

CONFIDENTIALITY AGREEMENT AND TERMS OF ENGAGEMENT

1. **SCOPE** - The purpose of this agreement is to define the terms and conditions of the professional relationship between Havill & Company, Inc. ("Havill") and the client. ("Client"), as it pertains to professional services provided by Havill. With this agreement in place, Havill will provide services resulting from verbal requests with verbal authorization where the total of the fees and expenses associated with the request does not exceed \$5,000. A request for services requiring fees and expenses greater than \$5,000 will be addressed through a separate proposal and contract. Such proposal and contract will supercede this agreement.
2. **PRICE AND PAYMENT** -
 - A. **Fees, Expenses, and Taxes** - Havill will provide Client the agreed upon services detailed in our proposal. In exchange, Client will pay Havill Consultants for professional services and expenses incurred. Havill Consultants utilizes a professional time and cost accounting system.
 - (1) **Professional Fees** - Professional services will be billed on an hourly basis, in 15 minute time increments, with the exception of flat rate technical support requests or other designated programs. Havill's standard fee schedule ranges from \$65 to \$200 per hour. Per hour billing are as follows: Officer Level Consultants, \$200; Senior Consultants, \$185; Project Managers, \$165; Account Managers, \$145; Project Analysts, \$125; Executive Interviewers, \$95; Survey Researchers, \$75; Clerical Support Staff, \$65; and Direct Marketers, \$45 per hour. Havill reserves the right to periodically change its hourly rates. Such change will be submitted to Client, in writing, 30 days before such change is to go into effect. Any such change will affect only time charges incurred after the change is effective.
 - (a) Professional fees will be billed on the basis of actual time from time slips, not from estimated budgets or estimated time from project plans.
 - (b) Professional fees for work within the original scope will not exceed original estimate by more than 10% of the original estimate.
 - (c) Should Client request that the scope of the authorized service be expanded beyond that of the original commissioned work, Havill will notify Client, in writing, prior to conducting the out of scope work. This letter will include a description of the out of scope work along with cost and timing estimates.
 - (d) All professional services will be completed in good faith and in the most cost effective manner available to Havill; i.e., all professional services will be assigned to personnel of the appropriate skill level, or be billed as such.
 - (e) Technical support relating to software developed, configured, or installed by Havill will be billed at \$100 per incident.
 - (2) **Expenses** - In the course of providing the products and services, Havill will periodically incur expenses upon Client's behalf. Expenses include, but are not limited to, data, software, printing, courier, and travel expenses. These expenses will be billed to Client as follows:
 - (a) Expenses will be billed from actual expenses incurred, not from expense estimates provided in project plans and/or budgets.
 - (b) Expenses associated with work within the original scope will not exceed original estimate by more than 10% of the original estimate.
 - (c) Should Client request that the scope that the authorized service be expanded beyond that of the original commissioned work and such scope change will result in additional expenses, Havill will notify Client, in writing, prior to accruing said additional fees.
 - (d) Expenses will be billed at cost plus 15% to cover administration. All expenses will be reasonable and customary, i.e., air travel via coach.
 - (e) Havill Consultants is licensed by the State of Ohio as a computer hardware and software vendor.
 - (3) **Taxes** - Taxes will be billed as an expense item. Havill Consultants shall be responsible for paying and billing Client for any taxes incurred under this agreement.

- B. **Invoicing** - Invoices will be prepared monthly based on the accumulation of professional fees and expenses. Havill Consultants will maintain records of actual professional time and expenses that will be available for Client's review throughout the duration of the project. All invoices are prepared from actual time and expenses incurred, not time and expense estimates reported in project budgets and/or project plans.
 - C. **Payment Terms** - Invoices are due and payable within 30 days of date of billing. A finance charge of 1.5% per month will be assessed on any unpaid balance after deduction of current payments, credits, and allowances made within 30 days of date of billing. This is an Annual Percentage Rate of 18%.
3. **LIMITATIONS ON LIABILITY** - Havill draws on information and analysis believed to be reliable. However, neither Havill nor individuals credited with authorship or support can guarantee accuracy or completeness, or be liable for possible errors of fact or judgment. Such information shall not be used or relied upon as the exclusive basis for evaluating sales and marketing decisions. Havill represents and warrants that it has the authority to use information and data in furtherance of its providing services under this agreement, and further represents and warrants that such authority extends to the use by Client and any Client dealers or representatives of information and services provided pursuant to this Agreement.

