

## CONSULTANT AGREEMENT

This **CONSULTANT AGREEMENT** ("Agreement") is effective as of the 1<sup>st</sup> day of July 2020, by and between the Virginia Tobacco Region Revitalization Commission, a political subdivision and agency of the Commonwealth of Virginia, with offices at 701 E. Franklin Street, Richmond, VA 23219 (the "Agency") and Anwyl Economic Development Ltd., a British private limited company with offices located at Palings, Cliff Lane, Curbar, Hope Valley, S32 3XD, Great Britain and its employees, agents and contractors (collectively, the "Consultant") and in light of the following circumstances:

**WHEREAS**, the Agency is a political subdivision of the Commonwealth of Virginia, committed to diversifying and revitalizing the economies of Southern and Southwest Virginia, as defined by the Agency and referred to hereinafter as the "Footprint";

**WHEREAS**, the Agency desires to retain the services of Consultant as an independent contractor to provide consulting and development services to secure manufacturing, supply chain, telecommunications, technology, IT, and related jobs and capital investments in the Footprint, and Consultant desires to provide said services to the Agency as an independent contractor under the terms, covenants and conditions set forth in this Agreement; and

**WHEREAS**, the Consultant has provided valuable and similar services to the Footprint while in a contractual relationship with various entities receiving grant funding from the Agency for the prior several years.

**NOW THEREFORE**, in consideration of the foregoing, the mutual promises and agreements set forth in this Agreement, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, and intending to be legally bound, the Agency and Consultant agree as follows:

1. **Scope of Services.** Subject to the terms and conditions of this Agreement, the Agency hereby engages Consultant as an independent contractor to provide consulting and development services to secure manufacturing, supply chain, telecommunications, technology, IT, and related jobs and capital investments in the Footprint, provide staff support in the UK and throughout Europe to principals of the Agency should such support be needed, as well as represent Agency economic development interests throughout UK and Europe, specifically including, but not limited to, those services described in the Statement of Work set forth in **Schedule A** to this Agreement, attached hereto and made a part hereof by this reference, as well as such related services as the Agency may request from time to time (collectively, the "Services"). Consultant shall provide the Services on a schedule mutually agreed upon by Consultant and the Agency; provided, however, that Consultant shall be expected to provide an average of at least forty (40) work hours – recognizing that some weeks

may be significantly above or below that figure – to the provision of Services during each week that Consultant is engaged by the Agency hereunder. Consultant shall select the individual or individuals that will provide Services on behalf of the Consultant pursuant to this Agreement; provided, however, that the Agency shall have the sole discretion to consent or reject Consultant's selection of any such individual or individuals. Consultant and the Agency acknowledge and agree that the Services provided pursuant to this Agreement shall primarily be performed outside of the United States, excepting such visits to the United States as are necessary to support business attraction activities. Consultant agrees to provide Services pursuant to this Agreement that are consistent with industry standards for quality and that meet the Agency's expectations and requirements, as determined by the Agency in its sole discretion.

The Agency and Consultant acknowledge and agree that Consultant is expected to accomplish the criteria set forth below during the Term, including on an annual basis,

- a. Identifying ten (10) qualified advanced manufacturing or other companies for investment and job creation within the Agency Footprint ("Target Companies");
- b. Engaging in eight (8) face-to-face meetings with decision makers of qualified large Companies;
- c. Facilitating and arranging five (5) qualified Target Company decision maker visits to the Footprint with meetings with Economic Development Organization(s);
- d. Facilitating three (3) qualified Target Companies in identifying the Footprint as one of the finalists (meaning reaching a short list of no more than two competitor states) for Target Company's investment in the United States; and,
- e. Facilitating a minimum of one and a half (3 over any two-year period) executed Performance Agreements between a qualified Target Company and the Agency.

For purposes of this Agreement, "advanced manufacturing" shall apply to those entities that make extensive use of computer, high precision, and information technologies integrated with a high performance workforce in a production system capable of furnishing a heterogeneous mix of products in small or large volumes with both efficiency of mass production and the flexibility of custom manufacturing in order to respond quickly to customer demands; provided,

however, that "advanced manufacturing" shall also apply to companies or entities the Agency, in its sole discretion , deems appropriate for purposes of this Agreement.

