

## CONSULTING SERVICES AGREEMENT

Network Appliance Inc.  
495 East Java Drive  
Sunnyvale, CA 94089

The following confirms the agreement between \_\_\_\_\_  
(the "Consultant") and Network Appliance Inc., (the "Company") a Delaware  
corporation, with respect to the consulting services of \_\_\_\_\_.

1. Consultant understands that the Company possesses and will possess Proprietary Information that is important to its business. For purposes of this Agreement, "Proprietary Information" is information that was or will be developed, created or discovered by or on behalf of the Company, or that became or will become known by, or was or is conveyed to the Company (including, without limitation, "Results" as defined below) that has commercial value in the Company's business. "Proprietary Information" includes, but is not limited to, information about operations and maintenance, circuits, mask works, layouts, algorithms, trade secrets, computer programs, design, technology, ideas, know-how, processes, formulas, compositions, data, techniques, improvements, inventions (whether patentable or not), works of authorship, business and product development plans, customers and other information concerning the Company's actual or anticipated business, research or development, or that is received in confidence by or for the Company from any other person. Proprietary Information does not include information that Consultant demonstrates to the Company's satisfaction, by written evidence, (i) is in the public domain by reason of prior publication not directly or indirectly resulting from any act or omission of Consultant or (ii) was already properly known to Consultant (other than in connection with this consulting arrangement) without restriction on use or disclosure at the time of the Company's disclosure to Consultant. Consultant understands that the consulting arrangement creates a relationship of confidence and trust between Consultant and the Company with regard to Proprietary Information. Consultant agrees to keep confidential all Proprietary Information and not disclose it to third parties without prior written authorization from Company and not use the Proprietary Information for any purpose other than the benefit of Company and in furtherance of the consulting relationship.

2. Consultant understands that the Company possesses or will possess "Company Materials" that are important to its business. For purposes of this Agreement, "Company Materials" are documents or other media or tangible items that contain or embody Proprietary Information or any other information concerning the business,

operations or plans of the Company, whether such documents have been prepared by Consultant or by others. "Company Materials" include, but are not limited to, blueprints, drawings, photographs, charts, graphs, notebooks, customer lists, computer disks, tapes or printouts, sound recordings and other printed, typewritten or handwritten documents, as well as samples, prototypes, models, products and the like.

3. In consideration of the mutual covenants and agreements hereafter set forth, the parties agree as follows:

a. This Agreement will terminate on \_\_\_\_\_, unless terminated earlier pursuant to Paragraph 4 of this Agreement.

b. Consultant agrees to render consulting services ("Services") to the Company for the term of this Agreement. Consultant's duties shall include, but are not limited to, those duties set forth in Attachment A hereto and such other duties as the Company may from time to time prescribe. Consultant also agrees to submit to the Company, in written form or other tangible form, any deliverables or results of Consultant's work under this Agreement ("Results," including, without limitation, all Inventions referred to in 3.g. below) and all documentation of work performed under this Agreement in a timely manner. Consultant shall report directly to the undersigned manager of the Company and shall provide his services in accordance with the instructions of the undersigned manager of the Company, and with such reasonable instructions given to him by any other officer of the Company.

c. Consultant shall be paid a fee of \$\_\_\_\_\_ for Consultant's duties under this Agreement. The Company shall also reimburse Consultant for reasonable long distance travel (transportation, lodging and meals) and telephone expenses Consultant is required to incur in providing the Services. All long-distance travel and lodging will be coach class or equivalent and must be authorized in writing by the Company in advance. The foregoing fees and expense reimbursements are Consultant's sole compensation for rendering Services to the Company.

Consultant shall provide the Company with invoices detailing the consulting hours, fees and expense reimbursements that Consultant believes are due under this Agreement, and shall itemize and provide receipts for expenses upon request. The Company agrees to pay approved invoices within 30 days of receipt.

