



CONSULTANT'S AGREEMENT

_____ **Client Name**

_____ **Project Name**

This AGREEMENT, inclusive of Attachments "A" and "B" incorporated by reference herein (hereinafter collectively referred to as the "Agreement"), is entered into this ____ day of _____, 20__ between the New Jersey Manufacturing Extension Program, Inc., having a principal office at 2 Ridgedale Ave., Suite 305, Cedar Knolls, New Jersey 07927 (hereinafter "NJMEP") and _____, having a principal place of business at _____ and EIN-Social Security Number of _____ (hereinafter the "Consultant").

1. **Entire Agreement.** The parties to the Agreement have read the terms of the Agreement and agree that this document constitutes the sole agreement of the parties with respect to the Consulting Services referred to in Paragraph 2 hereof to the satisfaction of NJMEP and consistent with the standard of professional care and skill customarily provided in performance of such services. The parties further agree that the Agreement supersedes any and all other verbal and/or written understandings or agreements with respect to the Consulting Services referred to in Paragraph 2 hereof.
2. **Consulting Services.** Consultant agrees to perform the services set forth in Attachment A. Said services shall hereinafter be referred to as the "Consulting Services."
3. **Term.** This Agreement shall become effective as _____, _____ and shall continue in effect until _____, _____ or until terminated or expired in accordance with Paragraph 5 hereof. The term of the Agreement as set forth herein may be extended only upon the written consent of NJMEP.
4. **Compensation.** NJMEP shall pay the Consultant the amount of \$_____.00 for completion of the Consulting Services. Payment shall be due thirty (30) days after Consultant's invoice is received in the Finance department at NJMEP in Cedar Knolls according to the Payment Schedule in Attachment B.
5. **Expiration and Termination.** The Agreement shall expire upon the Consultant's completion of the Consulting Services and/or the conclusion of the term of the Agreement as set forth in Paragraph 3 hereof including, when applicable, any extension pursuant to Paragraph 3 hereof, whichever is earlier.

The Agreement may be terminated by NJMEP with or without cause at any time prior to expiration upon advance written notice of NJMEP's intent to terminate as prescribed herein. If termination is for cause, NJMEP shall provide the Consultant five (5) days advance written notice of intent to terminate. If termination is without cause, NJMEP shall provide the Consultant thirty (30) days advance written notice of intent to terminate.

6. **Amendment.** The Agreement shall not be amended, modified or otherwise altered except upon the written consent of both parties, executed by representatives of the respective parties duly authorized to execute said amendment(s) and/or modification(s) on behalf of the respective parties.
7. **Jurisdiction, Venue and Governing Law.** The parties consent to the jurisdiction of the Superior Court of New Jersey in any action or dispute arising out of the Agreement. The Agreement shall be deemed to have been made in the State of New Jersey, County of Morris and shall be governed, construed and interpreted in all respects in accordance with the laws of the State of New Jersey. The parties further agree that venue in any action or dispute brought hereunder shall be laid in the State of New Jersey, County of Morris.
8. **Warranty of Authority.** Each of the individuals executing the Agreement on behalf of the respective parties hereto hereby warrants and represents that they have been duly authorized to execute and/or enter into the Agreement on behalf of the respective parties.
9. **Consultant's Capacity, Responsibilities and Representations.** The parties agree that Consultant is an independent contractor and not an agent or employee of NJMEP and shall be considered an independent contractor for any and all purposes under the Agreement and in construing the Agreement. Accordingly, in addition to performing the Consulting Services, Consultant shall be responsible for the payment of all taxes and withholding of any and all payments associated with his or her compensation for performance of the Consulting Services.

The parties further agree that the Consultant shall not have the authority to enter into any contract and/or agreement and/or to otherwise bind NJMEP in any way to any third party.

Consultant hereby warrants and represents and warrants that Consultant and/or Consultant's employees and/or agents have the right to perform the Consulting Services and to disclose to NJMEP and/or NJMEP's customer(s) all information transmitted to NJMEP and/or NJMEP's customer(s) in performance of the Consulting Services and that any information submitted to NJMEP and/or NJMEP's customer(s) in connection with performance of the Consulting Services, whether patentable or not, may be used fully and freely by NJMEP and NJMEP's customer(s).

Consultant hereby further warrants and represents that neither the Consultant nor Consultant's employees and/or agents will be in breach of any contract and/or agreement with any third party in or as a result of their performance of the Consulting Services.

10. **Nondisclosure of Confidential Information.** Consultant hereby acknowledges that during the term of the Agreement, Consultant may, by virtue of Consultant's performance of Consultant's obligations under the Agreement, learn, receive or have access to the Confidential Information of NJMEP and/or NJMEP's customer(s). For purposes of the Agreement, Confidential Information shall mean all confidential information including, but not limited to, product designs, product sources, product development techniques or plans, processes, machinery, know how, apparatus, compilations of information, philosophies, trademarks, inventions, trade secrets, future plans, copyrightable matter, records, sales, prices, discounts, costs, information and strategies, business acquisition plans, personnel data, drawings, diagrams, customer lists and similar information of a proprietary nature relating to any business or technology of NJMEP and/or NJMEP's customer(s) if and when the same has been delineated and/or labeled "confidential" by NJMEP and/or its client prior to the Consultant's access to said information.

