

# Professional Services Agreement – Ad-Hoc Business Resources, LLC

## Terms of Engagement

Ad-Hoc Business Resources, LLC (AHBR) offers a specialized set of services to client companies including:

1. Business Assessment
2. Cost Containment
3. Optimization Planning
4. Buyer/Seller Matching
5. Business Planning and Marketing Strategies
6. Information & Referral Services
7. Project-Based Staffing
8. Identification of Potential Sources of Capital
9. Identification of Potential Business Partnerships
10. Customized Services as may be required by the Client

Our services are provided in complete confidence and are based upon client requirements determined through questionnaires, interviews, and related dialogue. It is expected that the client will disclose all pertinent information, relating to the assessment, as requested by AHBR. The findings, reports, and suggestions AHBR presents to the client represent our best understanding of current conditions within the client's enterprise. AHBR does not require any client to accept and/or follow our recommendations as they are submitted only for their consideration as guidelines to modify procedures and operations at their discretion. Implementation of AHBR suggestions is the sole responsibility of the client. AHBR can, and will, assist in an implementation with the understanding that AHBR will bear no liability for costs, cost overruns, unrealized expectations, missed opportunities, or costs/collateral damages occurring from the implementation of the suggested procedures.

AHBR is structured to assess conditions within the environment of the client and to present suggestions based upon our experience, research, and knowledge regarding operations to be improved. Implementation is left to the client because the sustainability of new procedures has been proven to be higher when administered internally as opposed to externally by a contracted entity. Orchestrating sustainable success is the focus of AHBR.

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AD·HOC  
Business Resources, LLC

This agreement is made effective \_\_\_\_\_, 2\_\_\_\_ (Effective Date) by and between  
\_\_\_\_\_ whose principal place of business is located at \_\_\_\_\_  
\_\_\_\_\_ hereinafter referred to as "Company", and

Ad-Hoc Business Resources, LLC whose address is P.O. Box 68233, Tucson, AZ, hereinafter referred to as "Provider".

WHEREAS the Company wishes to engage the services and expertise of the Provider on the terms and conditions hereinafter set forth, and the Provider wishes to accept such an engagement;

NOW THEREFORE in consideration of the covenants of each of the parties given to the other and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

- 1. TERM.** Commencing as of the Effective Date, and continuing for a period of \_\_\_\_\_  
\_\_\_\_\_ (the "Term"), unless earlier terminated, in writing, by mutual agreement of  
both parties, the Provider agrees to accept the engagement with the Company to render professional services as set  
forth in Schedule A – Statement of Work.

## 2. DUTIES and SERVICES:

During the term of this Agreement, the Provider shall devote such of its time, attention, and abilities to the business of the Company as may be necessary for the proper and reasonable exercise of the Provider's duties hereunder. The duties shall be scheduled on an as-needed basis. The Company acknowledges that the Provider shall also be entitled to render services to others during the term hereof. Nothing in this Agreement shall be interpreted or construed as creating or establishing a relationship of employer and/or employee between the Company and the Provider.

Services provided shall be detailed in the Statement of Work (Schedule A). Since Provider's services are broad-based, the Statement of Work may be modified at any time, in writing, upon mutual agreement of both parties. Such modifications may include adjustments to delivery dates, the scope of work to be performed, as well as substitutions among priorities. The Company shall also maintain its obligations to share with Provider, in confidence, pertinent Company data, reports, policies, forecasts, legal commitments, etc. as may be necessary for Provider to perform and complete such services. Provider services are delivered on a non-exclusive basis unless "exclusive" arrangements are agreed to, in writing, by both parties.

## 3. REMUNERATION:

The Provider's Schedule of Fees is detailed in Schedule B. Fees for specific services are designed with consideration for the service performed. Remuneration may be in the form of fees for service, commissions, subscription, retainer, or an equity stake as may be agreeable to both parties. Invoicing shall be submitted to the Company upon completion of a project/service or at intervals of a long-term project as agreed by both parties.

