

*****EXAMPLE NEST (NEW ENTITY FOR STARTUP TRANSITION) AGREEMENT. THIS IS A SAMPLE AGREEMENT PROVIDED FOR DISCUSSION PURPOSES ONLY. IT IS NOT LEGAL ADVICE, CONSULT YOUR ATTORNEY BEFORE USING OR MODIFYING IT.*****

ENGAGEMENT LETTER AND LICENSE AGREEMENT

1. PARTIES

This Engagement Letter and License Agreement (this “Agreement”) is entered into as of [EFFECTIVE DATE] (the “Effective Date”), by and between:

[COMPANY NAME], a [STATE / COUNTRY] [ENTITY TYPE], with its principal place of business at [ADDRESS] (the “Company”), and

[NEW COMPANY NAME], a [STATE / COUNTRY] [ENTITY TYPE], with its principal place of business at [ADDRESS] (the “Service Provider”).

Company and Service Provider may be referred to herein individually as a “Party” and collectively as the “Parties.”

2. BACKGROUND; ADVISOR DISCLAIMER

The Company acknowledges that the Service Provider is not a registered broker-dealer and that the Services do not include legal or tax advice. No advice or recommendations provided by the Service Provider should be construed as legal or tax advice. The Company is responsible for engaging its own legal counsel and tax advisors.

3. DEFINITIONS

“Change of Control” means any transaction or series of related transactions (including an initial public offering) that results in: (a) the holders of the Company’s voting interests as of immediately prior to the closing of such transaction(s) ceasing to own and hold a majority of the voting interests of the Company; or (b) any sale, transfer, or exclusive license of all or substantially all of the assets of the Company (including, without limitation, the Intellectual Property), or any other transaction or event that constitutes or results in a change in control of the Company to one or more third parties. A Change of Control shall be deemed to occur regardless of the form of consideration (cash, equity, debt, or any combination thereof).

“Confidential Information” means any tangible or intangible information in any form disclosed by a Party (the “Disclosing Party”) to the other Party (the “Receiving Party”) that reasonably should be understood to be confidential or proprietary in light of the

circumstances surrounding disclosure or the nature of the information. Confidential Information does not include information that: (i) is or becomes publicly available through lawful means and no fault of the Receiving Party; (ii) the Receiving Party can show was in its possession prior to disclosure by the Disclosing Party, as evidenced by written records; (iii) is rightfully received from a third party without obligation of confidentiality; or (iv) is independently developed without access to the Disclosing Party's Confidential Information.

"Intellectual Property" means all intellectual property and other similar proprietary rights in any jurisdiction worldwide, whether registered or unregistered, including without limitation: trademarks, trade dress, service marks, logos, trade names, goodwill; patents and patent applications; inventions, know-how, technologies, processes, techniques, protocols, methods, formulae, specifications, data, algorithms; plans, drawings, specifications, writings, works of authorship; trade secrets; software (including source/object code, APIs, databases, documentation); domain names and URLs; websites, email addresses and rights of use and access; and claims/causes of action related to enforcement of the foregoing.

"Revenue" means [GROSS / NET] revenue actually received by the Service Provider from commercialization or exploitation of the Intellectual Property, excluding [TAXES / REFUNDS / CHARGEBACKS / THIRD-PARTY PROCESSING FEES / PASS-THROUGH COSTS]. If "Net," permitted deductions are limited to those expressly listed here.

"Recurring Revenue" (optional) means revenue received by the Service Provider for subscription or recurring services in connection with its commercialization of the Intellectual Property, determined in accordance with [US GAAP / OTHER STANDARD], and prorated over the term of the underlying customer agreement; excluding [NON-RECURRING SERVICES / IMPLEMENTATION / TRAINING / PROFESSIONAL SERVICES], unless the Parties agree otherwise in writing.

"Term" means the period beginning on the Effective Date and continuing for [INITIAL TERM LENGTH] (the "Initial Term"), and thereafter renewing as set forth in Section 9.

4. SERVICES

4.1 Services Scope. The Service Provider will be responsible for commercializing and exploiting the Intellectual Property at the Service Provider's sole cost and expense (the "Services"). Without limiting the foregoing, the Services may include sales, customer support, administrative services, software maintenance, and application updates, and any additional services described in Exhibit B (optional).

