

# ADVISORY BOARD MEMBER AGREEMENT EXAMPLE

PROVIDED BY JACKSON WALKER L.L.P.

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## EXAMPLE

### **ADVISORY BOARD MEMBER AGREEMENT**

This ADVISORY BOARD MEMBER AGREEMENT (this “Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ [COMPANY NAME], a \_\_\_\_\_ [TYPE OF ENTITY] (the “Company”) and \_\_\_\_\_, an individual residing at \_\_\_\_\_ (“Advisory Director”).

#### **R E C I T A L S:**

WHEREAS, the Bylaws of the Company authorize its Board of Directors to appoint as advisory directors individuals who possess, in the opinion of the directors, expertise with whom the Board of Directors may consult;

WHEREAS, the Board of Directors has determined that Advisory Director possesses expertise that will aid the Directors and have elected her to serve as an Advisory Director of the Company; and

WHEREAS, the Bylaws of the Company require that no person may serve as an advisory director without first agreeing to certain requirements;

NOW, THEREFORE, in consideration of ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the Company and Advisory Director hereby agree as follows:

#### **AGREEMENT:**

**Section 1. Duties.** The Advisory Director agrees to serve the Company as an advisor and to make himself/herself available from time to time in person or by telephonic or electronic communication to assist the Company and its advisors in the conduct of the Company’s business. In addition, if so requested by the Company, Advisory Director will serve for not less than one year as a member of any Advisory Board established by the Company. Unless the parties shall otherwise agree, however, the Advisory Director shall not be obligated to devote in excess of 10 hours during any calendar month or 100 hours during any calendar year to the Company’s affairs. Without limiting the generality of the foregoing:

1.1. *Advisory Board.* Advisory Director agrees to serve on any Advisory Board established by the Company.

1.2. *Advisory Activities.* Advisory Director agrees to counsel the Company’s management on issues proposed for decision which touch upon her areas of expertise, including, but not limited to, \_\_\_\_\_ [FOR EXAMPLE: the product development roadmap for \_\_\_\_\_, technical planning and other strategic planning related thereto]. Advisory Director also agrees to provide strategic consulting services as requested by the Company's Board of Directors or President to advise the

Company's executive team on strategic matters including the matters in the following list, and such other matters as the President may reasonably request, verbally or in writing:

- 1.2.1. Facilitating introductions between the Company and potential customers and investors;
- 1.2.2. Providing Advisory Director's opinion to assist the Company in identifying and recruiting potential sales, technical, marketing, strategic and other partners or individuals;
- 1.2.3. Apprising the Company of technological, competitive and other changes and developments that you may from time to time become aware of and that do not conflict with any other existing role or obligations Advisory Director may have; and
- 1.2.4. Contributing in other advisory roles as deemed appropriate.
- 1.3. *Advisory Board Participation.* Advisory Director agrees to attend all meetings of the Advisory Board. Meeting participation shall include attendance and participation by teleconference and it is expected that the Company will have four quarterly meetings each year.
- 1.4. *Company Representative.* To the extent agreed to in advance by Advisory Director, Company may create and distribute press releases and/or other marketing materials which include a description of the Advisory Director's relationship with the Company, include the Advisory Director's name and capacity on the Company's website.
- 1.5. *Intellectual Property Notices.* The Advisory Director shall not, and shall not enable or allow any third party to, reverse-engineer, decompile, or disassemble any software disclosed by the Company and shall not remove, overprint or deface any notice of copyright, trademark, logo, legend, or other notices of ownership from any originals or copies of information it obtains from the Company.

**Section 2. Compensation.** In compensation ("Compensation") for the services provided herein, Advisory Director shall receive \_\_\_\_\_ [FOR EXAMPLE: \$\_\_\_\_ per meeting/an option to purchase equity of the Company pursuant to that certain Non-Qualified Stock Option Award Agreement, of even date herewith, by and between the Advisory Director and the Company ("Option Agreement")].

**Section 3. Expenses.** The Company shall reimburse Advisory Director, on a monthly basis, for all usual, reasonable and necessary expenses paid or incurred by Advisory Director in connection with, or related to, the performance of Advisory Director's services under this Agreement, subject to pre-approval of the expenses by the Company and satisfactory receipt by the Company of appropriate documentary proof of all expenditures for which reimbursement is sought and the approval thereof by the Company.

**Section 4. Term and Termination; Resignation.** This Agreement shall expire upon written notice by the Company to the Advisory Director at the address for notice set out in Section 8 below. The Advisory Director may resign on thirty (30) days written notice for any reason or no

reason. This Agreement and any unvested or unearned rights to Compensation shall immediately terminate if Advisory Director fails to serve, resigns or is removed as a member of the Advisory Board of the Company, or as an advisor of the Company.

