work location [or residence], but excluding any time spent on personal business or at a place of temporary lodging. *CLIENT* shall pay such reimbursement within 30 days after receipt of appropriate receipts or documentation of the expenses. [This paragraph may be replaced by travel and expenses terms defined

in the statement of work.]

4. Billing. *CONSULTANT* shall invoice *CLIENT* [state billing schedule], providing a listing of labor terms and expenses. Payment on invoices so provided shall be due within [number of] days of the invoice date. [This paragraph may also be replaced by billing terms defined in the statement of work.]

5. Confidential Information. Confidential information of any nature that either party acquires regarding any aspect of the other party's business shall be treated in strict confidence. Information so obtained shall not be divulged, furnished or made accessible to third parties without the written permission of the other party to this Agreement. Both parties retain the right to do business with third parties in matters that may be competitive with the interests of the other party to this Agreement. However, the confidentiality constraints above shall be binding and have precedence over these business matters. Upon termination of this Agreement, the terms of this paragraph shall remain in effect for [number of] years.

6. Ownership of Intellectual Property.

(a) Intellectual property rights of each party shall be governed by the following:

See the "Addendum - IP Alternative Provisions" below as the starting framework for negotiations between Consultant, Client and their respective lawyers.

(b) *CLIENT* shall be responsible for verifying any property rights of other parties prior to use of any work product provided under this Agreement.

(c) *CLIENT* acknowledges that the use of any design, advice, drawing or other service provided by *CONSULTANT*, its employees and agents does not relieve *CLIENT's* responsibility [as a manufacturer and seller] to execute sufficient testing and judgment to ensure that any resulting product is suitable for usage in *CLIENT's* market.

7. Term and Termination.

(a) Unless terminated at an earlier date in accordance with Section 7(b), this Agreement shall commence as of the date first written above and shall continue until [specify date or term, e.g., one year].

(b) This Agreement shall be terminated [only for cause - define] or [for no cause when either party gives at least [specify] days written notice to the other party of the intent to terminate this Agreement. *CONSULTANT* shall be entitled to receive from *CLIENT* all fees and expenses incurred up to the date of termination in accordance with the billing procedures set forth in Section 4.

8. Indemnification. *CLIENT* agrees to indemnify, defend and hold harmless *CONSULTANT* against any and all loss, liability, expenses and costs (including attorneys' fees, judgments, fines and amounts paid in settlement) actually and reasonably incurred by *CONSULTANT* in connection with any threatened, pending, completed or future action suit or proceeding to which *CONSULTANT* is, or is threatened to be, made a party arising from or related to Services that have been provided hereunder. The terms of this Section 8 are non revocable and shall survive the termination of this Agreement.

9. Disputes. Any action based on this Agreement, including disagreement, disputes regarding the terms and conditions, alleged breaches of contract, and remedies under contract, shall be governed by the laws of the State of [your State] and shall be adjudicated exclusively by a court of competent jurisdiction in [your city and State]. [Consider mediation, arbitration or another alternative dispute resolution procedure.]

10. Miscellaneous.

(a) Entire Agreement. This Agreement (including the exhibits, schedules and other documents referred therein) constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement supersedes any and all prior agreements, oral or written, between the parties with respect to the subject matter hereof.

(b) Severability. If any provision of this Agreement is for any reason declared to be invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected thereby. Such invalid or unenforceable provision shall be deemed modified to the extent necessary to render it valid and enforceable, and if no modification shall render it valid and enforceable, this Agreement shall be construed as if not containing such provision and the rights and obligations of the parties shall be construed and enforced accordingly.

(c) Amendment, Waiver, Modification or Termination. No amendment, waiver or termination or modification of this Agreement shall be binding unless it is in writing and signed by both *CONSULTANT* and *CLIENT* and dated subsequent to the date hereof. Performance of work by *CONSULTANT* and/or acceptance of payment by *CONSULTANT* for work performed and/or work to be performed for *CLIENT* beyond the scope of this Agreement does not constitute acceptance by *CONSULTANT* of amendments or modifications to this Agreement nor shall they be binding.

(d) Assignment. This Agreement and the rights and obligations of the parties hereunder shall not be assignable by either party without prior written consent of the other party.

(e) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives and, to the extent permitted by subsection (d), successors and assigns of the parties hereto.

IN WITNESS WHEREOF, *CLIENT* and *CONSULTANT* have executed this Agreement as of the date set forth in the first paragraph.

Authorized signature for *CONSULTANT*

Title Date

Authorized signature for *CLIENT*

Title Date

INTELLECTUAL PROPERTY

The following paragraphs refer to your intellectual property rights and may affect your royalty or other remuneration. Their content and wording depends on many factors including the type of work undertaken. Our committee can not make any recommendation at this time. In any event the choice will require negotiation between CONSULTANT and CLIENT and should be reviewed by CONSULTANT's attorney.

ADDENDUM-IP ALTERNATIVE PROVISIONS

Many CLIENTS will request an assignment of all intellectual property rights in the work product generated by CONSULTANT'S Services. The following paragraphs A through H provide for a

general assignment of rights, while still preserving certain rights of CONSULTANT.

