

INDEPENDENT CONTRACTOR SERVICES AGREEMENT EXAMPLE

PROVIDED BY JACKSON WALKER L.L.P.

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INDEPENDENT CONTRACTOR SERVICES AGREEMENT

This Independent Contractor Services Agreement is entered into and made effective this _____ day of _____, 20____ ("Effective Date"), by and between [COMPANY], a [STATE] [ENTITY] ("Company/[Name of Co.]"), and [CONTRACTING INDIVIDUAL/ENTITY] ("Contractor").

Section 1. General.

(a) Services. Contractor shall provide the services outlined in Exhibit A hereto. As a Contractor of Company, Contractor hereby agrees to observe all the provisions of this Agreement, as well as all other rules and policies that Company may announce from time to time.

(b) Change Requests. Changes to any of the services to be provided under this Agreement shall become effective only when a written change request is executed. Contractor may not decline to accept any change requests that reduce the cost of performance, provided that an equitable adjustment in compensation is made for the out-of-pocket costs of any performance or preparation already undertaken. Contractor further may not decline any change requests that increase the cost or magnitude of performance, provided that the changes are reasonable in scope and a commensurate increase in compensation is fixed. Change requests submitted by Contractor must be approved by Company.] **<Delete if not project based>**

Section 2. Fees, Expenses, and Payment.

(a) Fees. In consideration of the services to be performed by Contractor, Company shall pay Contractor the fees set forth in Exhibit A hereto and shall have no liability to Contractor for any other fees, costs or expenses not set forth in a Statement of Work, unless otherwise agreed to by Company in writing signed by an authorized representative.

(b) Additional Work. Unless otherwise agreed in writing in advance, no follow-on or additional work not described in Exhibit A shall be performed. Additional work shall be requested pursuant to a subsequent Statement of Work executed by both parties hereto.] **<Delete if not project based>**

(c) Taxes. Contractor shall be responsible for paying all applicable taxes relating to the services, including, without limitation, the payment of any self-employment taxes and Contractor acknowledges that Company will not withhold taxes from the fees payable to Contractor on the Contractor's behalf.

Section 3. Term and Termination. The initial term of this Agreement shall be as provided on Exhibit A hereto. This Agreement shall be extended pursuant to any additional Statements of Work executed hereunder. Notwithstanding the foregoing, Company may terminate this Agreement upon ten (10) days' written notice, and, upon such termination, shall be liable only for fees actually incurred as of the date of termination. Notwithstanding the foregoing, either party may terminate this Agreement immediately upon a material breach by the other party of its obligations hereunder.

Section 4. Ownership of Work Product.¹

¹ Without a written work for hire agreement, all intellectual property owned by an independent contractor remains the property of an independent contractor.

(a) Company shall own all Work Product (as defined below). All Work Product shall be considered "work made for hire" by Contractor and owned by Company.

(b) If any of the Work Product may not, by operation of law, be considered work made for hire by Contractor for Company (or if ownership of all right, title, and interest of the intellectual property rights therein shall not otherwise vest exclusively in Company), Contractor agrees to assign, and upon creation thereof automatically assigns, without further consideration, the ownership of all Trade Secrets (as defined below), U.S. and international copyrights, patentable inventions, and other intellectual property rights (collectively, "**Intellectual Property**") therein to Company and its successors and assigns.

(c) Company, or its successors, assigns or affiliates (as designated by Company), shall have the right to obtain and hold in its or their own name copyrights, registrations, patent registrations and any other protection available in the Intellectual Property.

(d) Contractor agrees to perform, upon the reasonable request of Company, during the term of this Agreement or after termination of this Agreement, such further acts as may be necessary or desirable to transfer, perfect, and defend Company's ownership of the Work Product. When requested, Contractor will:

(i) Execute, acknowledge and deliver any requested affidavits and documents of assignment and conveyance;

(ii) Obtain and aid in the enforcement of copyrights (and, if applicable, patents) with respect to the Work Product in any country;

(iii) Provide testimony in connection with any proceeding affecting the right, title, or interest of Company in any Work Product; and

(iv) Perform any other acts deemed necessary or desirable to carry out the purposes of this Agreement.