4.2 Standard of Performance. The Service Provider will perform the Services in a professional and workmanlike manner and will use commercially reasonable efforts to market and commercialize the Intellectual Property.

4.3 Information; Reliance. The Company will furnish (or cause to be furnished) information reasonably requested by the Service Provider to perform the Services (the "Information"). The Company represents and warrants that, to the best of its knowledge, the Information is truthful, accurate, and complete in all material respects. The Service Provider may rely on the Information without independent verification. The Company will promptly notify the Service Provider of any material change in Information previously provided.

5. LICENSE

5.1 Grant. In consideration of the Royalty (if applicable) and in furtherance of the Service Provider's performance of the Services, the Company hereby grants to the Service Provider an [EXCLUSIVE / NON-EXCLUSIVE] (even with respect to the Company, if exclusive), [SUBLICENSABLE (as required to perform the Services) / NON-SUBLICENSABLE], irrevocable (except as set forth herein, including upon termination), fully paid-up, worldwide license in, to, and under all of the Company's Intellectual Property during the Term, for any and all lawful purposes (the "License").

5.2 Discretion. The Company acknowledges that the Service Provider's commercialization and exploitation of the Intellectual Property will be made at the Service Provider's sole and absolute discretion, subject to Section 4.2.

5.3 Further Assurances. The Company agrees to execute such other instruments and documents and to take such other actions as the Service Provider may reasonably request in furtherance of the transactions contemplated by this Agreement.

6. ROYALTY / REVENUE SHARE (COMPANY ECONOMICS)

6.1 Royalty. Within [NUMBER] days after the end of each [MONTH / QUARTER], the Service Provider shall pay to the Company a royalty equal to [PERCENTAGE]% of [Revenue / Recurring Revenue] actually received by the Service Provider as a result of its commercialization of the License (the "Royalty").

6.2 Statements. Each Royalty payment shall be accompanied by a statement reasonably detailing the calculation.

6.3 Audit Rights (Optional). Upon reasonable advance notice and during regular business hours, the Company may inspect books and records of the Service Provider solely as necessary to verify Royalty calculations, no more than [ONE] time per [YEAR], at Company's expense unless a discrepancy of more than [X%] is discovered, in which case the Service Provider shall reimburse reasonable audit costs.

7. CHANGE OF CONTROL; OPTIONS; THRESHOLDS (ANTI-CIRCUMVENTION)

7.1 Company Call Option (Optional). Upon the occurrence of a Change of Control with respect to the Company, the Company shall have the right and option to acquire from [PARENT / OWNER ENTITY] its entire right, title, and interest to all of the Service Provider's then issued and outstanding equity for a purchase price equal to the greater of: (a) \$[DOLLAR AMOUNT] or (b) [PERCENTAGE]% of the aggregate amount payable to the Company with respect to such Change of Control (the "Call Option"). The closing shall occur no later than [30] days after notice of exercise.

7.2 Qualified Change of Control Threshold; Mandatory Cooperation. If the Company or the Service Provider has the opportunity to enter into a Change of Control that results in consideration payable to the Company (or its owners) of no less than \$[THRESHOLD AMOUNT] (a "Qualified Change of Control"), then each Party agrees to participate in such Qualified Change of Control and to execute and deliver all related documentation and take such other actions reasonably requested to carry out the transaction.

7.3 Substitute Payment. Notwithstanding Section 7.2, if and to the extent the Parties agree in writing, in lieu of participating in the Qualified Change of Control, the Company may pay to the Service Provider a lump sum payment equal to the consideration that would have been paid to the Service Provider if such Qualified Change of Control had been consummated.

7.4 Post-Termination Tail. The Company agrees that if a Change of Control with respect to the Company occurs within [TWELVE (12)] months following (i) termination of this Agreement by the Company, or (ii) expiration of the Term, then the Service Provider (or [PARENT / OWNER ENTITY], if applicable) shall be entitled to receive an amount equal to the greater of (a) [PERCENTAGE]% of the aggregate amount payable to the Company with respect to such Change of Control, or (b) \$[DOLLAR AMOUNT].