Client hereby releases and waives any and all claims it may have against Havill, its respective directors, members, shareholders, officers, employees, agents, and representatives (collectively, "Representatives") from any and all claims, liabilities, or damages resulting from the use of information or data or services provided by Havill, unless: (a) same are occasioned by the negligence or intentional act of Representatives, or (b) same are occasioned by Representatives or their actions in connection with amendments or alteration of the information, data, or services, or (c) same are occasioned by any breach of the representations and warranties regarding authorized use made by Havill in the preceding paragraph. The foregoing shall include, but not be limited to, any and all reasonable attorney's fees incurred by Havill.

EXCEPT AS SPECIFIED TO THE CONTRARY ELSEWHERE IN THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY OR ITS REPRESENTATIVES BE LIABLE TO THE OTHER FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES ARISING DIRECTLY OR INDIRECTLY OUT OF THE USE OF, OR INABILITY TO USE, HAVILL CONSULTANTS INFORMATION OR SERVICES.

If any of the limitations on liability of either party or their Representatives contained in this agreement are found to be invalid or unenforceable for any reason by a court of competent jurisdiction, each party agrees that the maximum liability shall not in the aggregate, be greater than the fees paid by Client. In the event of a dispute between the parties under the terms of this Agreement or in any way connected with the rendering of services under this Agreement, the disputing party agrees to send a written notice to the other party providing the written specifics of the dispute. Senior management of the party receiving said notice shall agree to meet in good faith to discuss resolution of the dispute with the other party within thirty days of the receipt of the notice.

This agreement shall be governed by Ohio law. Each party hereby designates the Court of Common Pleas of Lucas County, Ohio, as the court of proper jurisdiction and venue of and for any and all lawsuits or other legal proceedings relating to this agreement and hereby irrevocably consent to such designation, jurisdiction, and venue; and hereby waive any objections or defenses relating to jurisdiction or venue with respect to any lawsuit or other legal proceeding initiated in the Court of Common Pleas of Lucas County, Ohio.

4. **CONFIDENTIAL DISCLOSURE OF THE CLIENT BUSINESS PROGRAM** – It is understood that the Client deliverables are confidential, proprietary, and valuable. Accordingly, such disclosure of information shall be made under the following terms and conditions:
- A. "Client Confidential Information" shall mean information relating to the project disclosed to Havill by Client in writing and marked "Confidential" or, if disclosed orally, confirmed in writing to Havill within thirty (30) days.
 - B. "Havill Confidential Information" shall mean information relating to the project, or commissioned services, disclosed to Client by Havill in writing and marked "Confidential" or, if disclosed orally, confirmed in writing to Client within thirty (30) days.
 - C. Each party agrees to maintain confidential and not disclose to any third party or use Confidential Information of the other, except for the purpose noted above, for a period of two (2) years from the date of disclosure hereunder after which period each party's obligation of non-use shall cease and each agrees to treat the information received hereunder in the same manner as it treats its own proprietary and confidential information.

- D. The provisions of paragraph C above shall not apply to information:
 - i. which was in the public knowledge or literature at the time of disclosure hereunder; or
 - ii. which the receiving party had in its possession at the time of disclosure hereunder without obligation of confidentiality; and such provisions shall cease to apply to information which:
 - (1) subsequent to its disclosure hereunder and without fault of the receiving party becomes part of the public knowledge;
 - (2) is disclosed to the receiving party without obligation of confidentiality by a third party having legal right to do so; or
 - (3) is independently developed by employees of the receiving party who have not had access to the disclosing party's confidential information.
- E. This agreement shall not be construed to grant either party any license or other right except as expressly noted herein.
- F. EACH PARTY SHALL LIMIT THE DISCLOSURE OF ITS CONFIDENTIAL INFORMATION TO THE OTHER PARTY TO THAT REQUIRED FOR THE PURPOSES OF THIS AGREEMENT. NO CONFIDENTIAL INFORMATION SHALL BE DISCLOSED BY EITHER PARTY UNTIL THE DISCLOSING PARTY HAS DESCRIBED THE GENERAL NATURE AND SCOPE OF THE INFORMATION TO BE DISCLOSED AND THE OTHER PARTY HAS AGREED TO RECEIVE SUCH INFORMATION IN CONFIDENCE AND DESIGNATED THE INFORMATION PURSUANT TO PARAGRAPH A OF THIS PART 4.
- G. All documents, drawings, and writings provided to the receiving party hereunder and copies thereof shall be returned promptly to the disclosing party upon the disclosing party's written request with the exception of one (1) legal file copy, which may be retained solely for the determination of legal obligations under this Agreement.
- H. The time period for disclosure of information under this Agreement shall expire on December 31, 2009
- I. The term of this agreement shall commence on the date of project authorization. This agreement can be canceled by either party for any reason, or for no reason, with 30 days written notice. Termination shall not affect each party's confidentiality and not-use obligations under paragraphs A and B of this Part 4.
- J. No agreement is either expressed or implied between the parties except as to the obligations set for in this agreement.