2. **Term and Termination.** Consultant's engagement under this Agreement shall begin on the date first written above and continue for twelve (12) months thereafter unless sooner terminated in accordance with this Section 2 (the "Term"). Upon the expiration of the Term, the agreement shall automatically renew for another Term, unless either party terminates the Agreement. This Agreement, and Consultant's engagement by the Agency hereunder, may be terminated as follows:

- a. **Upon Breach.** Either party may terminate this Agreement immediately upon a breach by the other party of any material term of this Agreement.
- b. **Upon Notice.** Either party may terminate this Agreement by providing the other party with:
  1. One hundred twenty (120) days advance written notice of such party's intent to terminate the Agreement;
  2. A complete accounting of all work performed to-date including (on the part of the Consultant) furnishing of contacts at Target Companies; and
  3. A plan to wind-down or transfer management of the program in such a fashion as the parties may agree.

If this Agreement terminates pursuant to this Section 2, neither party shall have any obligations to the other party after the effective date of such termination except as is expressly provided for under this Agreement.

3. **Compensation and the Parties Relationship.** The Agency shall remit to the consultant fees in exchange for performance of obligations in the fashion described herein:

- a. **Compensation.** In exchange for rendering Services pursuant to this Agreement, the Agency shall pay Consultant the amounts set forth in this Section 3. Consultant shall execute and deliver to the Agency a Form W-9 and the Agency will issue a Form 1099 at year's end reflecting all payments paid to Consultant pursuant to this Agreement. As set forth in Section 4(c) hereof, Consultant shall bear sole responsibility for any taxes or other withholdings attributable to such payments.
- b. **Consulting Fee.** In exchange for the Services provided hereunder, the Company shall pay to Consultant a sum of twenty one thousand dollars

and no cents (\$21,600.00) for each month that Consultant provides Services pursuant to this Agreement effective July 1, 2020 (the "Consulting Fee") irrespective of whether such Services actually result in job creation or capital investment within the Footprint in such month. The Consulting Fee shall be full compensation for the services provided by Consultant hereunder regardless of any travel, supply costs, meeting costs, or other expenses incurred by Consultant in connection herewith. For each month during the Term that Consultant claims a consulting fee is due, Consultant shall submit to the Agency an invoice that reflects the time spent by Consultant during the month providing Services pursuant to this Agreement, summarizes the nature of the Services provided during the month and describes any achieved or anticipated results of such Services. The Agency shall make payment pursuant to this Section 3(a) as expeditiously as possible.

- c. ***Incentive Bonus.*** In addition to the Consulting Fee provided to Consultant pursuant to Section 3(a) hereof: the Consultant is eligible to earn an incentive bonus or bonuses ("Incentive Bonus") up to twenty thousand dollars and no cents (\$20,000.00) per Target Company as set forth below; provided however, that the Incentive Bonus shall be capped in the aggregate at one hundred thousand dollars and no cents (\$100,000.00) per calendar year.
1. **Performance Agreement Execution Bonus:** Consultant shall earn five thousand dollars and no cents (\$5,000.00) for each of Consultant's Target Companies that executes a Performance Agreement with the Agency during the Term which results in an announcement of operations in the VTRRC Footprint.
  2. **Investment/Job Creation Bonus:** Consultant shall earn, on a *pro-rata basis*, up to fifteen thousand dollars and no cents (\$15,000.00) for each announced facility that completes its employment and capital investment obligations to the Agency. Any pro-rata determination, made by the Agency, regarding the performance by the Target Company shall also control the determination of the pro-rata bonus to the Consultant.
  3. **Referral Fee:** Consultant shall earn two thousand five hundred dollars and no cents (\$2,500.00) (the "Referral Bonus") for each of Consultant's Target Companies that executes a joint venture or partnership agreement with an existing company in the Footprint that results in production and/or leveraging of resources and costs. This Referral

Bonus is intended to compensate Consultant for its efforts related to recruiting a Target Company that results in a joint venture or partnership agreement, rather than a Performance Agreement or other agreement, as provided in Section 3(b)(1) above. The Referral Bonus will be paid after public announcement of the execution of such joint venture or partnership agreement. If, during the Term and subsequent to the payment of the Referral Bonus, the Target Company executes a Performance Agreement or other agreement as contemplated in Section 3(b)(1) above, then the amount of the Referral Bonus shall be subtracted from the bonus due the Consultant under Section 3(b)(1) hereof.

