

# RETAINER AGREEMENT

This Retainer Agreement (this “Agreement” or this “Retainer Agreement”), effective as of [EFFECTIVE DATE], (“Effective Date”) is made by and between [SIGNER.Company], a company organized and existing in [SIGNER STATE], with offices located at [SIGNER ADDRESS] (“Company”) and Nevis Technology LLC, a company organized and existing in NC, with offices located at 8539 Kangaroo Court (“Consultant”).

## BACKGROUND

Company shall describe the specifics of such Services, the compensation to be paid and the schedule, under which such Services shall be provided in the Statement of Work. Company desires to retain your Company to perform certain services on Company's behalf, and Consultant desires to perform such services as described in the Statement of Work (attached hereto as Attachment 1 and incorporated by reference), subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration of the terms and conditions, the parties, intending to be legally bound, agree as follows:

### 1. TERM.

Unless terminated at an earlier date in accordance with Section 6 of this agreement, the term of this Agreement shall be effective on the date of last signature and continue for [NUMBER MONTHS] months after that date, unless extended by Company prior to its expiration.

### 2. SERVICE EXPECTATIONS AND ACCEPTABLE CRITERIA.

The work to be performed under this Agreement is illustrated within the attached Statement of Work. Upon acceptance of the Statement of Work by both parties, Consultant agrees to perform those services set forth in the attached Statement of Work.

Additional Statements of Work may be entered into in writing and signed by both parties, during

the term of this Agreement. Such additional Statements of Work shall be incorporated by reference to this Agreement.

Extension of the period of performance of this agreement may be granted by Company, agreed to in writing and signed by both parties during the term of this Agreement. Such extension shall be issued through a Modification to this agreement.

### 3. CONSIDERATION AND PAYMENT.

As compensation in full for services performed under this Agreement and the Statement of Work, Consultant shall invoice Company and Company shall pay Consultant in accordance with the fees and schedule set forth in the Statement of Work.

In providing services to Company, Consultant shall be acting as an independent contractor and not as an employee or agent of Company. Consultant shall have no authority, express or implied, to commit or obligate Company in any manner whatsoever.

Invoices shall be due and payable thirty (30) days from the receipt and approval of invoice and services referenced thereon, unless otherwise specified in the attached Statement of Work.

All invoices must reference the Retainer Agreement and include the following information.

- Explanation of Services;
- Period of performance, number of hours for invoiced period and cumulative hours;
- Billing rate, total invoiced amount and cumulative invoiced amount;
- Trip report for travel performed, indicating names of persons and companies visited, and purposes of trip;
- Itemized expenses, supported by original receipts;

Invoices may be submitted electronically to:

The Consultant shall be responsible for the payment of all taxes applicable to any compensation paid to Consultant and Company shall not withhold or pay any federal, state, or local income, social security, unemployment and workers compensation taxes related to the work performed under this Agreement.

The Consultant shall be responsible for all expenses incurred in performing duties under the Statement of Work unless otherwise agreed to in the attached Statement of Work.

Company shall reimburse Consultant for only such travel and other expenses as have been authorized in advance in writing and included as a part of each Statement of Work

Reimbursement for all other travel or expenses is not authorized. Local travel is not authorized for reimbursement. Local travel is considered to be a 50 mile radius of the Consultant's business. In addition, Company does not reimburse the contractor for administrative expenses such as postage, photocopying, secretarial support, telephone calls, etc., unless otherwise agreed to in writing by Company.

## 4. CONFIDENTIAL INFORMATION/NON DISCLOSURE.

During the course of such Services, Consultant may be exposed to confidential and proprietary information including but not limited to products, processes, technologies, innovative concepts, customer information, processing capabilities, and information which may be of a personal nature and other valuable personal identity information designated as confidential expressly or by the circumstances in which it is provided (collectively "Confidential Information"). Confidential Information does not include (i) information already known or independently developed by the recipient; (ii) information in the public domain through no wrongful act of the recipient, or (iii) information received by the recipient from a third party who was free to disclose it; (iv) information disclosed to a third party by the owner without restriction.

It is agreed that Confidential Information shall not be revealed or disclosed to any third party at any time, except as may be authorized in writing by an officer or authorized representative of the party that is the proprietary owner of the Confidential Information, or when such disclosure is required by law, subject to the receiving Party giving prior notice to Company to allow it to seek protective or other court orders. Each party receiving Confidential Information hereby agrees that it shall not use, commercialize or disclose such Confidential Information to any person or entity, except to the individuals having a "need to know" (and who are themselves bound by similar nondisclosure restrictions).

In the event that the Receiving Party or its Agents become legally compelled to disclose any of the Confidential Information, the Receiving Party shall use its best efforts to promptly notify Company and provide reasonable cooperation to Company in connection with its efforts to lawfully avoid or limit disclosure and preserve the confidentiality of the Confidential Information in such circumstances.