The Company will not pay Consultant's invoices until Consultant provides the Company with a taxpayer identification number or a completed and accurate Internal Revenue Service Request for Taxpayer Identification Number and Certification form (commonly known as a "W-9 form"). A blank form is attached to this Agreement.

d. All Proprietary Information and all title, patents, patent rights, copyrights, mask work rights, trade secret rights, and other intellectual property and rights anywhere in the world (collectively "Rights") in connection therewith shall be the sole property of the Company. Consultant hereby assigns to the Company any Rights Consultant may have or acquire in such Proprietary Information. At all times, both during the term of this Agreement and after its termination, Consultant will keep in confidence and trust and will not use or disclose any Proprietary Information without the prior written consent of an officer of the Company, except as may be necessary and appropriate in the ordinary course of performing the Services under this Agreement. Consultant acknowledges that any disclosure or unauthorized use of Proprietary Information will constitute a material breach of this Agreement and cause substantial harm to the Company for which damages would not be a fully adequate remedy, and, therefore, in the event of any such breach, in addition to other available remedies, the Company shall have the right to obtain injunctive relief.

e. All Company Materials shall be the sole property of the Company. Consultant agrees that during the term of this Agreement, Consultant will not remove any Company Materials from the business premises of the Company or deliver any Company Materials to any person or entity outside the Company, except as required to do in connection with performance of the Services under this Agreement. Consultant further agrees that, immediately upon the Company's request and in any event upon completion of the Services, Consultant shall deliver to the Company all Company Materials, any document or media that contains Results, apparatus, equipment and other physical property or any reproduction of such property, excepting only Consultant's copy of this Agreement. At all times before or after completion of the Services, the Company shall have the right to examine the Results and any materials relating thereto to ensure Consultant's compliance with the provisions of this Agreement.

f. Consultant will promptly disclose in writing to the President of the Company, or to any persons designated by the Company, all "Inventions" (which term includes improvements, inventions, designs, formulas, works of authorship, trade secrets, technology mask works, circuits, layouts, algorithms, computer programs, ideas, processes, techniques, know-how and data, whether or not patentable) made or conceived or reduced to practice or developed by Consultant, either alone or jointly with others, during the term of this Agreement in the course of performing the Services. Consultant will not disclose Inventions covered by Section 3.g. to any person outside the Company unless requested to do so in writing by management personnel of the Company.

g. Consultant agrees that all Inventions that Consultant makes, conceives, reduces to practice or develops (in whole or in part, either alone or jointly with others) during the term of this Agreement in the course of performing the

Services shall be the sole property of the Company. Consultant agrees to assign and hereby assigns to the Company all Rights to any such Inventions. The Company shall be the sole owner of all Rights in connection therewith. Furthermore, all works of authorship will be "works made for hire" to the extent allowed by law. No assignments in this Agreement shall extend to inventions, the assignment of which Consultant proves would be prohibited by Section 2870 of the Labor Code (a copy of which is attached as Attachment B), were Consultant an employee of the Company.

h. Consultant agrees to perform, during and after the term of this Agreement, all acts deemed necessary or desirable by the Company to permit and assist it, at Consultant's hourly rate as stated in paragraph 3(c), in evidencing, perfecting, obtaining, maintaining, defending and enforcing Rights and/or Consultant's assignment with respect to such Inventions in any and all countries. Such acts may include, but are not limited to, execution of documents and assistance or cooperation in legal proceedings. Consultant hereby irrevocably designates and appoints the Company and its duly authorized officers and agents, as Consultant's agents and attorneys-in-fact to act for and in behalf and instead of Consultant, to execute and file any documents and to do all other lawfully permitted acts to further the above purposes with the same legal force and effect as if executed by Consultant.

i. Any assignment of copyright hereunder includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights" (collectively "Moral Rights"). To the extent such Moral Rights cannot be assigned under applicable law and to the extent the following is allowed by the laws in the various countries where Moral Rights exist, Consultant hereby waives such Moral Rights and consents to any action of the Company that would violate such Moral Rights in the absence of such consent. Consultant will confirm any such waivers and consents from time to time as requested by the Company.

