

サマライズ講座（要約英日文法）契約書篇

第1講 提出課題

課題文「Consulting Agreement（コンサルティング契約書）」を読み、日本語で要約文を作成して下さい。要約の方法は、本講で勉強した「条項順」による要約とします。

## CONSULTING AGREEMENT

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This Consulting Agreement (the "Agreement") is made and effective as of April 1, 2002

**BETWEEN:** **Abraham Consulting Company** (the "Consultant"), a company organized and existing under the laws of the State of Delaware, with its head office located at:

2808 South Ashland Avenue, Calumet Park, IL 60827

**AND:** **Lincoln Corporation** (the "Company"), a company organized and existing under the laws of the State of New York, with its head office located at:

5566 Madison Ave., New York, NY 10016

In consideration of the foregoing and of the mutual promises set forth herein, and intending to be legally bound, the parties hereto agree as follows:

### RECITALS

- a. The Company is engaged in the business of manufacturing and marketing of certain LED Array Printers, and has spent significant time, effort, and money to develop certain proprietary information relating to its LED Array Printers ("Proprietary Information"), which the Company considers vital to its business and goodwill.
- b. Consultant has expertise in the area of the Company's business and is willing to provide consulting services to the Company.
- c. The Company is willing to engage Consultant as an independent contractor, and not as an employee, on the terms and conditions set forth herein.
- d. The Company desires to obtain the services of Consultant by means of services provided by Consultant's employees dispatched by Consultant to provide services to Company hereunder ("Agents"), on its own behalf and on behalf of all existing and future Affiliated Companies

(defined as any corporation or other business entity or entities that directly or indirectly controls, is controlled by, or is under common control with the Company), and Consultant desires to provide consulting services to the Company upon the following terms and conditions.

- e. The Proprietary Information will necessarily be communicated to or acquired by Consultant and its Agents in the course of providing consulting services to the Company, and the Company desires to obtain the services of Consultant, only if, in doing so, it can protect its Proprietary Information and goodwill.

## 1. SERVICES

Consultant agrees to perform for Company the services listed in the Scope of Services section in Exhibit A, attached hereto and executed by both Company and Consultant. Such services are hereinafter referred to as "Services." Company agrees that consultant shall have ready access to Company's staff and resources as necessary to perform the Consultant's Services provided for by this contract.

## 2. CONSULTING PERIOD

### 2.1. Basic Term

The Company hereby retains the Consultant and Consultant agrees to render to the Company those Services described in Exhibit A for the period (the "Consulting Period") commencing on the date of this Agreement and ending upon the earlier of (i) March 31, 2003, (the "Term Date"), and (ii) the date the Consulting Period is terminated in accordance with Section 6. The Company shall pay the Consultant the compensation to which it is entitled under Section 4 through the end of the Consulting Period.

### 2.2. Renewal

Subject to Section 7, the Consulting Period will be automatically renewed for an additional one (1) year period (without any action by either party) on the Term Date and on each anniversary thereof, unless one party gives to the other written notice sixty (60) days in advance of the beginning of any renewal period that the Consulting Period is to be terminated, provided, that in no event shall the Consulting Period extend beyond March 31, 2007. Either party's right to terminate the Consulting Period, instead of renewing the Agreement, shall be with or without cause.

## 3. CONSULTANT'S RESPONSIBILITIES

- a. Consultant hereby agrees to provide and perform for the Company those services set forth on Exhibit A attached hereto. Consultant shall devote its best efforts to the performance of the Services and to such other services as may be reasonably requested by the Company.
- b. Consultant shall use its best efforts to furnish competent Agents possessing a sufficient working knowledge of the Company's research, development and products to fulfill Consultant's obligations hereunder. Any Agent of Consultant who, in the sole opinion of the Company, is unable to adequately perform any services hereunder shall be replaced by Consultant within seven (7) days after receipt of notice from the Company of its desire to have such Agent replaced.
- c. Consultant shall use its best efforts to comply with, and to ensure that each of its Agents comply with, all policies and practices regarding the use of facilities at which services are to be performed hereunder. Consultant agrees and shall cause each of its Agents to agree to the Acknowledgement and Inventions Assignment attached hereto as Exhibit B, and Consultant shall deliver a signed original of such Acknowledgement and Inventions Assignment to Company prior to such Agent's commencement of the provision of services for the Company.

- d. Personnel supplied by Consultant to provide services to Company under this Agreement will be deemed Consultant's employees or agents and will not for any purpose be considered employees or agents of Company. Consultant assumes full responsibility for the actions of such personnel while performing services pursuant to this Agreement, and shall be solely responsible for their supervision, daily direction and control, provision of employment benefits (if any) and payment of salary (including all required withholding of taxes).

#### **4. COMPENSATION AND EXPENSES**

##### **4.1. Compensation**

In consideration of the services to be rendered hereunder, including, without limitation, services to any Affiliated Company, Company shall pay to Consultant, the amount of One Thousand Dollars (\$1,000) per month, by wired transfer to the following bank account of Consultant by the 10th day of the following month for all due payments.