Both parties acknowledge and agree that the unauthorized disclosure of Company' Confidential Information could cause harm and significant injury to the Company, which may be difficult to ascertain. Company makes no warranty or representation as to the accuracy or completeness of any information provided to the Receiving Party hereunder; provided that neither party shall knowingly provide any false or misleading information to the other. Upon termination of this Agreement or at the request of Company, the Receiving Party shall immediately return all Confidential Information and copies thereof, or if directed by Company, shall immediately destroy all copies of such, and shall furnish proof of their destruction to Company.

Protection of Trade Secrets. Without the prior written consent of Company, Consultant shall not directly or indirectly disclose or use at any time, either during or subsequent to Consultant's consulting arrangement with Company, any trade secrets, know-how, or any other secret or confidential information, knowledge or data of Company ("Confidential Information"). Such Confidential Information shall include, but not be limited to, customer and supplier lists, product designs, engineering drawings, and computer programs. Upon termination of this Agreement, or any time prior thereto upon request of Company, Consultant shall promptly return all property and all Confidential Information which are in Consultant's possession or under Consultant's control, including all materials which incorporate such Confidential Information.

## 5. IMPROVEMENTS AND INVENTIONS.

Consultant shall promptly notify and fully disclose to Company, in writing, the existence and nature of any and all ideas, designs, apparatus, practices, processes, improvements and inventions ("Inventions"), which Consultant has conceived or first actually reduced to practice during the term of this Agreement or within six (6) months after termination of this Agreement, if such Inventions relate to a product or process upon which Consultant worked during the term of this Agreement.

## 6. TERMINATION.

Notwithstanding any contrary provision contained elsewhere in this Agreement, this Agreement and the rights and obligations hereunder may be terminated:

1. by Company immediately if Consultant defaults in the performance of Consultant's obligations under this Agreement, including failure to provide the products or services set forth in the Statement of Work within the times specified. Any moneys due to Consultant shall be compensated fairly against actual work performed; or

2. by Consultant immediately if Company defaults in the performance of its obligations under this Agreement.

Either party then may terminate this agreement by providing 30 days advance written notice, which notice shall not be provided until at least 30 days subsequent to the execution date of this agreement.

## 7. INTELLECTUAL PROPERTY.

Consultant shall retain all rights to pre-existing ideas, processes, procedures, and materials used by Consultant in developing or providing products and/or services to Company.

Consultant warrants that the Intellectual Property and products Consultant will produce, shall be original and shall not infringe any third party's patents, trademarks, trade secrets, copyrights or other proprietary rights. To the extent that Consultant is required to incorporate a third party's proprietary materials into the Intellectual Property and products Consultant produces for Company. Consultant shall obtain all authorizations necessary for such incorporation and shall obtain such permissions as are required by Company to allow Company to fully exploit the Intellectual property and products produced by Consultant.

## 8. OWNERSHIP OF PREPARED INFORMATION.

All technical or business information, in whatever medium or format, including but not limited to, data, specifications, drawings, records, reports, proposals, software and related documentation, inventions, concepts, research or other information (herein collectively referred to as "Information"), originated or prepared by or for Consultant (either solely or jointly with others) in contemplation of, or in the course of, or as a result of, Services performed hereunder, shall be promptly furnished to Company, Inc. All such Information shall become the exclusive property of Company and shall be deemed to be works for hire. To the extent that it may not, by operation of law, be works for hire, Consultant hereby assigns to Company all rights, title and interest in and to such Information including rights to copyrights, patent rights, moral rights and patrimonial rights. All such Information shall be deemed "Confidential Information; subject to the terms and conditions set forth herein. If such information includes material previously copyrighted or patented by Consultant and not originally prepared hereunder, Consultant hereby grants to Company an unrestricted, royalty-free and perpetual license to copy, use, make, have made, sell, disclose and sublicense such Information for any lawful purpose.

Consultant agrees that from time to time, upon request and without charge for Consultant's

Services beyond the payments herein specified, Consultant shall assist Company, Inc. and its nominees in every proper way during and subsequent to the term of the Agreement (entirely at Company's expense) to obtain patents for any invention in any or all countries of the world and that Consultant shall execute all papers (including assignments) and do all things that reasonably may be required in order to protect the rights of Company and vest in it or its nominees all right, title and interest in and to such inventions, patent applications and patents.

## 9. INDEMNIFICATION.

To the fullest extent permitted by law, Consultant shall indemnify Company, hold it harmless, and defend and protect it from and against any and all loss, damage, liability, judgment, claim, cost or expense (specifically including reasonable attorneys' fees and other costs and expenses of investigation and defense), of any sort, resulting from injury or damage of any sort to any person or entity, arising out of or in connection with Consultant's performance under this Agreement, including the performance of any other party for whom Consultant is responsible under this Agreement. Consultant's obligations under this Section apply to claims or demands alleging violation of copyright, trademark, trade name or other intangible property rights.

## 10. LIMITATION OF LIABILITY.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL LOSSES OR DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST RECORDS OR DATA, LOST SAVINGS, LOSS OF USE OF FACILITY OR EQUIPMENT, LOSS BY REASON OF FACILITY SHUT-DOWN OR NON-OPERATIONS OF INCREASED EXPENSE OF OPERATIONS, OR OTHER COSTS, CHARGES, PENALTIES, OR LIQUIDATED DAMAGES, REGARDLESS OF WHETHER ARISING FROM BREACH OF CONTRACT, WARRANTY, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE OR IF SUCH LOSS COULD HAVE BEEN REASONABLY FORESEEN. THE PARTY'S' LIABILITY FOR DAMAGES HEREUNDER AND UNDER ANY SERVICE WORK ORDER, REGARDLESS OF THE FORM OF ACTION, SHALL NOT EXCEED THE TOTAL AMOUNT PAYABLE TO CONSULTANT UNDER THIS AGREEMENT.

## 11. WARRANTY OF SERVICES.

Consultant agrees that services shall be performed hereunder in a professional and workmanlike manner and that the Intellectual Property and products Consultant provides to Company shall meet the requirements set forth on the attached Statement of Work.

Consultant further warrants that Consultant has all rights to enter into this Agreement and that there are no impediments to Consultant's execution of this Agreement or Consultant's performance of services hereunder.

## 12. INSURANCE.

Seller shall at all times during the term of this Agreement, at its own cost and expense, carry and maintain the following insurance coverage: homeowners property insurance (to include general liability coverage) and comprehensive automobile liability insurance. Seller shall not commence any work hereunder until Seller has fulfilled all insurance requirements herein.

Company is not requiring specific insurance limits or Workers Compensation, Commercial and General Liability and Comprehensive Automobile Liability Insurance in this instance for this Subcontract. In exchange for waiving these requirements, Seller agrees that it shall bear liability for occurrences normally covered by these types of insurances that shall arise in the course of this Agreement whether it be on Company, Customer, or subcontractor site and shall hold Company and its insurance carriers harmless for these occurrences.

## 13. ASSIGNMENT.

This Agreement and Consultant's rights and obligations shall not be assignable, in whole or in part, by Consultant without the prior written consent of Company. If Consultant is doing business as a partnership or corporation, any change in ownership is an "assignment under this provision." Any assignment without Company's consent is void.

## 14. GOVERNING LAW.

This Agreement shall be construed and enforced in accordance with the laws of the State of New York without reference to that body of law governing conflicts of law.

## 15. INJUNCTIVE RELIEF.

Consultant acknowledges it would be difficult to fully compensate Company for damages resulting from any breach by Consultant of the provisions of 4, 5, 6, 7, 8, 9 and/or 10 of this Agreement. Accordingly, in the event of any actual or threatened breach of such provisions, Company shall, in addition to any other remedies that it may have, be entitled to temporary and/or permanent injunctive relief to enforce such provisions.

## **16. SEVERABILITY.**

The parties recognize the uncertainty of the law with respect to certain provisions of this Agreement and expressly stipulate that this Agreement shall be construed in a manner that renders its provisions valid and enforceable to the maximum extent possible under applicable law. To the extent that any provisions of this Agreement are determined by a court of competent jurisdiction to be invalid or unenforceable, such provisions shall be deleted from this Agreement or modified so as to make them enforceable and the validity and enforceability of the remainder of such provisions and of this Agreement shall be unaffected.

## **17. FORCE MAJEURE.**

Neither party shall be liable for any failure to perform under this Agreement when such failure is due to causes beyond that party's reasonable control, including, but not limited to, acts of state or governmental authorities, acts of terrorism, natural catastrophe, fire, storm, flood, earthquakes, accident, strikes, and prolonged shortage of energy. In the event of such delay the date of delivery or time for completion shall be extended by a period of time reasonably necessary to overcome the effect of any such delay.

## **18. ENTIRE AGREEMENT.**

This Agreement inclusive of the attached Statement of Work(s) embodies the Initial authorization between the undersigned parties and supersedes all prior contracts, representations, negotiations, or letters, whether written or oral, regarding the subject matter hereof. The parties shall not be bound by or liable for any statement, representation, promise, inducement, or understanding of any kind not set forth in this Agreement.

No statement or writing subsequent to the date of execution of this Agreement purporting to

modify or add to the terms and conditions hereof shall be binding unless consented to in writing by duly- authorized procurement representatives of Company, Inc. and the Consultant in a document making specific reference to this Agreement.

IN WITNESS WHEREOF the parties have caused this Retainer Agreement to be executed and delivered by their duly authorized representatives.

Nevis Technology LLC

\_\_\_\_\_  
TJ Nevis  
Owner & President

[SIGNER.Company]

\_\_\_\_\_  
[SIGNER.FirstName] [SIGNER.FirstName]  
[SIGNER TITLE]