

1.6 Private Message Board; Upload. Service Provider will upload a true and correct copy of both this Agreement and any SOW or Attachments as fully executed, to the "Private Message Board" for the Project at the Website. The Client will consult the Private Message Board to confirm that the Agreement and any SOW posted on the Private Message Board are true and correct as fully executed. By entering into a course of dealing with each other in connection with the Project, Service Provider and Client are contractually agreeing to the terms and conditions of this Agreement, the Business Terms, and any SOW as posted on the Private Message Board, and to the further terms and conditions of the Terms of Service.

2. ENGAGEMENT AND PERFORMANCE OF SERVICES.

2.1 Project Work Product. Client hereby engages Service Provider to deliver the Work Product to Client, and Client will pay Service Provider for the Project Work Product, in accordance with the terms and conditions of this Agreement and the Terms of Service. As used in this Agreement, the "Work Product" means any and all work product developed by Service Provider as required to complete the Project and delivered to the Client in the performance of the Project, as specified in the Business Terms, the SOW, and this Agreement.

2.2 Performance. Service Provider will perform the services necessary to complete the Project in accordance with the procedures described in the SOW, in a timely and professional manner, consistent with industry standards, at a location, place and time that Service Provider deems appropriate, and all in accordance with the Business Terms, the SOW, and this Agreement. The manner and means that Service Provider chooses to complete the Project are in Service Provider's sole discretion and control. In completing the Project, Service Provider agrees to provide its own equipment, tools, and other materials at its own expense, unless stated otherwise.

2.3 Duration of Services. The duration of performance of services under this Agreement commences on the Effective Date and terminates on the Final Delivery Date set forth in Section 1.4 above, unless the Parties otherwise agree in writing signed by both parties and uploaded to the Private Message Board.

2.4 Change Control. Service Provider will provide Client, project management with comprehensive status reporting on a regular basis. These reports will indicate the work activities performed, progress against project milestones, as well as any expenses incurred in the furtherance of this Project to date.

Material deviations from the baseline SOW and budget documented herein will be mutually reviewed and agreed by Provider and Client. The following provides the process to be followed for any such material change to the SOW:

1. A Change Request ("CR") will be the vehicle for requesting a change to the SOW. The CR will describe the change, the rationale for the change, the impact on the implementation timeline, and the impact on the Compensation. Both Provider and Client may initiate a CR.

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2. The designated Project Manager of the requesting party will produce the CR and submit the CR to the other party.
3. Both Project Managers will review the proposed CR and either approve, request clarifications or investigations, revise or reject. Provider may request additional charges for such investigation. If the investigation is authorized, the Project Managers will sign the estimation portion of the CR, which constitutes authorization for the investigative changes. The investigation will determine the effect that the implementation of the CR will have on compensation, schedule and other terms and conditions of the Agreement.
4. A written CR must be signed by both Client and Provider to authorize implementation of the CR.

3. COMPENSATION. Client will pay Service Provider the fee specified for the Project in accordance with the Business Terms, any SOW, and the Terms of Service. Payment will be made by Client to Service Provider through PayPal Merchant Services, promptly upon each acceptance of the Project Work Product. Service Provider will be responsible for all expenses incurred in performing services under this Agreement, except and only to the extent expressly provided in this Agreement, the Business Terms, or SOW.

4. INDEPENDENT CONTRACTOR RELATIONSHIP. Service Provider's relationship with Client will be that of an independent contractor, and nothing in this Agreement should be construed to create a partnership, joint venture, or employer-employee relationship. Service Provider (a) is not the agent of Client; (b) is not authorized to make any representation, contract, or commitment on behalf of Client; (c) will not be entitled to any of the benefits that Client makes available to its employees, such as group insurance, profit-sharing or retirement benefits (and waives the right to receive any such benefits); and (d) will be solely responsible for all tax returns and payments required to be filed with or made to any federal, state, or local tax authority with respect to Service Provider's performance of services and receipt of fees under this Agreement. If applicable, Client will report amounts paid to Service Provider by filing Form 1099-MISC with the Internal Revenue Service, as required by law. Service Provider agrees to fill out form W-9 or W8-BEN, as applicable, and as required by Client. Service Provider agrees to accept exclusive liability for complying with all applicable state and federal laws, including laws governing self-employed individuals, if applicable, such as laws related to payment of taxes, social security, disability, and other contributions based on fees paid to Service Provider under this Agreement. Client will not withhold or make payments for social security, unemployment insurance or disability insurance contributions, or obtain workers' compensation insurance on Service Provider's behalf. Service Provider hereby agrees to indemnify and defend Client against any and all such taxes or contributions, including penalties and interest. If required by law, Service Provider agrees to provide proof of payment of appropriate taxes on any fees paid to Service Provider under this Agreement upon reasonable request of Client.