d. **Consultant as Independent Contractor.** The Agency and Consultant acknowledge and agree that Consultant's engagement by the Agency hereunder shall be as an independent contractor of the Company. Accordingly, the parties further acknowledge and agree as follows:

1. ***No Employment Relationship.*** The Agency and Consultant hereby affirm that Consultant is an independent contractor of the Company and that neither Consultant nor any individual engaged or employed by Consultant is an employee of the Agency. Consultant has no power or authority to act for, represent, or bind the Agency in any matter. Consultant and any individuals employed or engaged by Consultant are not entitled to any medical coverage, life insurance, unemployment insurance, or participation in any other benefits afforded to the Company's regular employees.
2. ***Freedom to Work/or Others.*** Consultant is free to work for other companies, individuals, or entities during the Term of this Agreement, so long as such work does not present a conflict of interest with regards to Consultant's obligations and responsibilities hereunder and it does not constitute or cause a breach of any provision of this Agreement.
3. ***Government Taxes & Fees.*** Consultant shall bear sole responsibility for operating Consultant's business, including payments of all taxes and all other governmental payments required for anyone to operate a business, including without limitation, the payment of all applicable federal, state and local income taxes, self-employment or

FICA (social security) taxes, and unemployment and workers' compensation insurance payments, if applicable. If the Agency is required to pay or withhold any taxes or make any other payment with respect to fees or other compensation paid or payable to Consultant or any employee or agent of Consultant, Consultant shall reimburse the Agency in full for all taxes or fees so paid, and permits the Agency to make deductions for such taxes and fees required to be withheld from any sum due Consultant.

4. **Workers Compensation.** Consultant agrees to maintain and be solely responsible for payment of all premiums regarding workers' compensation insurance for Consultant and/or any individuals employed or engaged by Consultant, if required, or in the alternative, waive in writing such insurance coverage as permissible by law. Consultant agrees to provide the Agency with a copy of the certificate of insurance regarding such compensation coverage or, if waived, the written notice of waiver.
5. **Operating Expenses.** Except as provided for herein, the Agency shall not be responsible for or liable to Consultant for any expenses paid or incurred by Consultant, or any individuals employed or engaged by Consultant, in connection with or arising from the provision of Services pursuant to this Agreement, including, without limitation, vehicles, fuel, repair and maintenance expenses, toll expenses, parking, traffic tickets, telecommunications or internet charges, and vehicle or other insurance.
6. **Liability Insurance.** Consultant shall supply at Consultant's expense, and furnish the Agency with written evidence of, liability insurance coverage, in an amount acceptable to the Agency, for Consultant insuring Consultant and any individuals employed or engaged by Consultant from and against any and all liability that may result from the performance of any obligations under this Agreement.

4. **Indemnification and release:** The parties shall, in the event of any dispute, attempt to resolve such disputes without litigation or threats of litigation to the extent possible. Otherwise:

- a. **Release of Claims.** By executing and delivering this Agreement and accepting work hereunder, Consultant hereby releases the Agency and the Commonwealth of Virginia from any claim which might otherwise be asserted by Consultant against the Agency or the Commonwealth of Virginia.
- b. **Reimbursement.** If any action is brought by Consultant against the Agency, its members, employees or agents, or the Commonwealth of Virginia, Consultant shall be liable for all legal expenses and other costs, including, but not limited to, attorneys' fees, related to such action incurred by the Agency or the Commonwealth of Virginia.

Nothing contained herein shall be deemed an express or implied waiver of the sovereign immunity of the Agency or the Commonwealth of Virginia.

- c. **Indemnification.** The work to be performed under this Agreement shall be performed entirely at Consultant's risk and expense (except as otherwise expressly provided in this Agreement), and all applicable governmental laws, rules, orders, and regulations. Consultant agrees to indemnify and hold the Agency harmless from any liabilities, claims or demands (including the costs, expenses, and attorneys' fees incurred on account thereof) that may be made against the Agency by any person or entity, including but not limited to customers, employees or agents of Consultant, or third parties, relating to or arising from Consultant's performance of Services under this Agreement. Consultant also agrees to rely solely upon the insurance maintained by Consultant for compensation or indemnification with respect to any automobile, worker's compensation or other claim that occurs while Consultant is performing services pursuant to this Agreement.

5. **Confidential Information.** Consultant acknowledges and agrees that, in the course of Consultant's engagement by the Agency, Consultant will acquire, develop and/or be given access to confidential information concerning the Agency's economic development plans and strategies; lists of and information about individuals, companies or entities that have been recruited for, identified as prospects for, or expressed interest in locating facilities or advanced manufacturing jobs, or making other capital investments, in the Footprint; research capabilities and projects; financial condition and internal operations; and internal corporate documents and information (collectively, the "Confidential Information"). Consultant further acknowledges and agrees that the Confidential Information is valuable to the Agency and the Commonwealth of Virginia,

has been developed at significant expense to the Agency and is not generally known by others in the industry in which the Company operates; that disclosure of the Confidential Information to competitor states or localities would damage the Agency and the Commonwealth; and that the Agency takes reasonable steps to protect and maintain the secrecy of the Confidential Information. The Confidential Information is and shall remain the sole and exclusive property of the Agency.

- a. **Competition.** Consultant covenants and agrees that Consultant shall not, during the Term of this Agreement and for a period of five (5) years from and after the date on which this Agreement terminates or Consultant's engagement by the Agency ceases for any reason whatsoever, other than in the performance to Consultant's obligations under this Agreement, use or disclose or distribute to any person or entity, other than the Agency or individuals or entities specifically designated by the Agency, any of the Agency's Confidential Information, except under compulsion by any court, state or federal agency, or regulatory authority having jurisdiction and the power to require disclosure of information relating to Consultant's services for the Agency or the Agency's activities while Consultant was engaged by the Agency.

Consultant shall promptly notify the Agency upon receipt of any request from any court, agency, or authority, and, if permitted under applicable law, shall not disclose the requested information until such time as the Agency has had an opportunity to take such steps as are necessary to ensure protection of the confidentiality and use of any requested information. Consultant further agrees to take all reasonable steps to ensure that all employees or agents of Consultant are advised of and adhere to the confidentiality provisions contained herein.

Notwithstanding anything to the contrary contained herein, the Confidential Information subject to this Section 5 shall not include any information that: (i) is or has become publicly available other than as a result of any act or failure to act of Consultant; (ii) was known to Consultant, without an obligation to keep it confidential, prior to Consultant's receipt of such item of information from the Agency or a member or partner of the Agency; or (iii) has legally and properly been received by Consultant from a third party through no breach of any agreement with or duty to the Agency or a member or partner of the Agency and without an obligation to keep it confidential. Additionally, nothing contained in this Agreement shall be construed to prohibit the exercise of any right by Consultant or



any employee or agent of Consultant that Consultant or such employee or agent cannot waive or forego under applicable law or to prohibit Consultant or such employee or agent from engaging in any activity that is protected by applicable law.

- b. **Agency Property.** Consultant and the Agency acknowledge and agree that all materials and data acquired, prepared, developed or obtained by Consultant, or any employee or agent of Consultant, during the Term of this Agreement and in furtherance of or in relation to Consultant's obligations hereunder, including, but not limited to, all correspondence, manuals, letters, notes, notebooks, reports, flow charts, programs, proposals, brochures, power point presentations, prospect lists, and any documents concerning the Agency operations, products or processes (actual or prospective) or concerning any other aspect of the Agency's operations (actual or prospective) (collectively, the "Agency Property") is, will be, and shall remain the sole and exclusive property of the Agency. Upon the cessation, for any reason, of the independent contractor relationship between Consultant and the Agency, Consultant will promptly deliver to the Agency all Agency Property and, without limiting the foregoing, will promptly deliver to the Agency any and all other documents or materials containing or constituting Confidential Information, regardless of the medium (i.e., including but not limited to originals and copies stored in electronic format, hard copy format, or cloud-based.)
- c. **Remedies in the Event of Breach.** If Consultant breaches any provision of this Agreement, Consultant shall be liable to the Agency for any and all damages, including, without limitation, consequential and incidental damages resulting from such breach, and shall also be liable for the attorneys' fees and costs incurred by the Agency in any litigation related to or arising under this Agreement where the Agency is the prevailing party.

**6. Governing Law.** This Agreement shall be construed according to the laws of the Commonwealth of Virginia without regard to any conflicts of law provisions or principles thereof to the contrary.