(e) Contractor shall provide to Company a copy any Work Product created under this Agreement and/or provided to any client or Customer (as defined hereinafter) including, without limitation, all presentations, software code, papers, memos, and procedures, immediately upon the earlier of completion or delivery. The copy shall be provided in any medium requested by Company.

(f) For purposes of this Agreement, "**Work Product**" shall mean all intellectual property rights, including all Trade Secrets (as defined hereinafter), U.S. and international copyrights, patentable inventions, discoveries and improvements, and other intellectual property rights, in any documentation, methodology or other work product that relates to the business and interests of Company and that Contractor conceives, develops, or delivers to Company at any time during the term of this Agreement related to the services Contractor is providing to Company. "**Work Product**" shall also include all intellectual property rights in any programming, sales materials, partner lists, customer or target lists, financial analysis, documentation, technology, or other work product related to the services Contractor provided to Company to the extent Contractor conceived, developed or delivered such Work Product to Company

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prior to the date of this Agreement while Contractor was engaged as an independent contractor or employee of Company. Contractor hereby irrevocably relinquishes for the benefit of Company and its assigns any moral rights in the Work Product recognized by applicable law.

Section 5. Confidential Information and Trade Secrets.

Contractor acknowledges that in connection with the provision of services under this Agreement that Contractor may have access to Company's Trade Secrets and Confidential Information (as defined hereinafter). Contractor agrees that Company has a legitimate business interest in its Trade Secrets and confidential and proprietary information. Company and Contractor agree that the trade secrets and confidential and proprietary information to which Contractor may access will include one or more of the following: (1) Company's strategy implementation methodologies; (2) Company's marketing strategies or product development plans and strategies; (3) Company's client and customer identity information and Company's partner and partner identity information; (4) information regarding Company's products and product development plans; (5) information about Company's channel partners, customers and potential customers (received both verbally and in written form) which is also proprietary to each customer and disclosed under confidentiality obligations to such company; (6) documented proprietary systems and procedures; (7) Company's methods of operations and proprietary information related to its software and services; (8) research reports and internal documentation prepared by Company; or (9) Company's methods of operations (hereinafter "**Confidential Information**"). For purposes of this Agreement, a "**Trade Secret**" is any information, including, but not limited to, technical or non-technical data, a compilation, a program, a device, a method, a technique, a process, financial data, financial plans, product plans, or a list of actual or potential customers or suppliers, which: (i) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Contractor agrees that the Company is entitled to prevent the disclosure of Confidential Information and Trade Secrets.

In exchange for Company's promises herein, Contractor agrees that:

(a) Contractor will not, during or after the term of this Agreement, in whole or in part, directly or indirectly, disclose Company's Confidential Information (whether received before or after the execution of this Agreement) to any person, firm, corporation, association or other entity for any reason or purpose whatsoever, unless required to do so by law and then only after giving Company fifteen (15) days written notice before such disclosure, nor shall Contractor make use of any of Company's Confidential Information for Contractor's own purposes or for the benefit of any person, firm, corporation or other entity (except for Company or any affiliate thereof), under any circumstances during or after the termination of this Agreement;

(b) Contractor will, during and after the term of this Agreement, hold in strict confidence and not disclose, reveal or allow to be disclosed or revealed to any person, firm or corporation, other than to persons engaged by Company to further the business of Company, and not to use or publish, except in the pursuit of the business of Company the Trade Secrets or Confidential Information of Company;

(c) Contractor will not, during or after the term of this Agreement, in whole or in part, directly or indirectly, usurp a corporate opportunity;

(d) Contractor will not use the goodwill of Company for the benefit of Contractor or any competitor of Company; and

(e) upon termination of this Agreement and at any time at Company's request, Contractor shall promptly return to a representative of Company all documents, data and other information derived from or otherwise pertaining to Confidential Information and Trade Secrets and any other materials and all copies of materials involving any of Company's Confidential Information in Contractor's possession or control. Contractor shall not take or retain any documents or other information, or any reproduction or excerpt thereof, containing or pertaining to any Confidential Information or Trade Secret.