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5. INTELLECTUAL PROPERTY RIGHTS.

5.1 Inventions and Intellectual Property Rights. As used in this Agreement, the term "Invention" means any ideas, concepts, information, materials, processes, data, programs, know-how, improvements, discoveries, developments, designs, artwork, formulae, other copyrightable works, and techniques and all Intellectual Property Rights therein. The term "Intellectual Property Rights" means all trade secrets, copyrights, trademarks, mask work rights, patents and other intellectual property rights recognized by the laws of any country.

5.2 Background Technology. As used in this Agreement, the term "Background Technology" means all Inventions developed by Service Provider other than in the course of providing services to Client hereunder and all Inventions acquired or licensed by Service Provider that Service Provider uses in performing services under this Agreement or incorporates into Work Product. Service Provider will disclose any Background Technology which Service Provider proposes to use or incorporate. If Service Provider discloses no Background Technology, Service Provider warrants that it will not use Background Technology or incorporate it into Work Product provided pursuant thereto. Notwithstanding the foregoing, unless otherwise agreed in the Project, Service Provider agrees that it will not incorporate into Work Product or otherwise deliver to Client any software code licensed under the GNU GPL or LGPL or any other license that by its terms requires, or conditions the use or distribution of such code on, the disclosure, licensing, or distribution of the Work Product or any source code owned or licensed by the Client.

5.3 License to Background Technology. Service Provider hereby automatically upon receipt of payment from Client, grants to Client a non-exclusive, perpetual, fully-paid and royalty-free, irrevocable and world-wide right, with rights to sublicense through multiple levels of sublicensees, to reproduce, make derivative works of, distribute, publicly perform, and publicly display in any form or medium, whether now known or later developed, make, have made, use, sell, import, offer for sale, and exercise any and all present or future rights in the Background Technology incorporated or used in Work Product.

5.4 Ownership and Assignment of Work Product. Service Provider agrees that upon receipt of payment from Client, any and all Work Product will be the sole and exclusive property of Client. If Service Provider has any rights to the Work Product that are not owned by Client upon creation or embodiment, Service Provider hereby automatically upon receipt of payment from Client irrevocably assigns to such Client all right, title and interest worldwide in and to such Work Product. Except as set forth elsewhere, Service Provider retains no rights to use the Work Product and agrees not to challenge the validity of Client ownership in the Work Product.

5.5 License to or Waiver of Other Rights. If Service Provider has any right to the Work Product that cannot be assigned by Service Provider, Service Provider hereby automatically upon receipt of payment from Client unconditionally and irrevocably grants to Client during the term of such rights, an exclusive, even as to Service Provider, irrevocable, perpetual, worldwide, fully paid and royalty-free license, with rights to sublicense through multiple levels of sublicensees, to reproduce, make derivative works of, distribute, publicly perform and publicly display in any form or medium, whether now known or later developed, make, use, sell, import, offer for sale and

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exercise any and all such rights. If Service Provider has any rights to the Work Product that cannot be assigned or licensed, Service Provider hereby automatically upon receipt of payment from Client unconditionally and irrevocably waives the enforcement of such rights, and all claims and causes of action of any kind against Client or related to Client's customers, with respect to such rights, and agrees, at Client's request and expense, to consent to and join in any action to enforce such rights.

5.6 Assistance. Service Provider agrees to assist Client in every way, both during and after the term of this Agreement, to obtain and enforce United States and foreign Intellectual Property Rights relating to Work Product in all countries.