j. Consultant has attached hereto as Attachment C a complete list of all existing Inventions to which Consultant claims ownership as of the date of this Agreement and that Consultant desires to specifically clarify are not subject to this Agreement, and Consultant acknowledges and agrees that such list is complete. If no such list is attached to this Agreement, Consultant represents that Consultant has no such Inventions at the time of signing this Agreement.

k. During the term of this Agreement and for one (1) year thereafter, Consultant will not encourage or solicit any employee of the Company to leave the Company for any reason.

l. Consultant agrees that during the term of this Agreement Consultant will not engage in any employment, business, or activity that is in any way

competitive with the business or proposed business of the Company, and Consultant will not assist any other person or organization in competing with the Company or in preparing to engage in competition with the business or proposed business of the Company.

m. Consultant represents that performance of all the terms of this Agreement will not breach any agreement to keep in confidence proprietary information acquired by Consultant in confidence or in trust prior to the execution of this Agreement. Consultant has not entered into, and Consultant agrees not to enter into, any agreement either written or oral that conflicts or might conflict with Consultant's performances of the Services under this Agreement.

n. If any Rights or Inventions assigned hereunder or any Results are based on, or incorporate, or are improvements or derivatives of, or cannot be reasonably made, used, reproduced and distributed without using or violating technology or Rights not assigned hereunder, Consultant hereby grants the Company a perpetual, worldwide royalty-free, non-exclusive sublicensable right and license to exploit and exercise all such technology and Rights in support of the Company's exercise or exploitation of any Results or assigned Rights or Inventions (including any modifications, improvements and derivatives thereof).

4. Consultant agrees that this Agreement may be terminated by either the Company or the Consultant at any time, for any reason, with or without cause, by giving written notice to the other party; termination to be effective upon the other party's receipt of notice.

5. Consultant is an independent contractor and is solely responsible for all taxes, withholdings, and other similar statutory obligations, including, but not limited to, Workers' Compensation Insurance; and Consultant agrees to defend, indemnify and hold Company harmless from any and all claims made by any entity on account of an alleged failure by Consultant to satisfy any such tax or withholding obligations.

6. Consultant has no authority to act on behalf of or to enter into any contract, incur any liability or make any representation on behalf of the Company.

7. Consultant's performance under this Agreement shall be conducted with due diligence and in full compliance with the highest professional standards of practice in the industry. Consultant shall comply with all applicable laws and Company safety rules in the course of performing the Services. If Consultant's work requires a license, Consultant has obtained that license and the license is in full force and effect.

8. Consultant will indemnify and hold Company harmless, and will defend Company against any and all loss, liability, damage, claims, demands or suits and related costs

and expenses to persons or property that arise, directly or indirectly, from wilful acts or omissions of Consultant, or breach of any term or condition of this Agreement.

9. Consultant agrees that all obligations under paragraphs 3(d) through 3(i) and paragraphs 3(k) and (n), 5 and 8 of this Agreement shall continue in effect after termination of this Agreement, and that the Company is entitled to communicate Consultant's obligations under this Agreement to any future client or potential client of Consultant.

10. Consultant agrees that any dispute in the meaning, effect or validity of this Agreement shall be resolved in accordance with the laws of the State of California without regard to the conflict of laws provisions thereof. Consultant further agrees that if one or more provisions of this Agreement are held to be illegal or unenforceable under applicable California law, such illegal or unenforceable portion(s) shall be limited or excluded from this Agreement to the minimum extent required and the balance of the Agreement shall be interpreted as if such portion(s) were so limited or excluded and shall be enforceable in accordance with its terms.

11. This Agreement shall be binding upon Consultant, and inure to the benefit of, the parties hereto and their respective heirs, successors, assigns, and personal representatives; provided, however, that it shall not be assignable by Consultant.