## 4. RESTRICTED ACTIVITIES:

During the term, and for a period of one (1) year thereafter, Provider will not, directly or indirectly:

- (i) solicit or request that any employee of, or consultant to, the Company leave the employ of, or cease consulting for the Company;
- (ii) solicit or request any employee of, or consultant to, the Company to join the employ of, or begin consulting for, any individual or entity that researches, develops, markets, or sells products that compete with those of the Company;
- (iii) solicit or request any individual or entity that researches, develops, markets, or sells products that compete with those of the Company, to employ or retain as a consultant any employee or consultant of the Company; or
- (iv) induce, or attempt to induce, any supplier or vendor of the Company to terminate or breach any written or oral agreement or understanding with the Company.

## 5. PROPRIETARY RIGHTS:

### (a) Definitions.

- (i) Concept and Ideas. Those concepts and ideas disclosed by the Company to Provider, or which are first developed by Provider during the course of the performance of Services hereunder, and which relate to the Company's present, past, or prospective business activities, services, and products, shall remain the sole and exclusive property of the Company. The Provider shall have no publication rights and all of the same shall belong exclusively to the Company unless mutually agreeable terms are developed, in writing and signed by both parties.
- (ii) Confidential Information. For the purposes of this Agreement, Confidential Information shall mean and collectively include: all information relating to the business, plans and/or technology of the Company including, but not limited to technical information including inventions, methods, plans, processes, specifications, characteristics, raw data, records, databases, formulations, equipment design, know-how, experience, and trade secrets; developmental, marketing, sales, customer, supplier, consulting relationship information, operating, performance, and cost information; computer programming techniques whether in tangible or intangible form, and all record-bearing media containing or disclosing the foregoing information and techniques including, written business plans, patents and patent applications, grant applications, notes, and memoranda, whether in writing or presented, stored, or maintained in or by electronic, magnetic, or other means.

Notwithstanding the foregoing, the term "Confidential Information" shall not include any information which: (a) can be demonstrated to have been in the public domain or was publicly known or available prior to the date of the disclosure to Provider; (b) can be demonstrated in writing to have been rightfully in the possession of Provider prior to the disclosure of such information to Provider by the Company; (c) becomes part of the public domain or publicly known or available by publication or otherwise, not due to any unauthorized act or omission on the part of Provider; or (d) is supplied to Provider by a third party without binder of secrecy, so long as that such third party has no obligation to the Company or any of its affiliated companies to maintain such information in confidence.

(b) Nondisclosure to Third Parties. Except as required by Provider's Duties, Provider shall not, at any time, now or in the future, directly or indirectly, use, publish, disseminate or otherwise disclose any of the Company's Confidential Information, Concepts, or Ideas to any third party without the prior written consent of the Company which consent may be denied in each instance and all of the same, together with publication rights, shall belong exclusively to the Company.

(c) Documents, etc. All documents, diskettes, tapes, procedural manuals, guides, specifications, plans, drawings, designs, and similar materials, lists of present, past or prospective customers, customer proposals, invitations to submit proposals, price lists and data relating to the pricing of the Company's products and services, records, notebooks and all other materials containing Confidential Information or information about Concepts or Ideas (including all copies and reproductions thereof), that come into Provider's possession or control by reason of Provider's performance of the relationship, whether prepared by Provider or others: (a) are the property of the Company, (b) will not be used by Provider in any way other than in connection with the performance of his/her Duties, (c) will not be provided or shown to any third party by Provider, (d) will not be removed from the Company's or Provider's premises (except as Provider's Duties require), and (e) at the termination (for whatever reason), of Provider's relationship with the Company, will be left with, or forthwith returned by Provider to the Company.

(d) Patents, etc. The Provider agrees that the Company is and shall remain the exclusive owner of the Confidential Information and Concepts and Ideas. Any interest in patents, patent applications, inventions, technological innovations, trade names, trademarks, service marks, copyrights, copyrightable works, developments, discoveries, designs, processes, formulas, know-how, data and analysis, whether registrable or not ("Developments"), which Provider, as a result of rendering Services to the Company under this Agreement, may conceive or develop, shall: (i) forthwith be brought to the attention of the Company by Provider and (ii) belong exclusively to the Company unless specific agreement, agreeable to both parties, is put in writing and signed by both parties. No license or conveyance of any such rights to the Provider is granted or implied under this Agreement.