6. COMPETITIVE OR CONFLICTING PROJECTS. Service Provider agrees, during the term of this Agreement, not to enter into a contract or accept an obligation that is inconsistent or incompatible with Service Provider's obligations under this Agreement. Service Provider warrants that there is no such contract or obligation in effect as of the Effective Date. Service Provider further agrees not to disclose to, deliver to, or induce Client to use any confidential information that belongs to anyone other than Client or Service Provider.

7. CONFIDENTIAL INFORMATION. Service Provider agrees that during the term of this Agreement and thereafter, except as expressly authorized in writing by Client, it (a) will not use or permit the use of Confidential Information (defined below) in any manner or for any purpose not expressly set forth in this Agreement; (b) will not disclose, lecture upon, publish, or permit others to disclose, lecture upon, or publish any such Confidential Information to any third party without first obtaining Client's express written consent on a case-by-case basis; (c) will limit access to Confidential Information to Service Provider personnel who need to know such information in connection with their work for Client; and (d) will not remove any tangible embodiment of any Confidential Information from Client's premises without Client's prior written consent. "Confidential Information" includes, but is not limited to, all information related to Client's business and its actual or anticipated research and development, including without limitation (i) trade secrets, inventions, ideas, processes, computer source and object code, formulae, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs, and techniques; (ii) information regarding products or plans for research and development, marketing and business plans, budgets, financial statements, contracts, prices, suppliers, and customers; (iii) information regarding the skills and compensation of Client's employees, contractors, and any other service providers; (iv) the existence of any business discussions, negotiations, or agreements between Client and any third party; and (v) all such information related to any third party that is disclosed to Client or to Service Provider during the course of Client's business ("Third Party Information"). Notwithstanding the foregoing, it is understood that Service Provider is free to use information that is generally known in the trade or industry, information that is not gained as a result of a breach of this Agreement, and Service Provider's own skill, knowledge, know-how, and experience.

8. SERVICE PROVIDER REPRESENTATIONS AND WARRANTIES. Service Provider hereby represents and warrants that (a) the Work Product will be an original work of Service Provider and any third parties will have

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executed assignment of rights prior to being allowed to participate in the development of the Work Product; (b) the Work Product will fully conform to the requirements and terms set forth on the SOW and in the Project; (c) neither the Work Product nor any element thereof will infringe or misappropriate the Intellectual Property Rights of any third party; (d) neither the Work Product nor any element thereof will be subject to any restrictions or to any mortgages, liens, pledges, security interests, or encumbrances; (e) Service Provider will not grant, directly or indirectly, any rights or interest whatsoever in the Work Product to third parties; (f) Service Provider has full right and power to enter into and perform this Agreement without the consent of any third party; (g) Service Provider has an unqualified right to grant the license to all Background Technology as set forth in the section titled "License to Background Technology"; and (h) Service Provider will comply with all laws and regulations applicable to Service Provider's obligations under this Agreement.

9. INDEMNIFICATION. Service Provider will defend, indemnify, and hold harmless Client against any damage, cost, loss or expense arising from a claim, suit or proceeding brought against Client alleging that any Work Product that Service Provider delivers pursuant to this Agreement or the Project: (i) infringes upon any intellectual property rights or (ii) misappropriates any trade secrets, of any third party.

10. INSURANCE. If requested by the Client and if appropriate for the Project, the Service Provider, at its sole cost and expense, will maintain appropriate insurance in accordance with industry standards.

11. TERMINATION.

11.1 Termination with Cause. Either party has the right to terminate this Agreement immediately in the event that the other party has materially breached the Agreement and fails to cure such breach within fifteen (15) days of receipt of notice by the non-breaching party, setting forth in reasonable detail the nature of the breach. Client may also terminate this Agreement immediately in its sole discretion in the event of Service Provider's material breach of the section titled "Intellectual Property Rights."

11.2 Return of Property. Upon termination of the Agreement or upon Client's request at any other time, Service Provider will deliver to Client all of Client's property together with all copies thereof, and any other material containing or disclosing any Work Product, Third Party Information or Confidential Information.

11.3 Survival. The following provisions will survive termination of this Agreement: Sections titled "Intellectual Property Rights," "Confidential Information," "Service Provider Representations and Warranties," "Indemnification," "Return of Property," "Survival," and "General Provisions."

12. MULTI-EMPLOYEE SERVICE PROVIDER. Before any Service Provider employee or agent performs services in connection with this Agreement or has access to Confidential Information, the employee or agent and Service Provider must have entered into a binding written agreement expressly for the benefit of Client that contains provisions substantially equivalent to the sections of this Agreement titled "Engagement and Performance of

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Services" and "Intellectual Property Rights." Service Provider agrees (a) that its employees and agents will not be entitled to or eligible for any benefits that Client may make available to its employees; (b) to limit access to the Confidential Information to employees or agents of Service Provider who have a reasonable need to have such access in order to perform the services pursuant to this Agreement; and (c) to be solely responsible for all expenses incurred by any of its employees or agents in performing the services or otherwise performing its obligations under this Agreement, except as set forth in the Engagement.

13. GENERAL PROVISIONS.

13.1 Governing Law and Venue. This Agreement and any action related thereto will be governed, controlled, interpreted, and defined by and under the laws of the State of Arizona, without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. Client hereby expressly consents to the personal jurisdiction and venues in the State of Arizona and the County of Maricopa, Arizona, for any lawsuit filed there against Service Provider by Client arising from or related to this Agreement.

13.2 Severability. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will be unimpaired and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

13.3 No Assignment. This Agreement, and the party's rights and obligations herein, may not be assigned, subcontracted, delegated, or otherwise transferred by either party without the other's prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void. The terms of this Agreement will be binding upon assignees.

13.4 Notices. Each party must deliver all notices or other communications required or permitted under this Agreement to the other party by posting it on the Private Message Board for the Project.

13.5 Injunctive Relief. Service Provider acknowledges that, because its services are personal and unique and because Service Provider will have access to Confidential Information of Client, any breach of this Agreement by Service Provider would cause irreparable injury to Client for which monetary damages would not be an adequate remedy and, therefore, will entitle Client to injunctive relief (including specific performance). The rights and remedies provided to each party in this Agreement are cumulative and in addition to any other rights and remedies available to such party at law or in equity.

13.6 Waiver. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

13.7 Export. Service Provider agrees not to export, directly or indirectly, any U.S. technical data acquired from Client or any products utilizing such data, to countries outside the United States, because such export could be in

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violation of the United States export laws or regulations.

13.8 Execution and Delivery; Binding Effect. The parties will evidence execution and delivery of this Agreement with the intention of becoming legally bound hereby, by completion of the following process on the Site:

(a) Uploading Party. One party (the "Uploading Party") will cause the definitive version of this Agreement ("Approved Version") to be approved by its duly authorized representative, and will upload the Approved Version to the Private Message Board for the Project with a message containing substantially the following text:

"Uploading Party hereby uploads the file named "[Insert Filename.ext]", with the intention of being legally bound."

The Uploading Party will thereby be deemed to represent and warrant that the Approved Version has been approved by all necessary corporate action, and that the Uploading Party's performance of its obligations under the Approved Version will not violate the terms of any law or contract binding on such Party. The Approved Version as so uploaded will be deemed to be executed and delivered with the intention of creating a legally binding contract.

(b) Responding Party. The other party (the "Responding Party") will then inspect the Approved Version on the Private Message Board, and will cause the Approved Version to be approved by its duly authorized representative. Upon approval, the Responding Party will post a message on the Private Message Board containing substantially the following text:

"Responding Party hereby accepts the file named "[Filename.ext]" posted on [Insert Date and Time of upload], with the intention of being legally bound."

[Note: The Responding Party should NOT re-upload the Approved Version; instead the Responding Party should type the Filename.ext of the Approved Version, and Date and Time the Uploading Party uploaded it.]

The Responding Party will thereby be deemed to represent and warrant that the Approved Version has been approved by all necessary corporate action, and that such Party's performance of its obligations under the Approved Version will not violate the terms of any law or contract binding on such Party. The Approved Version as so uploaded will be deemed to be executed and delivered with the intention of creating a legally binding contract.

(c) Counteroffers. If either Party uploads a modified version of this Agreement to the Private Message Board prior to the Responding Party's acceptance of a previously uploaded version pursuant to Section 13.8 (b) above, the Uploading Party's execution and delivery of the previously uploaded version will be deemed revoked, and the Parties must upload and accept the new version in accordance with Sections 13.8 (a) and (b) above in order to form a binding contract.

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