12. This Agreement contains the entire understanding of the parties regarding its subject matter and can only be modified by a subsequent written agreement executed by the President of the Company.

13. All notices required or given herewith shall be addressed to the Company or Consultant at the designated addresses shown below by registered mail, special delivery, or by certified courier service:

a. To Company:

Network Appliance Inc.  
495 East Java Drive  
Sunnyvale, CA 94089

b. To Consultant:

14. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements, in addition to any other relief to which the party may be entitled.

**CONSULTANT HAS READ THIS AGREEMENT CAREFULLY AND UNDERSTANDS AND ACCEPTS THE OBLIGATIONS THAT IT IMPOSES UPON CONSULTANT WITHOUT RESERVATION. NO PROMISES OR REPRESENTATIONS HAVE BEEN MADE TO CONSULTANT TO INDUCE CONSULTANT TO SIGN THIS AGREEMENT. CONSULTANT SIGNS THIS AGREEMENT VOLUNTARILY AND FREELY, IN DUPLICATE, WITH THE UNDERSTANDING THAT ONE COUNTERPART WILL BE RETAINED BY THE COMPANY AND THE OTHER COUNTERPART WILL BE RETAINED BY CONSULTANT.**

Accepted and Agreed to:

Network Appliance Inc.

Consultant:

By: \_\_\_\_\_

By \_\_\_\_\_

Print \_\_\_\_\_

Print \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

ATTACHMENT A

DUTIES OF CONSULTANT (STATEMENT OF WORK)



ATTACHMENT B

**Section 2870. Application of provision providing that employee shall assign or offer to assign rights in invention to employer.**

(a) Any provision in an employment agreement that provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or

(2) Result from any work performed by the employee for his employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.

ATTACHMENT C

Network Appliance Inc.  
495 East Java Drive  
Sunnyvale, CA 94089

Ladies and Gentlemen:

1. The following is a complete list of Inventions relevant to the performance of consulting services for Network Appliance Inc. (the "Company") that have been made or conceived or first reduced to practice by me alone or jointly with others prior to the execution of the Company's Consulting Services Agreement (the "Agreement") that I desire to clarify are not subject to the Agreement.

- No Inventions
- See below
- Additional sheets attached

Consultant

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## Request for Taxpayer Identification Number and Certification

**Give form to the  
 requester. Do not  
 send to the IRS.**

<b>Print or type See Specific Instructions on page 2</b>	Name (as shown on your income tax return)	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/ Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other ▶ .....	
	<input type="checkbox"/> Exempt from backup withholding	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	
List account number(s) here (optional)		

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

<b>Social security number</b>									

**or**

<b>Employer identification number</b>									

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
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### Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

**U.S. person.** Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

In 3 above, if applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

For federal tax purposes, you are considered a person if you are:

- An individual who is a citizen or resident of the United States,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or
- Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.**

Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments (after December 31, 2002). This is called "backup withholding." Payments that may be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 4 for details),

3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules regarding partnerships* on page 1.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

**Sole proprietor.** Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

**Limited liability company (LLC).** If you are a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Treasury regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line. Check the appropriate box for your filing status (sole proprietor, corporation, etc.), then check the box for "Other" and enter "LLC" in the space provided.

**Other entities.** Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

**Note.** You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

### Exempt From Backup Withholding

If you are exempt, enter your name as described above and check the appropriate box for your status, then check the "Exempt from backup withholding" box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

**Note.** If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

**Exempt payees.** Backup withholding is not required on any payments made to the following payees:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
2. The United States or any of its agencies or instrumentalities,
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation,
7. A foreign central bank of issue,
8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
9. A futures commission merchant registered with the Commodity Futures Trading Commission,
10. A real estate investment trust,
11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
12. A common trust fund operated by a bank under section 584(a),
13. A financial institution,
14. A middleman known in the investment community as a nominee or custodian, or
15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt recipients listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt recipients except for 9
Broker transactions	Exempt recipients 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt recipients 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt recipients 1 through 7 <sup>2</sup>

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees; and payments for services paid by a federal executive agency.

## Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-owner LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* on page 2), enter your SSN (or EIN, if you have one). If the LLC is a corporation, partnership, etc., enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at [www.socialsecurity.gov](http://www.socialsecurity.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and clicking on Employer ID Numbers under Related Topics. You can get Forms W-7 and SS-4 from the IRS by visiting [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Writing "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt recipients, see *Exempt From Backup Withholding* on page 2.

**Signature requirements.** Complete the certification as indicated in 1 through 5 below.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

## What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee <sup>1</sup>
b. So-called trust account that is not a legal or valid trust under state law	The actual owner <sup>1</sup>
5. Sole proprietorship or single-owner LLC	The owner <sup>3</sup>
For this type of account:	Give name and EIN of:
6. Sole proprietorship or single-owner LLC	The owner <sup>3</sup>
7. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN (if you have one). If you are a sole proprietor, IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the legal trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules regarding partnerships* on page 1.

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

## Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.



## **Independent Supplier Consolidated Billing Agreement**

This Agreement is between ICon Professional Services (“ICon”) having a place of business at 1065 E. Hillsdale Blvd., Suite 108, Foster City, CA 94404 and \_\_\_\_\_, (“Supplier”) with a place of business at \_\_\_\_\_, and the parties agree as follows:

1. This Agreement starts on \_\_\_\_\_, 20\_\_\_\_ (“Effective Date”) and will remain in effect as long as Supplier performs services as an Qualified Independent Contractor (QIC) for Network Appliance, Inc. a Delaware corporation (“Client”).
2. During the term of this Agreement, ICon is acting on behalf of Client to perform consolidated billing services for Client-specified Suppliers.
3. Supplier warrants that they have proper back-up documentation to prove status as an independent business that is reasonable and customary in Supplier’s industry. Supplier also warrants that they have paid, and will pay, all requisite federal, state and local taxes owed for compensation received as a result of services performed as an independent business for Client, and will provide evidence as such upon request.
4. Supplier will invoice ICon for services performed for Client twice per month, invoices received by the 13th of the month will be forwarded to the Client on the 16th, and invoices received by the 28th of the month will be forwarded to the Client by the first day of the next month. ICon will, after receiving written authorization from Client approving invoices for payment as submitted by Supplier, submit a consolidated bill to Client. ICon will pay Supplier for approved invoices within ten (10) days of receipt of payment from Client. ICon will not be obligated to send payment to Supplier unless it has received payment from Client.
5. Supplier agrees to hold ICon harmless from any dispute between Supplier and Client, including any dispute over Supplier's status as a QIC or an employee, or from ICon's failure to pay any invoice not approved by Client or from Client's failure to approve payment of an invoice. Furthermore, Supplier acknowledges that all agreements relating to Supplier’s services for Client are between Client and Supplier.
6. At all times during this Agreement, Supplier and ICon are independent suppliers. Supplier therefore expressly acknowledges and agrees that Supplier will not be eligible for any ICon employee benefits (including participation in employee benefit plans such as ICon’s medical plan, flexible benefits plan, investment plans, or any other plans or bonuses).