Consultant hereby agrees that the Confidential Information shall be and remain the exclusive property of NJMEP and/or NJMEP's customer(s). Consultant further hereby agrees and covenants that Consultant shall not use the Confidential Information except to the extent necessary to perform the services to which the Consultant is obligated under the Agreement.

More specifically, Consultant agrees and covenants that Consultant shall not in any way and/or for any purpose whatsoever, during or at any time subsequent to expiration or termination of the Agreement, directly or indirectly, reveal to any third party and/or use, for the benefit of Consultant or any third party, the Confidential Information of NJMEP and/or NJMEP's customer(s). Consultant further agrees and covenants that Consultant will take all reasonable precautions to safeguard the confidential nature of the Confidential Information and to prevent the inadvertent disclosure thereof.

Consultant shall make no copies of any Confidential Information without the prior written consent of NJMEP. Upon expiration or termination of the Agreement, or at the request of NJMEP at any time, any and all copies of Confidential Information, in whatever medium, in the possession of Consultant, shall be promptly returned to NJMEP irrespective of whether said copies of Confidential Information were procured by Consultant with the consent of NJMEP.

11. **Non-Competition.** Consultant hereby agrees and covenants that during, and for one (1) full year after expiration or termination of the Agreement, Consultant shall not, in the State of New Jersey, either as principal, partner, agent, employee, director, officer or in any other capacity whatsoever: (1) perform, directly or indirectly, any services similar to those provided by NJMEP and/or its affiliates and/or subsidiaries to or on behalf of any individual, firm, partnership, company, corporation and/or other entity to whom NJMEP introduced the Consultant and/or for whom Consultant performed services in connection with the Agreement or (2) solicit any business similar to the business engaged in by NJMEP from any individual, firm, partnership, company, corporation and/or other entity to whom NJMEP introduced the Consultant and/or for whom Consultant performed services in connection with the Agreement.

The covenant set forth herein shall survive expiration or termination of the Agreement.

12. **Severability.** In the event that one or more of the provisions contained in the Agreement, shall, for any reason, be deemed illegal, invalid or unenforceable in any respect, said illegality, invalidity and/or unenforceability shall not be construed to affect the legality, validity and/or enforceability of any other provision of the Agreement.

13. **Non-Assignability and Successors.** The Agreement and the rights, interests and obligations created by it shall not be assigned, transferred or delegated in whole or in part to any other person, firm, partnership, corporation or other entity without the prior written consent of both parties. Any purported assignment, transfer or delegation without the prior written consent required pursuant to this paragraph shall be void.

With the exception of the prohibition on assignment set forth herein, the Agreement shall be binding upon, and inure to the benefit of any heirs, legatees and/or successors in interest of the respective parties. The Agreement shall further be binding upon any assignees of the respective parties if and when an assignment has been duly authorized pursuant to this paragraph.

14. **Paragraph Numbers & Headings.** The parties agree that any paragraph numbers and headings contained in the Agreement are used solely for purposes of convenience and are not intended to expand, restrict, define and/or otherwise affect the scope and/or substance of the provisions of the Agreement.

15. **Non-Waiver of Breach or Default.** No waiver, or alleged waiver, by either party of any breach or default of any provision in the Agreement shall be deemed to constitute a waiver of any subsequent breach or default. Nor shall the existence of any claim or cause of action by either party against the other, whether predicated on the Agreement or otherwise, constitute a defense to either party's enforcement of any of the provision(s) herein.

16. **Legal Damages Inadequate Remedy for Consultant's Breach.** The parties agree that, notwithstanding anything to the contrary contained in the Agreement, in the event of Consultant's breach of any of the provisions of the Agreement, the remedies at law for such breach would be inadequate. The parties further agree that in addition to the remedies provided for by the Agreement and/or available at law, in equity, or pursuant to statute, NJMEP may apply to any court of competent jurisdiction for, and be entitled to, an injunction to prevent a breach or further breach of the Agreement by the Consultant.

17. **Indemnification.** Consultant hereby agrees to defend, indemnify and hold harmless, NJMEP and/or its officers, trustees, directors, employees and/or agents from and against any and all suits, claims, losses, demands and/or damages, including attorney's fees, arising out of or related to, and/or alleged to have arisen out of or relate to, the Agreement or the work performed thereunder. This paragraph shall not, however, apply to any suits, claims, losses, demands and/or damages resulting solely from the negligence of NJMEP and/or its officers, trustees, directors, employees and/or agents.

Consultant further agrees to carry, for the term of the Agreement, professional liability insurance in the amount of \$500,000.00 and with an insurer acceptable to NJMEP. This paragraph shall survive expiration or termination of the Agreement.

18. **Notices.** All notices pursuant to the Agreement shall be sent registered mail to the following individuals.

For NJMEP:

For Consultant:

John W. Kennedy, CEO
New Jersey Manufacturing Extension Program Inc.
2 Ridgedale Ave, Suite 305
Cedar Knolls, NJ 07927

John W. Kennedy, CEO

Authorized Person, Title

DATE: _____

DATE: _____

Attachment A



Attachment B



Payment Schedule