Name of Bank: Bank of America, West New York Branch  
Account No. :123456  
Name of Account: Abraham Consulting Company

##### **4.2. Expenses**

The Company shall reimburse Consultant for reasonable travel and other business expenses incurred by its Agents in the performance of the duties. Company shall pay such amounts within thirty (30) days after receipt of invoices which shall be sent by Consultant, to the bank account specified above in 5.1.

#### **5. TERMINATION OF CONSULTING RELATIONSHIP**

##### **5.1. By the Company or the Consultant**

At any time, either the Company or the Consultant may terminate, without liability, the Consulting Period for any reason, with or without cause, by giving thirty (30) days advance written notice to the other party. The Company shall pay Consultant the compensation to which the Consultant is entitled pursuant to Section 4 through the end of the Consulting Period, and thereafter all obligations of the Company shall terminate.

##### **5.2. Termination Due to Bankruptcy, Receivership**

The Consulting Period shall terminate and the Company's obligations shall cease upon the occurrence of: (i) the appointment of a receiver, liquidator, or trustee for the Company by decree of competent authority in connection with any adjudication or determination by such authority that the Company is bankrupt or insolvent; (ii) the filing by the Company of a petition in voluntary bankruptcy, the making of an assignment for the benefit of its creditors, or the entering into of a composition with its creditors; or (iii) any decision by the Board to terminate the Company's existence or otherwise to wind up the Company's affairs.

#### **6. TERMINATION OBLIGATIONS**

Consultant hereby acknowledges and agrees that all property, including, without limitation, all books, manuals, records, reports, notes, contracts, lists, blueprints, and other documents, or materials, or copies thereof, Proprietary Information, and equipment furnished to or prepared by Consultant or its Agents in the course of or incident to its rendering of services to the Company, including, without limitation, records and any other materials pertaining to Invention belong to the Company and shall be promptly returned to the Company upon termination of the Consulting Period..

The representations and warranties contained herein and Consultant's obligations under Sections 1, 2 and 3 shall survive termination of the Consulting Period and the expiration of this Agreement.

## 7. ASSIGNMENT

Consultant agrees that it will not assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, or by operation of law, any rights or obligations under this Agreement, nor shall Consultant's rights be subject to encumbrance or the claims of creditors. Any purported assignment, transfer, or delegation shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, legal representatives, successors, and permitted assigns, and shall not benefit any person or entity other than those enumerated above.

## 8. PLACE OF WORK

Consultant's services will be rendered largely at its office at 2808 South Ashland Avenue, Calumet Park, IL 60827 but Consultant will, on request, come to Company's address of 5566 Madison Ave., New York, NY 10016, or such other places designated by Company.

## 9. TIME DEVOTED TO WORK

In the performance of the services, the aforesaid services and the hours Consultant is to work on any given day will be entirely within Consultant's control and Company will rely upon Consultant to put in such number of hours as is reasonably necessary to fulfill the spirit and purpose of this contract. This arrangement will probably take about days of work per week although there undoubtedly will be some weeks during which Consultant may not perform any services at all or, on the other hand, may work practically the full week.

## 10. CONFIDENTIAL INFORMATION

- a. Each party hereto ("Such Party") shall hold in trust for the other party hereto ("Such Other Party"), and shall not disclose to any non-party to the Agreement, any confidential information of such Other Party. Confidential information is information which relates to Such Other Party's research, development, trade secrets or business affairs, but does not include information which is generally known or easily ascertainable by non-parties of ordinary skill in computer systems design and programming.  
Consultant hereby acknowledges that during the performance of this contract, the Consultant may learn or receive confidential Company information and therefore Consultant hereby confirms that all such information relating to the Company's business will be kept confidential by the Consultant, except to the extent that such information is required to be divulged to its personnel in order to enable Consultant to perform Consultant's contract obligation. Consultant shall take all reasonable precautions to prevent any other person from acquiring confidential information at any time.
- b. Consultant shall disclose promptly to Company all inventions, discoveries, formulas, processes, designs, trade secrets, and other useful technical information and know-how made, discovered, or developed by Consultant (either alone or in conjunction with any other person) during the term of this contract ("Inventions"). Consultant agrees that Consultant shall not disclose to third parties or use for his own financial benefit or for the financial or other benefit of any competitor of Company, the Inventions, without the written consent of Company.
- c. Upon termination of this contract, Consultant shall return to Company all drawings, manuals, letters, notes, notebooks, reports, and all other materials (including all copies of such materials), relating to confidential information obtained from Company or relates to Inventions, which are in the possession or under the control of Consultant.

## **11. SERVICES FOR OTHERS**

Inasmuch as Consultant will acquire or have access to information which is of a highly confidential and secret nature, it is expected that Consultant will not perform any services for any other person or firm doing business in the electronic device industry during the term of this agreement, without Company's prior written approval.

## **12. SERVICES AFTER TERMINATION**

Consultant agrees that, for a period of two (2) years following the termination of this agreement, Consultant will not perform any similar services for any person or firm doing business in the electronic device industry in the U.S.A.