7. In no event will either party be liable for any indirect, incidental, special or consequential damages, or damages for loss of profits, revenue, data or use, incurred by Supplier or any third party, whether in an action in contract or tort, even if that party was advised of the possibility of such damages. Neither party's liability for damages will exceed the fees paid by Client to ICon for ICon's services as it relates to the billing for Supplier's services to Client.
8. Notices will be made to the parties described in the first paragraph of this Agreement, and will be deemed given as of the date of receipt if served in person or by telegram or confirmed facsimile, as of three (3) business days after the date of mailing if served by mail, and as of one (1) business day after date of deposit with overnight mail.
9. Neither party may assign this Agreement to any third party without the prior written consent of the other party.
10. Section 5, 6, 7, 8 9, 10, 11 and 12 shall survive the Term of this Agreement.
11. This Agreement constitutes the full and complete understanding and agreement of the parties relating to the subject matter in this Agreement. Any waiver, modification or amendment of any provision of this Agreement shall be effective only if in writing and signed by ICon and Supplier. The provisions of this Agreement shall prevail over any conflicting provisions in any acceptance notice or other document.
12. Any dispute over the interpretation, enforcement or alleged breach of this Agreement shall be submitted to binding arbitration under the Commercial Rules of the American Arbitration Association. The prevailing party's reasonable attorney's fees will be paid by the other party. This Agreement, and all matters arising out of or relating to it, will be governed by the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below, to be effective as of the date first set forth above.

**Supplier**

**ICon**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**AUTHORIZATION, NOTIFICATION AND RELEASE FORM  
FOR PROCUREMENT OF CONSUMER CREDIT / BACKGROUND REPORT**

In connection with my application for employment, and/or employment with (Icon) ("Company"), I, \_\_\_\_\_ (applicant's or employee's name), understand and am hereby notified and authorize Company to procure a consumer report from a consumer reporting agency in accordance with the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq. (the "FCRA"), or any "person" as defined under the California Consumer Credit Reporting Agencies Act (if a CA applicant) for evaluation of me for employment (i.e. employment, promotion, reassignment, or retention as an employee). I understand that these consumer reports may contain information from public records, including written, oral, or other communications bearing on my credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, which may or may not be used as a factor for employment purposes. I further understand that such inquires may include, but are not limited to, criminal history, motor vehicle records, employment history and verification, military background, civil listings, education background, and professional background, from any individual, corporation, partnership, law enforcement agency, institution, school, organization, credit bureau, state board, licensing agency, and other entities, including present and past employers.

In connection with my application for employment and/or employment with Company, I further understand and am hereby notified that Company may procure an investigative consumer report concerning me from a consumer reporting agency or any "person" as defined by the California Consumer Credit Reporting Agencies Act (if a CA applicant.) I understand that an investigative consumer report may contain information from public records, including but not limited to, written, oral or other communications bearing on my credit worthiness, credit standing, character, general reputation, personal characteristics, or mode of living, which may be obtained through personal interviews with neighbors, friends or associates of me and may or may not be used as a factor for employment purposes. I further understand that such inquires may include, but are not limited to, investigations regarding worker's compensation, harassment, violence, theft, or fraud.

I have received and reviewed a copy of the Summary of Rights under the FCRA and the California Investigative Consumer Reporting Agencies Act (If a California resident.) I understand that I have the right to request, in writing, information regarding the nature and scope of any investigative report prepared on me.

I authorize without reservation any party or agency contacted by this employer to furnish the above-referenced information. I further authorize ongoing procurement of the above-referenced reports at any time, either during the time my application for employment is being considered or throughout the duration of my employment in the event that I am hired or am a current Company employee.

**My Social Security number is** \_\_\_\_\_ **My Date of Birth is** \_\_\_/\_\_\_/\_\_\_.\*\*

**My Drivers License number is** \_\_\_\_\_ **and was issued by the state of** \_\_\_\_\_.

Sex: ( )Male ( )Female

**Current address:**

No.	Street	County	City	State	Zip
Length at current address: _____ (If less than 7 years please provide previous addresses)					

**Previous address:**

No.	Street	County	City	State	Zip
Length at previous address: ___yrs___mos					

**Oklahoma, Minnesota and California applicants only:**

You have the right to receive a copy of your Consumer Credit Report free of charge should one be requested for employment purposes.

I wish to be furnished with a copy of my Background Investigation and/or credit report should one be ordered.