- a. **Venue.** In all court proceedings involving claims arising under or related to this Agreement, the Company and Consultant hereto irrevocably consent to exclusive personal jurisdiction by, and venue in, the Circuit Court of the County of Richmond and the United States District Court for the Eastern District of Virginia, Richmond Division (to the extent such court has subject matter jurisdiction) in connection with

any action, suit or other proceeding in connection with, arising out of, or relating to this Agreement, and the parties agree not to assert in any such action, suit or proceeding that a party is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper.

- b. Notices.** Any notice or other communication required permitted, or desirable under this Agreement shall be sufficient if delivered by hand or by commercial courier service or sent by United States registered or certified mail, postage prepaid, and addressed as follows:

TO THE AGENCY:

Evan Feinman  
Executive Director  
Tobacco Region Revitalization Commission  
701 E. Franklin Street, Suite 501  
Richmond, VA 23219

TO CONSULTANT:

Anwyl Economic Development Ltd. c/o Joe Anwyl  
Palings, Cliff Lane Curbar  
Hope Valley S32 3XD Great Britain

**7. Miscellaneous.** The following provisions are made a part of and shall apply to this Agreement:

- a. **Headings.** The headers herein are for convenience only and shall not affect the interpretation of this Agreement.
- b. **Assignment.** This Agreement shall be binding upon and inure to the benefit of successors and omitted assigns of the parties. This Agreement may not be assigned, nor may the performance of any duty hereunder be delegated, by either party without the prior written consent of the other; provided, however, the Agency may assign this Agreement to any successor to its operations.
- c. **Severability.** If any provision of this Agreement is found or held to be invalid, unenforceable or illegal to any extent, the remaining provisions of this Agreement shall not be affected and shall be enforceable to the fullest extent of the law.
- d. **Entire Agreement and Amendments.** This Agreement supersedes any and all other agreements, oral or written, between the parties, and may

not be modified or amended, except in a writing signed by a duly authorized representative of the Agency and by Consultant.

- e. **Waiver.** The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms or conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.
- f. **Execution in Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same Agreement. This Agreement may be delivered by facsimile transmission or electronic delivery of an originally executed copy to be followed by the immediate delivery of the original of such executed copy.
- g. **Incorporation of Recitals.** The recitals to this Agreement are an integral part of, and by this reference are hereby incorporated into. this Agreement

**IN WITNESS WHEREOF**, the parties, intending to be legally bound, have executed this Consulting Agreement effective as of the day and year first written above.

**VIRGINIA TOBACCO REGION REVITALIZATION COMMISSION**

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

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

**ANWYL ECONOMIC DEVELOPMENT LTD**

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

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

## Schedule A: Economic Development Consultant

Pursuant to the Consultant Agreement (the "Agreement"), the Economic Development Consultant ("Consultant") will bring Advanced Manufacturing, Information Technology, Telecommunications, and other job creation opportunities to the Footprint.

Consultant will work with the Agency, their partners and other staff, and will generate additional leads from European companies. Consultant is based in the United Kingdom for better access to target companies. As an independent contractor of the Agency, Consultant will continue to:

- Generate leads for the Footprint, primarily for foreign direct investment in advanced manufacturing, technology, IT and telecommunications, via interaction with Agency and partner staff and consultants and regional economic development organizations.
- Coordinate leads with State, Regional, and Local economic development organizations in the Footprint (e.g., Virginia Economic Development Partnership, Southern Virginia Regional Alliance, Virginia Growth Alliance, Greater Lynchburg Regional Alliance, Virginia Gateway Region, etc...).
- Establish a schedule for recruiting visits to companies in other states and countries. In coordination with State and Regional economic development organizations, co-lead delegations from the Footprint to meet with prospects on a recurring basis.
- Qualify leads based on their desire and ability to establish operations in the Footprint.
- Conduct meetings with decision makers in qualified companies and schedule and participate in visits by those decision makers to the Footprint.
- Conduct meetings with qualified leads and local and/or state Economic Development Organizations.
- Work to establish business relationships between non-Virginia companies and companies residing within the Footprint.
- Work with qualified leads and economic development organizations to consummate company agreements and announcements to establish manufacturing operations in the Footprint
- Perform such other tasks as are requested and fall generally within the scope of duties described herein or would act to support the aims of those duties described herein.