## **13. STATUS OF CONSULTANT**

Consultant is an independent contractor and neither Consultant nor Consultant's staff is or shall be deemed to be employed by Company. Company is hereby contracting with Consultant for the services described on Exhibit A and Consultant reserves the right to determine the method, manner and mean by which the services will be performed. Consultant is not required to perform the services during a fixed hourly or daily time and if the services are performed at the Company's premises, then Consultant's time spent at the premises is to be at the discretion of the Consultant; subject to the Company's normal business hours and security requirements.

Each of the parties hereto agrees that, while performing Services under this Agreement, and for a period of one (1) year following the termination of this Agreement, neither party will, except with the other party's written approval, solicit or offer employment to the other party's employees or staff engaged in any efforts under this Agreement.

## **14. USE OF WORK PRODUCT**

Except as specifically set forth in writing and signed by both Company and Consultant, Consultant shall have all copyright and patent rights with respect to all materials developed under this contract, and Company is hereby granted a non-exclusive license to use and employ such materials within the Company's business.

## **15. DISPUTES**

Any disputes that arise between the parties with respect to the performance of this contract shall be submitted to binding arbitration by the American Arbitration Association, to be determined and resolved by said Association under its rules and procedures in effect at the time of submission and the parties hereby agree to share equally in the costs of said arbitration. The arbitral award shall be final and binding upon the parties hereto.

## **16. LIABILITY**

Consultant warrants to Company that the material, analysis, data, programs and services to be delivered or rendered hereunder, will be of the kind and quality designated and will be performed by qualified personnel. Consultant makes no other warranties, whether written, oral or implied, including without limitation, warranty of fitness for purpose or merchantability. In no event shall Consultant be liable for special or consequential damages, either in contract or tort, whether or not the possibility of such

damages has been disclosed to Consultant in advance or could have been reasonably foreseen by Consultant.

#### **17. NON-COMPETITION**

If this Consulting Agreement with the Company terminates for any reason, the Consultant will not, for a period of two (2) years from the date of termination, have any business dealings whatsoever, either directly or indirectly through associates with any customer or client of the Company or its Affiliates or any person or firm with whom the Consultant has made contact in connection with his consulting activities for the Company.

#### **18. REPRESENTATIONS AND WARRANTIES**

Consultant represents and warrants (i) that Consultant has no obligations, legal or otherwise, inconsistent with the terms of this Agreement or with Consultant's undertaking this relationship with the Company, (ii) that the performance of the services called for by this Agreement do not and will not violate any applicable law, rule or regulation or any proprietary or other right of any third party, (iii) that Consultant will not use in the performance of his responsibilities under this Agreement any confidential information or trade secrets of any other person or entity and (iv) that Consultant has not entered into nor will enter into any agreement (whether oral or written) in conflict with this Agreement.

#### **19. INDEMNIFICATION**

Consultant hereby indemnifies and agrees to defend and hold harmless the Company from and against any and all claims, demands and actions, and any liabilities, damages or expenses resulting therefrom, including court costs and reasonable attorneys' fees, arising out of or relating to the services performed by Consultant under this Agreement or the representations and warranties made by Consultant pursuant to Sections 1 and 3 hereof.

#### **20. NONWAIVER**

No failure or neglect of either party hereto in any instance to exercise any right, power or privilege hereunder or under law shall constitute a waiver of any other right, power or privilege or of the same right, power or privilege in any other instance. All waivers by either party hereto must be contained in a written instrument signed by the party to be charged and, in the case of the Company, by an executive officer of the Company or other person duly authorized by the Company.

#### **21. APPLICABLE LAW**

This Agreement shall be construed in accordance with the laws of the State of New York, in all respects of validity, construction and performance thereof.

#### **22. SEVERABILITY; ENFORCEMENT**

If any provision of this Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement and such provisions as applied to other persons, places, and circumstances shall remain in full force and effect.

### 23. NOTICES

All notices or other communications required or permitted hereunder shall be made in writing and delivered by hand or mailed, postage prepaid, by certified or registered mail, return receipt requested, and shall be deemed to have been duly given at the time of delivery by hand or five (5) days after deposit in the U.S. addressed to the following address:

For Consultant:  
Mr. Robert Green  
**Abraham Consulting Company**  
2808 South Ashland Avenue, Calumet Park, IL 60827

For the Company  
Mr. Herbert White  
**Lincoln Corporation**  
5566 Madison Ave., New York, NY 10016

Notice of change of address shall be effective only when done in accordance with this Section.

### 24. ASSIGNMENT

This Agreement may not be assigned by either party without the prior written consent of the other party. Except for the prohibition on assignment contained in the preceding sentence, this Agreement shall be binding upon and inure to the benefits of the heirs, successors and assigns of the parties hereto.

### 25. COMPLETE AGREEMENT

This agreement contains the entire agreement between the parties hereto with respect to the matters covered herein. No other agreements, representations, warranties or other matters, oral or written, purportedly agreed to or represented by or on behalf of Consultant by any of its employees or agents, or contained in any sales materials or brochures, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth first above, with full knowledge of its content and significance and intending to be legally bound by the terms hereof.

Company: **Lincoln Corporation**

Consultant: **Abraham Consulting Company**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Date

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Date