**Applicant Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

I acknowledge that I have voluntarily provided the above the above information for employment purposes, and I have carefully read and I understand this authorization.

\*\*The Age Discrimination in Employment Act of 1967 prohibits discrimination on the basis of age with respect to individuals who are at least 40 years of age.

Client Account Number: 240000

Please fax to Private Eyes, Inc. 190 N. Wiget Lane Suite 220 Walnut Creek, CA 94598 at (925) 927-3330

# California Investigative Consumer Reporting Agencies Act

## COMPLETE TEXT OF SECTION OF THE LAW CONTAINING THE REQUIRED NOTICE TO CONSUMERS (Effective January 1, 2002)

The section of the California Civil Code, which are your rights under the Amended Act, are set out below in full.

### § 1786.22.

- (a) An investigative consumer reporting agency shall supply files and information required under Section 1786.10 during normal business hours and on reasonable notice.
- (b) Files maintained on a consumer shall be made available for the consumer's visual inspection, as follows:
- (1) In person, if he/she appears in person and furnishes proper identification. A copy of his/her file shall also be available to the consumer for a fee not to exceed the actual costs of duplication services provided.
  - (2) By certified mail, if he/she makes a written request, with proper identification, for copies to be sent to a specified addressee. Investigative consumer reporting agencies complying with requests for certified mailing under this section shall not be liable for disclosures to third parties caused by mishandling of mail after such mailings leave the investigative consumer reporting agencies.
  - (3) A summary of all information contained in files on a consumer and required to be provided by Section 1786.10 shall be provided by telephone, if the consumer has made written request, with proper identification for telephone disclosure, and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.
- (c) The term "proper identification" as used in subdivision (b) shall mean that information generally deemed sufficient to identify a person. Such information includes documents such as a valid driver's license, social security account number, military identification card, and credit cards. Only if the consumer is unable to reasonably identify himself with the information described above, may an investigative consumer reporting agency require additional information concerning the consumer's employment and personal or family history in order to verify his/her identity.
- (d) The investigative consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished him/her pursuant to Section 1786.10
- (e) The investigative consumer reporting agency shall provide a written explanation of any coded information contained in files maintained on a consumer. This written explanation shall be distributed whenever a file is provided to a consumer for visual inspection as required under Section 1786.22.
- (f) The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. An investigative consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's files in such person's presence.

## **A Summary of Your Rights Under the Fair Credit Reporting Act**

The federal Fair Credit Reporting Act (FCRA) is designed to promote accuracy, fairness, and privacy of information in the files of every "consumer reporting agency" (CRA). Most CRAs are credit bureaus that gather and sell information about you -- such as if you pay your bills on time or have filed bankruptcy -- to creditors, employers, landlords, and other businesses. You can find the complete text of the FCRA, 15 U.S.C. 1681-1681u, at the Federal Trade Commission's web site (<http://www.ftc.gov>). The FCRA gives you specific rights, as outlined below. You may have additional rights under state law. You may contact a state or local consumer protection agency or a state attorney general to learn those rights.

