

# Technical Consulting Agreement (EXAMPLE)

We have provided an example of a technical consulting agreement below for our clients to review. Once our clients are ready to hire Pro-Omni for product development services, we highly recommend using this document (or one that's similar) to solidify the business relationship between us. A technical consulting agreement provides information about what services will be rendered, what the pay rate is for those services and what information shall remain confidential during the business relationship. As with an NDA, we recommend that our clients have their lawyer review the technical consulting agreement before signing. Also, the information in *orange italics* below needs to be provided before the document is complete.

## Technical Consulting Agreement

This Technical Consulting Agreement is made effective as of *Date* by and between *Client Name*, of *Address*, and Pro-Omni Engineering, of 4967 Vista Place, San Diego, California 92116.

In this Agreement, *Client Name* is the party who is contracting to receive services and shall be referred to as "the Client". Pro-Omni Engineering is the party who will be providing the services shall be referred to as "the Consultant".

The Consultant has a background in engineering design services and is willing to provide services to the Client based on this background.

The Client desires to have services provided by the Consultant.

Therefore, the parties agree as follows:

**DESCRIPTION OF SERVICES.** Beginning on *Date*, the Consultant will provide certain technical consulting services for the implementation or use of the Supported Hardware to the Client including the following services (collectively, the "Services"): mechanical, electrical, optical and software/firmware design.

**PERFORMANCE OF SERVICES.** The manner in which the Services are to be performed and the specific hours to be worked by the Consultant shall be determined by the Consultant. The Client will rely on the Consultant to work as many hours as may be reasonably necessary to fulfill the Consultant's obligations under this Agreement.

**PAYMENT.** The Client will pay the rates listed below for the hours worked by the Consultant's engineers. Timesheets and invoices will be provided to the Client each month for services rendered, and the Client will pay the Consultant 30 days after receipt of those invoices. Physical checks or direct deposit are acceptable forms of payment.



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e. [info@proomniengr.com](mailto:info@proomniengr.com)

p. (916) 203-5397

w. [proomniengr.com](http://proomniengr.com)

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Mechanical Engineering:	\$	/hr
Electrical Engineering:	\$	/hr
Optical Engineering:	\$	/hr
Software / Firmware Engineering:	\$	/hr

**EXPENSE REIMBURSEMENT.** The Consultant shall be entitled to reimbursement from the Client for all "out-of-pocket" expenses.

**TERM/TERMINATION.** This Agreement shall terminate automatically upon completion by the Consultant of the Services required by this Agreement. This Agreement may also be terminated immediately by one party due to the breach of the Agreement by the other of any of its obligations and responsibilities under the Agreement at any time.

**RELATIONSHIP OF PARTIES.** It is understood by both parties that the Consultant is an independent contractor, and not an employee of the Client. The Client will not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefit, for the benefit of the Consultant.

**DISCLOSURE.** The Consultant is required to disclose any outside activities or interests, including ownership or participation in the development of prior inventions, that conflict or may conflict with the best interests of the Client. Prompt disclosure is required under this paragraph if the activity or interest is related, directly or indirectly, to:

- a product or product line of the Client
- a manufacturing process of the Client
- any activity that the Consultant may be involved with on behalf of the Client

**EMPLOYEES.** The Consultant's employees, if any, who perform services for the Client under this Agreement shall also be bound by the provisions of this Agreement. At the request of the Client, the Consultant shall provide adequate evidence that such persons are the Consultant's employees.

**INJURIES.** The Consultant acknowledges its own obligation to obtain appropriate insurance coverage for the benefit of the Consultant (and the Consultant's employees, if any). The Consultant waives any rights to recovery from the Client for any injuries that the Consultant (and/or the Consultant's employees) may sustain while performing services under this Agreement and that are a result of the negligence of the Consultant or the Consultant's employees.

**ASSIGNMENT.** The Consultant's obligations under this Agreement may not be assigned or transferred to any other person, firm, or corporation without the prior written consent of the Client.

**INTELLECTUAL PROPERTY.** The following provisions shall apply with respect to copyrightable works, ideas, discoveries, inventions, applications for patents, and patents (collectively, "Intellectual Property"):



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Consultant's Intellectual Property. The Consultant does not personally hold any interest in any Intellectual Property.

Development of Intellectual Property. Any improvements to Intellectual Property items, further inventions or improvements, and any new items of Intellectual Property discovered or developed by the Consultant (or the Consultant's employees, if any) during the term of this Agreement shall be the property of the Client. The Consultant shall sign all documents necessary to protect the rights of the Client in such Intellectual Property, including the filing and/or prosecution of any applications for copyrights or patents. Upon request, the Consultant shall sign all documents necessary to assign the rights to such Intellectual Property to the Client.