(e) Assignment. The Provider hereby assigns and, to the extent any such assignment cannot be made at present, hereby agrees to assign to the Company, without further compensation, all of his/her right, title and interest in and to all Concepts, Ideas, and Developments unless specific agreement, agreeable to both parties, is put in writing and signed by both parties. The Provider will execute all documents and perform all lawful acts which the Company considers necessary or advisable to secure its rights hereunder and to carry out the intent of this Agreement.

## **6. EQUITABLE RELIEF:**

Provider agrees that any breach of Articles 4 and 5 above would cause irreparable damage to the Company and that, in the event of such breach, the Company shall have, in addition to any and all remedies of law, the right to an injunction, specific performance, or other equitable relief to prevent the violation or threatened violation of Provider's obligations hereunder.

## **7. WAIVER:**

Any waiver by the Company of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of the same or any other provision hereof. All waivers by the Company shall be in writing.

## **8. LIMITATION OF LIABILITY:**

With regard to the services to be performed by the Provider pursuant to the terms of this agreement, the Provider shall not be liable to the Company, or to anyone who may claim any right due to any relationship with the Company, for any acts or omissions in the performance of services on the part of the Provider or on the part of the agents or employees of the Provider, except when said acts or omissions of the Provider are due to willful misconduct or gross negligence. The Company shall hold the Provider free and harmless from any obligations,

costs, claims, judgments, attorney's fees, and attachments arising from or growing out of the services rendered to the Company pursuant to the terms of this agreement or in any way connected with the rendering of services, except when the same shall arise due to the willful misconduct or gross negligence of the Provider and the Provider is adjudged to be guilty of willful misconduct or gross negligence by a court of competent jurisdiction.

Provider (Ad-Hoc Business Resources, LLC) makes no warranties, either express or implied, as to any matter whatsoever, including, without limitation, the condition of the services or any work product or deliverables developed hereunder, and Ad-Hoc Business Resources, LLC expressly disclaims all warranties of merchantability, fitness for any particular purpose or need, accuracy, non-infringement of third party rights and title, and all warranties that may arise from the course of dealing, course of performance, or usage of trade. To the extent permitted by applicable law, in no event will either party be liable under any legal theory for any special, indirect, consequential, exemplary or incidental damages, however caused, arising out of or relating to this Agreement, even if such party had been advised of the possibility of such damages. Neither party's liability to the other party under this Agreement shall exceed the total amounts paid or payable by the Company under this Agreement.

**9. TERMINATION:**

- (a) Term. This Agreement shall commence on the Effective Date. Either party may terminate this Agreement and/or any Statement of Work at any time upon thirty (30) days of advance written notice to the other party. Notice of termination of any Statement of Work shall not be considered notice of termination of this Agreement unless specifically stated in the notice; provided, however, any termination of this Agreement shall automatically terminate all Statements of Work. Any Statement of Work outstanding at the time of termination of this Agreement shall continue to be governed by the Agreement as if it had not been terminated.
- (b) Termination for Cause. Either party may terminate the Agreement immediately upon written notice to the other party if the other party breaches or is in default of any obligation hereunder, including the failure to make any payment when due, which default is incapable of cure or which, being capable of cure, has not been cured within thirty (30) days after receipt of written notice from the non-defaulting party.
- (c) Effect of Termination. Upon termination of the Agreement, Ad-Hoc Business Resources, LLC shall immediately cease performing any services for the Company and the Company shall pay Ad-Hoc Business Resources, LLC any compensation due for services actually rendered. Sections 5, 8, 9(c), and 12 shall survive the termination of this Agreement. Termination of this Agreement by either party shall not act as a waiver of any breach of this Agreement and shall not act as a release of either party from any liability for breach of such party's obligations under this Agreement. Neither party shall be liable to the other for damages of any kind solely as a result of terminating this Agreement in accordance with its terms, and termination of this Agreement by a party shall be without prejudice to any other right or remedy of such party under this Agreement or applicable law.