- **You must be told if information in your file has been used against you.** Anyone who uses information from a CRA to take action against you -- such as denying an application for credit, insurance, or employment -- must tell you, and give you the name, address, and phone number of the CRA that provided the consumer report.
- **You can find out what is in your file.** At your request, a CRA must give you the information in your file, and a list of everyone who has requested it recently. There is no charge for the report if a person has taken action against you because of information supplied by the CRA, if you request the report within 60 days of receiving notice of the action. You also are entitled to one free report every twelve months upon request if you certify that (1) you are unemployed and plan to seek employment within 60 days, (2) you are on welfare, or (3) your report is inaccurate due to fraud. Otherwise, a CRA may charge you up to eight dollars.
- **You can dispute inaccurate information with the CRA.** If you tell a CRA that your file contains inaccurate information, the CRA must investigate the items (usually within 30 days) by presenting to its information source all relevant evidence you submit, unless your dispute is frivolous. The source must review your evidence and report its findings to the CRA. (The source also must advise national CRAs -- to which it has provided the data -- of any error.) The CRA must give you a written report of the investigation, and a copy of your report if the investigation results in any change. If the CRA's investigation does not resolve the dispute, you may add a brief statement to your file. The CRA must normally include a summary of your statement in future reports. If an item is deleted or a dispute statement is filed, you may ask that anyone who has recently received your report be notified of the change.
- **Inaccurate information must be corrected or deleted.** A CRA must remove or correct inaccurate or unverified information from its files, usually within 30 days after you dispute it. **However, the CRA is not required to remove accurate data from your file unless it is outdated (as described below) or cannot be verified.** If your dispute results in any change to your report, the CRA cannot reinsert into your file a disputed item unless the information source verifies its accuracy and completeness. In addition, the CRA must give you a written notice telling you it has reinserted the item. The notice must include the name, address and phone number of the information source.
- **You can dispute inaccurate items with the source of the information.** If you tell anyone -- such as a creditor who reports to a CRA -- that you dispute an item, they may not then report the information to a CRA without including a notice of your dispute. In addition, once you've notified the source of the error in writing, it may not continue to report the information if it is, in fact, an error.
- **Outdated information may not be reported.** In most cases, a CRA may not report negative information that is more than seven years old; ten years for bankruptcies.

- **Access to your file is limited.** A CRA may provide information about you only to people with a need recognized by the FCRA -- usually to consider an application with a creditor, insurer, employer, landlord, or other business.
- **Your consent is required for reports that are provided to employers, or reports that contain medical information.** A CRA may not give out information about you to your employer, or prospective employer, without your written consent. A CRA may not report medical information about you to creditors, insurers, or employers without your permission.
- **You may choose to exclude your name from CRA lists for unsolicited credit and insurance offers.** Creditors and insurers may use file information as the basis for sending you unsolicited offers of credit or insurance. Such offers must include a toll-free phone number for you to call if you want your name and address removed from future lists. If you call, you must be kept off the lists for two years. If you request, complete, and return the CRA form provided for this purpose, you must be taken off the lists indefinitely.
- **You may seek damages from violators.** If a CRA, a user or (in some cases) a provider of CRA data, violates the FCRA, you may sue them in state or federal court.

The FCRA gives several different federal agencies authority to enforce the FCRA:

FOR QUESTIONS OR CONCERNS REGARDING:	PLEASE CONTACT:
CRA's, creditors and others not listed below	Federal Trade Commission Consumer Response Center - FCRA Washington, DC 20580 202-326-3761
National banks, federal branches/agencies of foreign banks (word "National" or initials "N.A." appear in or after bank's name)	Office of the Comptroller of the Currency Compliance Management, Mail Stop 6-6 Washington, DC 20219 800-613-6743
Federal Reserve System member banks (except national banks, and federal branches/agencies of foreign banks)	Federal Reserve Board Division of Consumer & Community Affairs Washington, DC 20551 202-452-3693
Savings associations and federally chartered savings banks (word "Federal" or initials "F.S.B." appear in federal institution's name)	Office of Thrift Supervision Consumer Programs Washington, DC 20552 800-842-6929
Federal credit unions (words "Federal Credit Union" appear in institution's name)	National Credit Union Administration 1775 Duke Street Alexandria, VA 22314 703-518-6360
State-chartered banks that are not members of the Federal Reserve System	Federal Deposit Insurance Corporation Division of Compliance & Consumer Affairs Washington, DC 20429 800-934-FDIC
Air, surface, or rail common carriers regulated by former Civil Aeronautics Board or Interstate Commerce Commission	Department of Transportation Office of Financial Management Washington, DC 20590 202-366-1306
Activities subject to the Packers and Stockyards Act, 1921	Department of Agriculture Office of Deputy Administrator - GIPSA Washington, DC 20250 202-720-7051