Section 6. Non-Solicitation Covenant. Ancillary to the otherwise enforceable agreements set forth in this agreement, Contractor agrees as follows:

(a) During the term of this Agreement and for a period of two (2) years following termination of this Agreement, Contractor will not enter into or attempt to enter into (on Contractor's own behalf or on behalf of any other person or entity) a business relationship to provide the delivery of consulting services to any company or entity that: (i) was identified to Contractor by Company, as a Customer or Partner of Company, or (ii) was sold any of Company's software or services by Company. For purposes of this Agreement, a "Customer" is defined to include any organization, individual, group, company or other entity for whom Company has provided software or services or which Company, or any of its representatives, have contacted during the term of this Agreement in relation to the sale of software or services by Company and a "Partner" is defined to include any organization, individual, group, company or other entity through whom Company markets and distributes software or services. Contractor agrees that the assertion or existence of any claim by Contractor against Company shall not be a defense to the enforcement of this paragraph by injunction or otherwise.

(b) Ancillary to the enforceable promises set forth in this Agreement, the Contractor covenants and agrees that, for a period of two (2) years subsequent to the termination of this Agreement with Company, whether such termination occurs at the insistence of Contractor or Company or as a result of the expiration of the term of this Agreement, Contractor shall not recruit, hire, or attempt to recruit or hire, directly or by assisting others, any employees of Company, nor shall Contractor contact or communicate with any employees of Company for the purpose of inducing other employees to terminate their employment with Company. For purposes of this covenant, "other employees" shall refer to employees or independent contractors who are still actively employed by, or doing business with, Company at the time of the attempted recruiting or hiring.

Section 7. Acknowledgment of Reasonable Restrictions; Consequences for any Breach by Contractor.

(a) Reasonableness. Contractor further agrees that his or her covenants, restrictions and agreements contained above, taken as a whole, are reasonable in their scope and duration and such reasonableness will not be challenged in any proceeding to enforce any of same and are ancillary to an otherwise enforceable agreement and supported by independent valuable consideration as required by Tex. Bus. & Comm. Code Ann. § 15.50 and do not impose any greater restraint than is reasonably necessary to protect the goodwill and other business interests of Company.

(b) Remedies. In the event of a breach or a threatened breach Contractor of his or her obligations contained above, shall, in addition to any other remedies that may be available at law or in equity, entitle Company to an immediate injunction and restraining order to prevent such violations or continued violation and to have the provisions of this Agreement specifically enforced without having

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to prove damages it being acknowledged and agreed that any such breach or threatened breach may cause irreparable injury to Company and that money damages may not alone provide an adequate remedy to Company. Such violation may further subject Contractor to pay all reasonable expenses incurred by Company during the enforcement of its rights hereunder including, but not limited to, court costs and reasonable attorneys' fees and for any damages suffered as a consequence of Contractor's actions.

(c) **Reformation.** In the event provisions of this Agreement should ever be found by a court of competent jurisdiction to exceed the time, geographic or other limitations permitted by applicable law or public policy, then said provisions shall be reformed to correspond with the maximum time, geographic or other limitations permitted by such applicable law or public policy.

Section 8. Representations and Warranties. Contractor hereby represents and warrants to Company that (i) Contractor has full power and authority to execute, deliver and perform this Agreement and is not subject to any contractual restrictions that would prevent performance hereunder; (ii) Contractor has the expertise and qualifications necessary to perform the services, or, at Contractor's own expense, will utilize employees or agents who have the necessary expertise and qualifications, (iii) the services will be performed in a good and workmanlike manner, in accordance with the generally accepted standards of care, skill, diligence and professional competence applicable to those engaged in providing similar services at the time when, and the place where, the Services are rendered; and (iv) no third party has any claim of ownership with respect to any of the Work Product delivered hereunder.