**CONFIDENTIALITY.** Either the Client or the Consultant may disclose the following information to the other party:

- inventions
- products
- business affairs
- process information
- trade secrets
- technical information

and other proprietary information (collectively, "Information") which are valuable, special and unique assets of the Disclosing Party and need to be protected from improper disclosure. In consideration for the disclosure of the Information, the Receiving Party agrees that it will not at any time or in any manner, either directly or indirectly, use any Information for the Receiving Party's own benefit, or divulge, disclose, or communicate in any manner any Information to any third party without the prior written consent of the Disclosing Party. The Receiving Party will protect the Information and treat it as strictly confidential. A violation of this paragraph shall be a material violation of this Agreement.

This Agreement is in compliance with the Defend Trade Secrets Act and provides civil or criminal immunity to any individual for the disclosure of trade secrets: (i) made in confidence to a federal, state, or local government official, or to an attorney when the disclosure is to report suspected violations of the law; or (ii) in a complaint or other document filed in a lawsuit if made under seal.

**UNAUTHORIZED DISCLOSURE OF INFORMATION.** If it appears that the Receiving Party has disclosed (or has threatened to disclose) Information in violation of this Agreement, the Disclosing Party shall be entitled to an injunction to restrain the Receiving Party from disclosing, in whole or in part, such Information, or from providing any services to any party to whom such Information has been disclosed or may be disclosed. The Disclosing Party shall not be prohibited by this provision from pursuing other remedies, including a claim for losses and damages.

**CONFIDENTIALITY AFTER TERMINATION.** The confidentiality provisions of this Agreement shall remain in full force and effect after the termination of this Agreement.



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**FORCE MAJEURE.** If performance of this Agreement or any obligation under this Agreement is prevented, restricted, or interfered with by causes beyond either party's reasonable control ("Force Majeure"), and if the party unable to carry out its obligations gives the other party prompt written notice of such event, then the obligations of the party invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, without limitation, acts of God, plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions, fire, explosion, vandalism, storm or other similar occurrence, orders or acts of military or civil authority, or by national emergencies, insurrections, riots, or wars, or strikes, lock-outs, work stoppages or other labor disputes, or supplier failures. Lack of financial resources on the part of either party shall not be a Force Majeure Event. The excused party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. An act or omission shall be deemed within the reasonable control of a party if committed, omitted, or caused by such party, or its employees, officers, agents, or affiliates.

**DISCLAIMER OF WARRANTIES.** Except as otherwise expressly provided in this Agreement, the Consultant disclaims any and all promises, representations and warranties, express or implied, with respect to the supported hardware, software or firmware, corrections and the services provided as above, including promises, representations and warranties as to condition, the existence of any latent or patent defects, merchantability or fitness for any particular purpose, non-infringement, or any implied warranty of information content or system integration.

Without limiting the generality of the foregoing disclaimer, the Consultant does not warrant that its advice or programming on behalf of the Client will be error free.

The Consultant shall have an obligation to correct demonstrated errors in the operation of the supported hardware, software or firmware which may appear as a result of incorrect provision of the Services, for a period agreed upon by the parties following delivery of the Services.

The Consultant shall not have any obligation to correct errors in the operation of the supported hardware, software or firmware if the hardware or programming code has been modified by the Client or by any other party.

**ATTORNEYS' FEES.** If either party employs attorneys to enforce any rights arising out of or relating to this agreement, the prevailing party in such action or proceeding shall be entitled to recover its attorneys' fees in addition to other costs and expenses incurred and other damages and remedies available to said prevailing party.

**RETURN OF RECORDS.** Upon termination of this Agreement, the Consultant shall deliver all records, notes, data, memoranda, models, and equipment of any nature that are in the Consultant's possession or under the Consultant's control and that are the Client's property or relate to the Client's business.



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**NOTICES.** All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States mail, postage prepaid, addressed as follows:

**IF for the Client:**

**Client Name**

**Client Address**

**IF for the Consultant:**

Pro-Omni Engineering, Inc.  
4967 Vista Place  
San Diego, California 92116

Such address may be changed from time to time by either party by providing written notice to the other in the manner set forth above.

**ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.

**AMENDMENT.** This Agreement may be modified or amended if the amendment is made in writing and is signed by both parties.

**SEVERABILITY.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

**WAIVER OF CONTRACTUAL RIGHT.** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

**APPLICABLE LAW.** This Agreement shall be governed by the laws of the State of California.



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**SIGNATURES.** This Agreement shall be signed on behalf of *Client Name* by *Name of Client Representative*, and on behalf of Pro-Omni Engineering by *Name of Pro-Omni Representative*.

## Party receiving services:

*Client Company Name*

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

*Name of Client Representative*  
*Title of Client Representative*

## Party providing services:

**Pro-Omni Engineering**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

*Name of Pro-Omni Representative*  
*Title of Pro-Omni Representative*



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