**Section 5. Status of Advisory Director.** The parties hereto recognize that the status of Advisory Director is that of an independent contractor engaged solely to consult with the Board of Directors of the Company, without duties with respect to the management of its business or authority to bind the Company or act on its behalf. Advisory Director is not a director, officer, employee or agent of the Company and shall have no liability as such. Advisory Director is not a director, officer, employee or agent of the Company and shall have no liability as such. This Agreement and any claim the Advisory Director may have to equity in the Company or any successor thereof shall immediately terminate if Advisory Director fails to serve, resigns or is removed by the Board of Directors as a member of the Advisory Board of the Company, or as an advisor of the Company.

**Section 6. Disclosure of Interest.** Upon learning that the Company is considering entering into a contract or transaction with an enterprise in which Advisory Director has a direct or indirect interest, whether individually or as a director, officer, employee, agent or equity owner thereof, Advisory Director shall immediately notify the Company of the material facts of her interest in such enterprise. Such notice shall be in writing and given to the Company at the address set forth in Section 8 below unless Advisory Director first learns of such contract or transaction at a meeting of the Board of Directors or Advisory Directors, in which case such notice shall be given orally at such meeting to all members present.<sup>1</sup>

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<sup>1</sup> It is recommended that agreements with Advisory Directors also address intellectual property assignment, confidentiality and non-competition obligations. The following are examples:

**Ownership of Intellectual Property.** Advisory Director represents and acknowledges that the Company solely and exclusively owns all of the rights, titles and interests in and to the Intellectual Property (as defined below). The Company shall own all Work Product (as defined below). All Work Product shall be considered “work made for hire” by Advisory Director and owned by the Company. For purposes of this Agreement, “Intellectual Property” shall mean any rights associated with any patent, trademark, service mark, trade dress, trade name, product names, service names, copyright, moral right, trade secret, design concepts, Confidential Information (as defined in Section 5 below) or other proprietary rights. For purposes of this Agreement, “Work Product” shall mean all intellectual property rights, including all trade secrets, U.S. and international copyrights, patentable inventions, discoveries and improvements, and other intellectual property rights, in any documentation, technology or other work product that Advisory Director conceives, develops, or delivers to the Company in his capacity as an Advisory Director or related to the Intellectual Property of the Company at any time during the term of this Agreement. Advisory Director hereby irrevocably relinquishes for the benefit of the Company and its assigns any moral rights in the Work Product recognized by applicable law.

**Confidentiality.** Advisory Director acknowledges that in serving the Company in his capacity as Advisory Director as contemplated by this Agreement, he shall be given or obtain access to confidential and proprietary information of the Company which may include, without limitation, information concerning the Company’s financial condition, operations, markets, employees, agents, products, software, marketing strategy and techniques, and similar information which may otherwise become available during the term of this Agreement (collectively, the “Confidential Information”). Accordingly, Advisory Director agrees to retain in strict confidence all Confidential Information and not to use or disclose to others, or permit the use or disclosure of, any Confidential Information, except as may be authorized in writing by the Company. In the event of termination of this Agreement for any



## **Section 7. Indemnification.**

7.1. Generally. The Company shall indemnify Advisory Director against all judgments, penalties (including excise and similar taxes), fines, amounts paid in settlement and reasonable expenses actually incurred by the Advisory Director in connection with any Proceeding to which she was, is or is threatened to be named defendant or respondent, or in which she was or is a witness without being named a defendant or respondent, by reason, in whole or in part, of her serving or having served, as an advisory director of the Company. Provided, however, that no indemnification shall be made under this Section 7 in respect of any judgment, penalty, fine, or amount paid in settlement in connection with any Proceeding in which Advisory Director shall have been found liable on the basis of a breach of Section 6 of this Agreement. For the purposes hereof, “Proceeding” means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrate or

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reason or by either party, Advisory Director shall forthwith deliver to the Company (without retaining copies thereof), any and all Confidential Information, documents or other written information obtained from the Company, and Advisory Director shall not thereafter disclose or use any Confidential Information relating to the Company or its affiliates or representatives in any way detrimental to the Company or its affiliates or representatives.

Notwithstanding the foregoing, Confidential Information shall not include: (i) information which may be in the public domain, now or when it becomes in the public domain in the future, other than by reason of a breach of this Agreement or any other confidentiality agreement, and (ii) information which has come to Advisory Director from a lawful source not bound to maintain the confidentiality of the information, other than from the Company. If disclosure is required by law, in the reasoned opinion of counsel to Advisory Director, Advisory Director shall give the Company at least thirty (30) days written notice before such disclosure and shall disclose only such information as is required by law and shall work to maintain the confidential nature of such disclosure. The provisions of this Section 5 shall survive any termination of this Agreement. Advisory Director acknowledges that the violation of this Section 5 will result in irreparable injury to the Company and that in addition to monetary damages, the Company shall be entitled to (a) the issuance of a temporary restraining order, (b) a preliminary injunction, and (c) a permanent injunction to prohibit either the continuation of, or any additional, breach of this Agreement.

**Noncompetition Covenant.** Ancillary to the otherwise enforceable agreements set forth in this Agreement, Advisory Director agrees as follows:

(i) During the term of this Agreement and for a period of two (2) years following termination of this Agreement, for any reason, Advisory Director shall not compete with the business of the Company. For purposes of this Agreement, “compete with the business of the Company” means to enter into or attempt to enter into (on Advisory Director’s own behalf or on behalf of any other person or entity) a business relationship with any company or entity that: (i) competes with the Company, (ii) was identified to Advisory Director by the Company, as a customer of the Company, or (iii) was sold any of the Company’s goods or services or sells competitive products to customers of the Company. Advisory Director agrees that the assertion or existence of any claim by Advisory Director against the Company shall not be a defense to the enforcement of this paragraph by injunction or otherwise.

(i) Due to the irreparable and continuing nature of the injury which would result from a breach of the covenant, as described above, Advisory Director agrees that the Company may, in addition to any remedy which the Company may have at law or in equity, apply to any court of competent jurisdiction for the entry of an immediate order to restrain or enjoin the breach of this covenant and to otherwise specifically enforce the provisions of this covenant.

If these provisions are added, a survival provision should also be added such that the obligation survive termination of this Agreement.

investigative, any appeal in such an action, suit or proceeding and any inquiry or investigation that could lead to such an action, suit or proceeding.

- 7.2. Advancement of Expenses. Reasonable expenses (including court costs and attorney's fees) incurred by Advisory Director as a witness or as a defendant or respondent in a Proceeding, or due to a threat to be named as such, shall be paid or reimbursed by the Company in advance of the final disposition of such Proceeding provided that such Proceeding is not based upon an alleged breach by Advisory Director of Section 6 of this Agreement.

**Section 8. Notices.** All notices, requests, demands or other communications with respect to this Agreement shall be in writing and addressed as follows:

To Advisory Director at:

To the Company at:

**Section 9. Miscellaneous Provisions.**

- 9.1. *Assignment.* No party hereto may assign this Agreement without the prior written consent of the other party except that the Corporation may assign this Agreement by conversion into another type of business organization, or to any other successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets. This Agreement shall inure to the benefit of and be enforceable by successors..
- 9.2. *Amendments.* The parties hereto agree that this Agreement shall be modified only by a written agreement signed by the parties hereto.
- 9.3. *Governing Law.* The laws of the State of \_\_\_\_\_, 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.
- 9.4. *Jurisdiction and Venue.* The parties hereto agree that this Agreement shall be fully performable in \_\_\_\_\_ County, \_\_\_\_\_ [STATE] and further agree to submit to the non-exclusive jurisdiction of, and agree that venue is proper in, state or federal courts in \_\_\_\_\_ County, \_\_\_\_\_ [STATE] in any legal action or proceeding relating to this Agreement.
- 9.5. *Severability.* The provisions of this Agreement shall be severable, and if any provision of this Agreement is held to be invalid or unenforceable, it shall be construed to have the broadest interpretation that would render it valid and enforceable.
- 9.6. *Entire Agreement.* The parties hereto acknowledge and agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties.
- 9.7. *Independent Contractors.* The Advisory Director's relationship to the Company is that of an independent contractor, and nothing in this Agreement will be deemed to establish any other relationship between Advisory Director and the Company, such

as employer-employee, principal-agent, partners or joint ventures. The Company shall have no control over the means or manner of performance by Advisory Director of his/her obligations under this Agreement. Unless expressly authorized in writing by the Company, Advisory Director shall not contract for or incur any obligations in the name of, or for the account of, the Company, accept payment from any party of any obligation due the Company, or make any representation, guaranty or other agreement relating to the business of the Company.

- 9.8. *Copies and Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. A facsimile or other electronic transmission of this signed Agreement shall be legal and binding on all parties hereto.

**[REMAINDER OF PAGE INTENTIONALLY BLANK]**

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

**ADVISORY DIRECTOR:**

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

**COMPANY:**

\_\_\_\_\_, INC.

By: \_\_\_\_\_  
\_\_\_\_\_, President

EXAMPLE