Section 9. Cooperation with Customers, Third Party Contractors and Vendors. Contractor acknowledges and agrees that successful provision of the services to be provided hereunder shall require its full, good faith cooperation with third parties.

Section 10. No Conflicting Obligations. Contractor will not improperly use or disclose any confidential information or trade secrets, if any, of any former employer (if an individual) or of any of its Assigned Staff's former employers (if an entity) or any other person to whom Contractor has an obligation of confidentiality, and Contractor will not bring onto the premises of Company or otherwise provide to Company any unpublished documents or any property belonging to any person to whom Contractor or its assigned staff have an obligation of confidentiality unless consented to in writing by that person.

Section 11. Miscellaneous Provisions.

(a) **Compliance by Staff.** If Contractor is not an individual, Contractor shall be responsible for assuring compliance by its assigned staff with all of the provisions contained herein.

(b) **Indemnity.** Contractor will hold Company and its employees, members, trustees harmless from and indemnify and defend them against all damages, losses, injuries, liabilities, penalties, costs (including attorneys' fees), claims, demands, litigation, and judgments (a) arising from or incurred in connection with the performance of the services, or (b) caused by Contractor or anyone working on or providing the services.

(c) **Offset.** In addition to all other remedies permitted by law, Company shall have the right to withhold from payment otherwise due to Contractor, and to offset against such sums due, the amount reasonably necessary to protect Company against any loss or damage which may result from negligence of or unsatisfactory work by Contractor, failure by Contractor to perform its obligations hereunder, or claims filed against Company relating to the services. Company shall have no obligation to pay for unsatisfactory performance of the services, including under a theory of *quantum*

meruit.

(d) **Disclaimer.** IN NO EVENT SHALL COMPANY BE LIABLE TO CONTRACTOR FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS OR LOST OPPORTUNITY DAMAGES. CONTRACTOR ACKNOWLEDGES AND UNDERSTANDS THAT NO OFFICER, DIRECTOR, EMPLOYEE, OR PERSON OTHER THAN COMPANY SHALL HAVE ANY LIABILITY UNDER THIS AGREEMENT.

(e) **Waiver.** The failure of Company to enforce any provision of this Agreement cannot be construed to be a waiver of such provision or of the right thereafter to enforce same, and no waiver of any breach shall be construed as an agreement to waive any subsequent breach of the same or any other provision. If Company fails to take action for any violation of this Agreement, such failure shall not constitute a waiver or estoppel as to said violation, but it shall have the right to enforce or take such action for any prior violation or future violation without being subjected to the defense of waiver or estoppel.

(f) **Governing Law; Jurisdiction.** THIS AGREEMENT SHALL BE DEEMED TO HAVE BEEN ENTERED INTO AT COMPANY'S LOCATION IN THE STATE OF TEXAS, U.S.A., REGARDLESS OF THIS PLACE OR PLACES OF SIGNING BY THE PARTIES HERETO OR THE ORDER OF THEIR SIGNING. THE LAWS OF THE STATE OF TEXAS, EXCLUDING ITS CONFLICTS LAWS, SHALL GOVERN THIS AGREEMENT THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO, THE ENTIRE RELATIONSHIP BETWEEN THE PARTIES HERETO, AND ALL MATTERS ARISING OUT OF OR RELATING TO THIS AGREEMENT. This Agreement is performable in Bexar County, Texas. Any lawsuit or other legal proceeding between the parties shall be brought only in the civil district courts of Bexar County, Texas, or the United States District Court for the Western District of Texas, San Antonio Division. The parties hereby consent to the personal and exclusive jurisdiction and venue of these courts.

(g) **Entire Agreement.** This Agreement together with any exhibit(s) hereto contain the entire agreement between the parties with respect to the subject matter of this Agreement and supersede all prior agreements and understandings.

(h) **Headings.** The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

(i) **No Relationship.** Contractor shall not represent himself/herself/itself as an agent or legal representative of Company or as joint venturers for any purpose whatsoever, and Contractor shall not have any right to create or assume any obligations of any kind, express or implied, for or on behalf of Company in any way whatsoever.

(j) **Survival.** The provisions, terms, covenants, and restrictions of any of the parties provided for by this Agreement shall survive the execution and delivery of this Agreement. Upon the occurrence of any default by Contractor under this Agreement, there shall be no limitations or restrictions on the rights and remedies available, whether at law, in equity, in bankruptcy, or otherwise.

(k) **Assignment, Successors and Assigns.** This Agreement and the services contemplated hereunder are personal to Contractor and Contractor shall not have the right or ability to assign, transfer, or subcontract any obligations under this Agreement without the written consent of Company. Any attempt to do so shall be void *ab initio*. This Agreement shall be binding upon and shall inure to the benefit

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of the parties hereto and to the extent permitted by this Agreement, their successors and assigns.

(l) Amendment. This Agreement may be amended only by an agreement in writing duly executed by the Party against which enforcement of any waiver, change, modification, consent, or discharge is sought.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

Company:

[COMPANY'S FULL LEGAL NAME],
a [STATE] [entity]

By: _____
Printed Name: _____
Title: _____

Contractor: [INDIVIDUAL]

Contractor's Signature _____

Contractor's Printed Name _____

Contractor: [ENTITY]

[COMPANY'S FULL LEGAL NAME],
a [STATE] [entity]

By: _____
Printed Name: _____
Title: _____

Exhibit A

STATEMENT OF WORK

This Statement of Work by and between the parties below is supplemental to that certain Independent Contractor Services Agreement (the "Agreement") by and between the undersigned parties. The obligations hereunder remain subject to the terms and conditions in the Agreement.

1. Services. The Contractor shall provide the following Services: _____

2. Fees. Company shall pay the Contractor the following fees: _____

(for example, "Contractor shall receive a rate equal to the \$ _____ per hour based on actual hours expended and shall be billed in 6 minute increments, pro-rated to the hourly rate. Contractor shall not work more than 160 hours in a calendar month without the prior written consent of Company. Contractor acknowledges and understands that the particular amount of time may vary from day to day or week to week.")

3. Reimbursement of Expenses. In addition to the foregoing fees, Company shall pay Contractor its actual out-of-pocket expenses as reasonably incurred by Contractor in the performance hereunder, and as approved in advance by Company. Contractor agrees to provide Customer with such receipt, ledgers, and other records as may be reasonably appropriate for Customer or its accountants to verify the amount and nature of any such expenses.

or replace 1, 2 and 3 with the following

2. Services. For the fees specified in the table below, the Contractor will provide the following services

MILESTONE DELIVERY SCHEDULE		
Description	Completion Date	Fees

4. Invoicing. Contractor shall provide Company with a monthly invoice indicating the amount due for the services provided hereunder along with the documentation supporting the expenses incurred in such month.

Staffing. If Contractor is not an individual, Contractor will assign the following team of individuals who will, at various times during the Services, be responsible for filling one or more of the following roles: _____

5. Term. _____

(for example, "Company agrees to retain Contractor for an initial term of [sixty days], commencing _____ and continuing through and including _____. Said term may be extended upon the written agreement of the parties hereto but if no written extension is executed, upon expiration of the initial term, the term shall automatically convert to week to week unless either party provides one week notice of his/her/its intent to terminate. Either party may cancel this agreement after thirty days, on one week notice to the other party, in writing.")

Effective this day of , 20 (the “Effective Date”), Company and Contractor agree that the Services set forth in this Statement of Work are provided pursuant to the terms and conditions of the Independent Contractor Services Agreement, dated , 20 .

Company:

Company, Inc., a Texas corporation
[or other entity]

By: _____

Its: _____

Contractor:

Contractor's Signature

Contractor's Printed Name

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