**10. NOTICES:**

Any notices delivered or received between either party shall be deemed to have been received:

- (a) if it was delivered in person, on the date it was delivered;
- (b) if it was sent by electronic facsimile transmission, on the date it was delivered;
- (c) if it was sent by mail, on the day it was received to the following addresses:

Ad-Hoc Business Resources, LLC  
P.O. Box 68233  
Tucson, Arizona 85737  
Attn: Bob Horn  
Facsimile: 520 638-7388

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City / State / Zip \_\_\_\_\_

Attention: \_\_\_\_\_

Facsimile: \_\_\_\_\_

**11. MODIFICATIONS:**

Any modification of this Agreement must be made in writing and signed by both parties or it shall have no effect and shall be void.

**12. GENERAL PROVISIONS:**

- (a) Governing Law. This Agreement is to be construed in accordance with and governed by the internal laws of the State of Arizona, without regard to or application of provisions relating to choice of law.
- (b) Severability. If any provision of this Agreement is unenforceable, then such provision will be enforced to the maximum extent possible under applicable law so as to effect the intent of the parties, and the other provisions of this Agreement will continue in full force and effect.
- (c) Counterparts. This Agreement may be executed in counterparts.
- (d) Entire Agreement; Amendment; Waiver. This Agreement (including any Statements of Work) constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous communications, negotiations, and agreements, written or oral, regarding the subject matter hereto. No modification of, or amendment, or waiver to this Agreement will be effective unless presented in writing and signed by each of the parties.

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**IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives:**

**COMPANY:**

\_\_\_\_\_

**PROVIDER:**

Ad-Hoc Business Resources, LLC

BY: \_\_\_\_\_

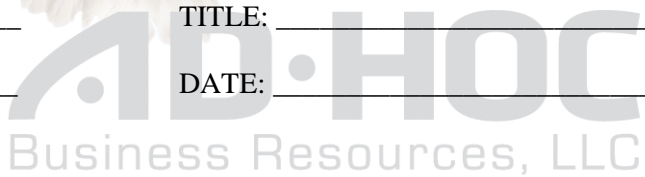
BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_



APPENDICES FOLLOW

## SCHEDULE A: Statement of Work

Ad-Hoc Business Resources, LLC (AHBR) offers the following set of services or combinations thereof:

1. Business Assessment
2. Cost Containment
3. Optimization Planning
4. Buyer/Seller Matching
5. Business Planning and Marketing Strategies
6. Information & Referral Services
7. Project-Based Staffing
8. Identification of Potential Sources of Capital
9. Identification of Potential Business Partnerships
10. Customized Services as may be required by the Client

The Statement of Work proposed for \_\_\_\_\_ (Company) is as follows:

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**SCHEDULE B: Schedule of Fees**

The AHBR fee schedule for services rendered is based upon the type of work performed and the level of performance as follows:

1. Research: Product and Market Research authorized by Company ..... \$80.00/hour
2. Identification and Contracting of Suppliers ..... Percentage of Contract \*
3. Identification and Fulfillment of Funding..... Percentage of Funding Amount \*\*
4. Initial Business Assessment .....\$750.00
5. Planning Services ..... \$100.00/hour
6. Cost Containment Process ..... Percentage of Savings \*\*\*
7. Long-term Engagement .....Monthly Retainer per Prior Agreement
8. Identification of hired project-based staff ..... 5% of annualized starting salary

NOTE: All fees will be estimated prior to execution of agreement and subject to approval by Company.

\* 2% of first year / 1% of second year purchase volume

\*\* 2% of first year funding amount / 1% of second year funding amount

\*\*\* 30% of documented savings for the first year

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Estimated fees for the Statement of Work per this Agreement with \_\_\_\_\_ (Company) are as follows:

