

NOTE

Please consult with your attorney regarding any contract you intend to use. This sample contract is not intended to provide legal advice and should not be used as a substitute for consultation with a lawyer.

Safety and Health Consulting Agreement

This Safety and Health Consulting Agreement (this “Agreement”) is entered into as of _____, 200__ between _____, a _____ corporation with offices at _____ (the “Client”), and _____, a _____ corporation with offices at _____ (the “Consultant”).

Client requires the services of Consultant for the purpose of assisting with the development of Client’s Safety plan and to act as a consultant for various safety and health issues, as further described below. In consideration of the agreements and covenants hereinafter set forth, the parties agree as follows:

1. Consultant’s Responsibilities; Performance of the Services. Consultant shall provide services and advice relating to safety and health (the “Services”) as set forth on Schedule A hereto, which is hereby incorporated into and made part of this Agreement. In the event of a conflict between the terms of the Agreement and Schedule A, the terms of this Agreement shall prevail. Client acknowledges and agrees that this Agreement, including Schedule A, sets forth the sole duties, tasks and obligations of Consultant and that Client shall be solely responsible for performing all other duties, tasks and obligations that are not specifically identified in this Agreement as Consultant’s responsibility including, without limitation, the duties, tasks and obligations set forth in Section 2 below.

2. Client’s Responsibilities. As a condition to Consultant’s performance of the Services, Client shall (a) provide sufficient qualified personnel who are capable of performing Client’s duties, tasks and obligations under this Agreement; (b) provide Consultant with access to Client’s facility during Client’s normal business hours and otherwise as reasonably requested by Consultant in order to facilitate Consultant’s ability to timely perform the Services; and (c) perform such other duties and tasks as set forth on Schedule A. Client acknowledges and agrees that its failure to perform or to timely perform any of its duties or obligations under this Agreement may affect the timing and cost of Services to be provided by Consultant.

3. Compensation.

3.1 Fees and Expenses. Client shall pay to Consultant the fees set forth on Schedule A for the Services rendered by Consultant. Client shall reimburse Consultant for all reasonable out-of-pocket expenses (including, without limitation, travel and lodging expenses) incurred by Consultant in connection with this Agreement. At Client’s request, Consultant will provide such documentation as may be reasonably required to verify such expenses.

3.2 Payment of Invoices. Consultant shall use reasonable efforts to bill Client on a monthly basis. Client shall pay all amounts incurred hereunder within thirty (30) calendar days after the date of Consultant’s invoice. If Client fails to remit payment within such thirty (30) calendar day period, Client shall pay interest on the amount due under such invoice at the rate of

percent (____%) per month, or the highest rate permitted to be charged by applicable law, whichever is lower.

3.3 Taxes. Client shall pay all personal property, sales, use and other taxes (excluding taxes based upon Consultant's net income) that are imposed as a result of the execution or performance of this Agreement. Any amount due from Client under this Section shall be paid directly by Client, where appropriate, or shall be reimbursed to Consultant upon payment thereof by Consultant.

4. Confidential Information and Work Product

4.1 Confidential Information. Each party may disclose to the other party hereto certain information that it considers to be confidential and such information shall constitute "Confidential Information," provided such information is disclosed in writing and clearly marked or, if orally disclosed, promptly thereafter reduced to writing and clearly marked "Confidential," and further provided, in no event shall Confidential Information include information that: (a) is or becomes publicly available other than through a breach of the Agreement; (b) is known to the party receiving such information prior to disclosure hereunder or is independently developed by such party subsequent to such disclosure without reference to Confidential Information provided hereunder; or (c) is subsequently lawfully obtained by the party receiving such information from a third party without obligations of confidentiality. Each party agrees that it (a) will not disclose or divulge the other party's Confidential Information to any person, (b) will not use the other party's Confidential Information for its own benefit or the benefit of others, (c) will employ at least the same degree of care in protecting Confidential Information as it employs in protecting its own confidential information, but not less than a reasonable degree of care, and (d) will, upon termination of the Agreement, or at any time at the request of the other party, return to the other party or destroy all copies of the other party's Confidential Information. Notwithstanding the foregoing each party may disclose the other party's Confidential Information to its employees, subcontractors and authorized agents who have a need to know such confidential information to fulfill its obligations under this Agreement. In the event a party receives a subpoena or other validly issued administrative or judicial process requesting the disclosure of the other party's Confidential Information, such party will promptly notify the other party and tender to it the defense of such demand and will cooperate (at the other party's expense) with the defense of such demand. Unless the demand shall have been timely quashed or extended, the party receiving the demand shall thereafter be entitled to comply with such demand when and to the extent required by law.

4.2 Ownership of Proprietary Materials. Each Party is and shall remain the owner of all right, title and interest in and to such party's proprietary materials, and all copies thereof, and in and to all of the related trade secrets, copyrights, patents and all other proprietary rights. Neither party shall obtain any right or license in and to the other party's proprietary materials.

4.3 Ownership of Work Product. Upon payment of all amounts due hereunder, title to all written work product delivered by Consultant under this Agreement (the "Work Product") shall invest in Client and Client shall have the perpetual right to use, copy, distribute and make derivative works from such copies. Notwithstanding the foregoing, Consultant shall retain sole

and exclusive ownership of all ideas, concepts, theories, improvements, designs, original works of authorship, formulas, processes, algorithms, inventions, know-how, techniques, compositions of matter and any other information owned by Consultant prior to the date of this Agreement or generated by Consultant under this Agreement, including all intermediate and partial versions thereof, and all proprietary rights therein (collectively, the “Consultant Knowledge”), provided that in no event shall any of Client’s Confidential Information be deemed to be included in Consultant Knowledge.

4.4 Survival. The terms of this Section 4 shall survive any termination of this Agreement.

5. Independent Contractor. Nothing herein shall be deemed or construed to create a joint venture, partnership, agency, or employee/employer relationship between the parties for any purpose, including but not limited to, withholding for purposes of social security or income tax, or entitlement to vacation, insurance, retirement, or other employee benefits. The relationship of the parties is that of independent contractor and client, and is governed solely by this Agreement. Neither party is authorized to act as agent for, or otherwise on behalf of the other party, and no action by either party shall bind the other party.

6. Warranty.

6.1 Services Warranty. ~~Consultant warrants that it shall perform the Services in a professional and workmanlike manner. In the event Consultant fails to perform any Services as provided in the Section, Consultant’s sole and exclusive obligation shall be to promptly take such action as may be reasonably necessary to correct such failure.~~

6.2 Exclusion of Warranties. CONSULTANT MAKES NO OTHER EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SERVICES TO BE PERFORMED BY CONSULTANT OR ANY PRODUCTS THAT MAY RESULT THEREFROM. CONSULTANT DISCLAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Without limitation to the foregoing, Client acknowledges that Consultant has been hired for consultancy and advisory services only. ENFORCEMENT OF ALL SAFETY AND HEALTH REGULATIONS SHALL BE THE SOLE RESPONSIBILITY OF CLIENT AND SHALL NOT BE THE RESPONSIBILITY OF CONSULTANT.

6.3 Limitation of Liability. CONSULTANT’S TOTAL LIABILITY UNDER THIS AGREEMENT FOR ANY CAUSE WHATSOEVER IS LIMITED TO THE AMOUNT ACTUALLY PAID BY CLIENT UNDER THIS AGREEMENT FOR THE SERVICES THAT GAVE RISE TO SUCH LIABILITY. CONSULTANT SHALL IN NO EVENT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL OR SIMILAR DAMAGES INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF REVENUES, LOSS OF DATA, OR FOR COVER AND THE LIKE, EVEN IF CONSULTANT HAS BEEN ADVISED OF THE LIKELIHOOD OF THE OCCURRENCE OF SUCH DAMAGES.

7. Term and Termination.

7.1 Term and Termination Without Cause. This Agreement shall commence on the date set forth first above and shall remain in effect until (a) the completion of the Services, unless an earlier date is specified on Schedule A, (b) terminated by either party as provided in Section 7.2; or (c) terminated by a party without cause upon ninety (90) calendar days prior written notice to the other party.

7.2 Termination for Default. In the event of the failure of a party to perform any material obligation under this Agreement that is not cured within thirty (30) calendar days following receipt of written notice of such failure, the non-defaulting party shall have the right to terminate this Agreement and, subject to the terms of this Agreement, seek any and all rights and remedies available to it at law and in equity.

8. Risk Allocation and Insurance.

8.1 Risk Allocation. Client shall indemnify, defend and hold harmless Consultant and Consultant's directors, officers, employees, representatives, agents, successors and assigns (collectively the "Indemnified Parties"), and shall pay any and all losses, liabilities, damages, costs and expenses (including attorney's fees) incurred by the Indemnified Parties as a result of Client's operation of its business or Client's use of the Work Product, including, without limitation, losses, liabilities, damages, costs and expenses arising or resulting from safety and/or health violations by Client, except in each case to the extent caused by Consultant's (i) breach of this Agreement, or (ii) negligence or willful misconduct. The Indemnified Parties shall provide Client with prompt notice of any such claims and providing all reasonable assistance in the defense of such claims, provided, however, that any failure or delay of the Indemnified Parties to do so shall only relieve Client of its indemnity obligations hereunder to the extent that Client is actually prejudiced thereby. The terms of this Section 8.1 shall survive the termination of this Agreement.

8.2 Insurance. Client shall maintain for each jobsite, insurance in an amount comparable to similar jobsites of equal size and character, including but not limited to worker's compensation, or other employer's liability claims of any kind or nature for damaged property or for personal injury, including death, that may arise from Client's activity on the jobsite. Client shall provide Consultant with a binder or other evidence of insurance coverage naming Consultant as an additional insured for each jobsite prior to commencement of Consultant's performance under this agreement.

9. Miscellaneous.

9.1 Governing Law, Arbitration. This Agreement shall be governed by and enforced in accordance with the laws of the State/Commonwealth of <State> (excluding conflict of law provisions). Any dispute or disagreement between parties under this Agreement (except to the extent arising under Section 4 of this Agreement) shall be settled by arbitration in <City>, <State> under the Commercial Arbitration Rules then in effect of the American Arbitration

Association. The panel of arbitrators shall consist of three (3) arbitrators. Each party shall select one (1) arbitrator with appropriate expertise in the matter in dispute. No less than fourteen (14) days after both party-selected arbitrators have been selected, the two party-selected arbitrators shall select a neutral third arbitrator. The parties will use reasonable efforts to expedite the arbitration proceeding and will request that the arbitrators render and opinion within thirty (30) days after the conclusion of the evidence and argument. While the third arbitrator shall be neutral, the two party-selected arbitrators are not required to be neutral, and it shall not be grounds for removal of either of the two party-selected arbitrators or for vacating the arbitrators' award that either of such arbitrators has past or present relationships with the party that appointed such arbitrator. To the fullest extent permitted by law, any arbitration proceeding and the arbitrators' award shall be maintained in confidence by the parties.

9.2 Injunctive Relief: Exclusive Jurisdiction. The parties agree that money damages would not be a sufficient remedy for any breach of Section 4 of this Agreement and that the non-breaching party shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach or threatened breach. Such remedy shall not be deemed to be the exclusive remedy for breach of this Agreement, but shall be in addition to all other remedies available at law or equity to the non-breaching party. The parties further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Any suit or proceeding to enforce a party's right under Section 4 of this Agreement or to enter judgment upon an award pursuant to arbitration, shall be brought only in the state and federal courts located in the State/Commonwealth of <State> and the parties hereby consent to the exclusive personal jurisdiction and venue of such courts.

9.3 Notices. Any notice required or permitted to be delivered pursuant to this Agreement shall be in writing and shall be deemed delivered: (a) upon delivery if delivered in person; (b) three (3) business days after deposit in the United States mail, registered or certified mail, return receipt requested, postage prepaid; (c) upon transmission if sent via Telecopier, with a confirmation copy sent via overnight mail; or (d) one (1) business day after deposit with a national overnight courier, in each case addressed to the address set forth in the first paragraph of this Agreement or to such other address as may be specified by either party upon notice given to the other in accordance with the terms of this Agreement.

9.4 Force Majeure. Each party shall be excused from performance under this Agreement and shall have no liability to the other party for any period it is prevented from performing any of its obligations, in whole or in part, as a result of delays caused by the other party by an act of God, war, civil disturbance, court order, third party performance or nonperformance, strikes, work stoppages or other cause beyond its reasonable control, and such nonperformance shall not be a default under, or grounds for termination of, this Agreement. Notwithstanding the foregoing, if any of the above-enumerated circumstances prevent, hinder or delay performance of either party's obligations hereunder for more than thirty (30) calendar days, the party not prevented from performing may, at its option, terminate this Agreement without liability or penalty as of a date specified by such party in a written notice of termination to the other party.

9.5 Survival of Obligations. Termination of this Agreement for any cause shall not release either party from any liability that accrued on or before the date of termination or that

may thereafter arise with respect to any act or omission occurring on or before the date of termination, or from any obligation that is expressly stated in this Agreement to survive termination of this Agreement.

9.6 Entire Agreement; Construction. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements relating to the same subject matter. No modification, amendment or supplement to this Agreement shall be effective for any purpose unless agreed to in writing and signed by authorized representatives of the parties. If any provision of this Agreement is found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity of such provision shall not affect the other provisions of this Agreement, and all provisions not affected by such invalidity shall remain in full force and effect. No delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have hereunder shall operate as a waiver; any waiver must be in writing and signed by the party granting such waiver. The waiver by either party of a breach or default in any of the provisions of this Agreement by the other party shall not be construed as a waiver of any other breach or default. Headings contained in this Agreement are for convenience of reference only and shall not affect the meaning and interpretation of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date first above written.

Sample

CONSULTANT:

CLIENT:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

SCHEDULE A

STATEMENT OF SERVICES AND FEE SCHEDULE

SERVICES

<Description of services to be performed. Be as precise as possible. Example:>

During the period beginning _____, 200__ and ending _____, 200__ Consultant shall:

- a) evaluate Client's existing safety plan and edit/augment said plan as Consultant deems advisable.
- b) provide training with respect to safety issues to Client's employees as Consultant deems advisable.
- c) provide site specific written plans as Consultant deems advisable.
- d) perform periodic site visits and provide recommendations for hazard abatement. All recommendations will be provided in writing to Client's site supervisor and Client's corporate designee.
- e) participate, if requested and upon reasonable notice, in inspections and informal conferences conducted by governing entities and/or insurers, as well as any other meetings or conferences involving safety and health, as needed.

FEES

<Set forth method for calculation of Consultant's fees.>

<Example: On an time and materials basis, in accordance with the billing rates set forth below:>

CLIENT RESPONSIBILITIES

<List any cooperation required from Client as a condition for the performance of Consultant's duties.>