

CONSULTING AGREEMENT

This Agreement, dated as of Friday, May 19, 2000, is between Scott Henion Designs (“*CONSULTANT*”), and (“*CLIENT*”).

RECITALS

A. *CONSULTANT* has expertise in product development and/or experience in work required by *CLIENT*.

B. *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”).

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; *provided, however*, that if *CLIENT* is determined to be liable for collection and/or remittance of any such taxes, *CONSULTANT* shall immediately reimburse *CLIENT* for all such payments made by *CLIENT*.

2. Compensation for Consulting Services.

For Services hereunder, *CLIENT* shall pay to *CONSULTANT* a fee of \$65 per hour. The minimum time to be billed for any one day for work performed at *CONSULTANT*'s location will be ½ hour. The minimum time to be billed for any one day for work performed at *CLIENT*'s location will be 1 hour.

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 50 miles from

CONSULTANT's primary work location, 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, 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.

4. Billing.

CONSULTANT shall invoice *CLIENT* monthly, providing a listing of labor terms and expenses. Payment on invoices so provided shall be due within 30 days of the invoice date. The *CONSULTANT* may invoice *CLIENT* according to project-defined milestones as needed.

The *CONSULTANT* may include subcontractor costs in an invoice as they occur. The *CLIENT* may choose to pay a subcontractor directly if so desired. Payment of subcontractors shall be decided in advance of any use of the subcontractors.

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 3 years unless otherwise specified.

6. Ownership of Intellectual Property.

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

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.

Limitation.

Paragraph (a) 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*.

(b) 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.

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

(d) *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. Reuse

Any design, advice, drawing, or other service provided by *CONSULTANT* that is not specific to the *CLIENT*'S needs may be reused by the *CONSULTANT* for other clients including competitors. This does not include any material covered by any copyright or intellectual property protection.

CLIENT may reuse any design, advice, drawing, or other service provided by *CONSULTANT* unless covered by any copyright or intellectual property protection not owned by the *CLIENT*.

8. Term and Termination.

(a) Unless terminated at an earlier date in accordance with Section 8(b), this Agreement shall commence as of the date first written above and shall continue for a period of one year. This Agreement shall be automatically renewed for successive year terms, unless terminated at an earlier date in accordance with Section 8(b).

(b) This Agreement shall be terminated only if replaced with a new contract or when either party gives at least 30 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.

9. 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 shall survive the termination of this Agreement.

10. 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 Georgia and shall be adjudicated exclusively by a court of competent jurisdiction in Georgia.

11. 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*

Authorized signature for *CLIENT*

Title

Title

Date

Date