IP A

Grant of Rights to Client.

CONSULTANT grants and assigns to *CLIENT* all rights to use any work product and to develop, manufacture, market or otherwise commercialize any product based on, directly related to or directly making use of the Services.

IP B

Disclosure of Inventions.

CONSULTANT agrees to promptly disclose to *CLIENT* all ideas, designs, practices, processes, apparatus, improvements, inventions and discoveries ("Inventions") by *CONSULTANT* made or first reduced to practice in the course of performing Services to *CLIENT*.

IP C

Assignment to Client.

CONSULTANT agrees to assign, and does hereby assign to *CLIENT*, all right, title and interest in and to all such Inventions. *CONSULTANT* agrees to cooperate with *CLIENT* and to execute all proper documents, at the expense (including time at the then current compensation rate), of *CLIENT*, to enable *CLIENT* to obtain intellectual property protection in the United States and foreign countries in the Inventions.

IP D

Limitation.

Paragraph C shall not apply to any Invention meeting the following conditions:

- (1) Such Invention was developed entirely on *CONSULTANT*'s own time;
- (2) Such Invention does not relate (i) directly to the business of *CLIENT*, or (ii) to *CLIENT*'S actual or demonstrably anticipated research or development; and
- (3) Such Invention does not result from any work performed by *CONSULTANT* for *CLIENT*.

IP E

Consultant's Right to Use Inventions.

CONSULTANT retains the royalty-free right to use an Invention and incorporate it into any product in a field unrelated and non-competitive with *CLIENT*. *CLIENT* retains the right to sell or otherwise dispose of the rights, title and interests granted by this Agreement as *CLIENT* sees fit; provided that this Agreement does not limit the rights of *CONSULTANT* authorized under the foregoing provision. *CLIENT* is obligated to notify *CONSULTANT*, in writing (xx) days prior to such transfer.

IP F

Copyright Rights

All right, title and interest in all copyrightable material which *CONSULTANT* shall conceive or originate, either individually or jointly with others, and which arise out of the performance of Services under this Agreement shall be the property of *CLIENT* and are by this Agreement assigned to *CLIENT*. *CONSULTANT* agrees to cooperate with *CLIENT* and to execute all necessary documents at the expense (including time at the then current compensation rate) of *CLIENT* to assist *CLIENT* in

obtaining and registering copyrights on such materials in any and all countries. Where applicable, works of authorship created by *CONSULTANT* for *CLIENT* in performing Services under this Agreement shall be considered "works made for hire" as defined in the U.S. Copyright Act.

[If the Agreement calls for the creation of software, the parties should address specifically the issue of copyright ownership in the software, the right to register copyright rights in the software in the United States Copyright Office and any license back to CONSULTANT if CLIENT is to own the copyright rights or to CLIENT, if CONSULTANT is to own the copyright rights in the software.]

IP G

Consultant's Right to File for Rights in Inventions and Copyrightable Material.

If, within 180 days after written disclosure of an Invention by *CONSULTANT* to *CLIENT*, *CLIENT* does not file appropriate documents with the United States Patent and Trademark Office, or any other national or international agency (USPTO+) for pursuing intellectual property rights, including, but not limited to, patents or database protection, *CONSULTANT* shall be free to independently file with the USPTO+ after notifying *CLIENT* of *CONSULTANT'S* intended action. *CLIENT* retains the right to use the patent, if issued, upon payment of a negotiated royalty. However, *CONSULTANT* shall be free to sell rights to third parties for use of the Invention.

IP H

Consultant's Ownership of Material.

CONSULTANT shall retain ownership and possession of all notebooks, notes, drawings and similar materials, including computer generated documents generated by *CONSULTANT* in the performance of Services under this Agreement. Intellectual property rights to all documents, drawings and instruments of service, whether or not delivered to *CLIENT* under the terms of this Agreement, shall remain *CONSULTANT'S* property until all terms of this Agreement are satisfied. Upon *CLIENT'S* request, copies of these items shall be delivered to *CLIENT* at *CLIENT'S* expense. All conditions of confidentiality of these documents shall be in effect as defined elsewhere in this Agreement.

Alternative Provision in which CONSULTANT is the owner of all intellectual property rights with a license granted to CLIENT.

IP I

Ownership of Rights by CONSULTANT

CONSULTANT shall own all right, title and interest in any work product, Invention or copyrightable material based on, related to or making use of the Services provided hereunder. *CONSULTANT* grants *CLIENT* the [non-exclusive/exclusive] right and license to make, have made, use and sell products in *CLIENT'S* field which are based on, related to, or making use of the Services provided hereunder. Upon the issuance of a patent, based on, related to, or making use of the Services, *CLIENT* and *CONSULTANT* shall negotiate and sign a patent license agreement, pursuant to which *CONSULTANT* shall receive a mutually agreed-upon royalty from *CLIENT* for each product or part thereof which is manufactured by, or sold by or on behalf of *CLIENT* and covered by a patent claim.