8. PAYMENTS; LATE FEES; SUSPENSION; COLLECTION

All amounts payable under this Agreement must be paid in [CURRENCY] in immediately available funds via [CREDIT CARD / WIRE / ACH] to an account designated by the receiving Party. Amounts not paid when due may be subject to a late fee equal to [1.5%] per month (or the maximum permitted by law). The Company acknowledges that the Service Provider may suspend performance of the Services until undisputed amounts then due are paid. For amounts not subject to a good faith dispute that remain unpaid for more than [45] days following the due date, the owing Party agrees to pay all reasonable costs and expenses of collection, including court and attorneys' fees.

9. TERM; RENEWAL; TERMINATION; TERMINATION FEE

9.1 Term and Renewal. The term of this Agreement commences on the Effective Date and continues for an Initial Term of [ONE (1) YEAR / SIX (6) MONTHS]. At the conclusion of the Initial Term (or any Renewal Term), the Agreement automatically renews for additional terms of [ONE (1) YEAR] each unless either Party provides written notice of non-renewal at least [30] days prior to the expiration of the then-current Term. [OPTIONAL: The Company may not elect non-renewal if it has notice of a pending Change of Control.]

9.2 Service Provider Termination. The Service Provider may terminate this Agreement at any time by providing the Company with [15] days' prior written notice.

9.3 Company Termination. The Company may terminate this Agreement only by delivering to the Service Provider [60] days' prior written notice and paying the Termination Fee, provided that the Company may not terminate after it has notice of a pending Change of Control unless the Parties agree otherwise in writing.

9.4 Termination Fee. If the Company terminates this Agreement or elects not to renew, the Company shall pay to the Service Provider an amount equal to the Service Provider's [Recurring Revenue / Revenue] for the [THREE (3)]-month period preceding the date of such notice (the "Termination Fee"). The Company's termination or non-renewal is effective contingent upon payment of the Termination Fee. [OPTIONAL: Waive Termination Fee if termination occurs within first [90] days after Effective Date.]

10. REPORTING AND INFORMATION RIGHTS (OPTIONAL BUT COMMON)

At the end of each calendar [MONTH / QUARTER], the Service Provider shall provide unaudited financial statements within [30] days of period end, prepared in accordance with [US GAAP / OTHER STANDARD]. Upon reasonable notice, the Company may inspect relevant books and records and discuss the Service Provider's affairs, finances, and accounts. The Service Provider agrees to maintain books and records in accordance with industry standards.

11. CONFIDENTIALITY

Each Party agrees to keep in strict confidence and not to use or disclose any Confidential Information except in furtherance of its obligations under this Agreement. Confidential Information shall be returned promptly upon request. If compelled to disclose by legal process, the Receiving Party will provide prompt notice (to the extent legally permitted) to allow the Disclosing Party to seek a protective order. The Service Provider may share the Company's Confidential Information with third parties in furtherance of the Services, subject to appropriate confidentiality obligations.

12. INDEMNIFICATION

12.1 Company Indemnity. The Company shall defend and hold harmless the Service Provider and its affiliates and their respective partners, managers, officers, members, employees and agents (“Service Provider Indemnitees”) from and against third-party claims and shall indemnify Service Provider Indemnitees for liabilities, losses, expenses (including reasonable attorneys’ fees), penalties, interest, and damages arising out of or in connection with this Agreement, except to the extent caused by the Service Provider’s gross negligence or willful misconduct.

12.2 Service Provider Indemnity. The Service Provider shall defend and hold harmless the Company and its partners, managers, officers, members, employees and agents (“Company Indemnitees”) from and against third-party claims arising out of the Service Provider’s gross negligence or willful misconduct.

12.3 Payment of Expenses. Indemnifiable expenses will be paid or reimbursed as incurred.

13. LIMITATION OF LIABILITY

Except to the extent arising in connection with a Party’s indemnification obligations, neither Party will be liable for special, incidental, indirect, punitive, lost profits, exemplary, or consequential damages. Except for indemnification obligations or a Party’s willful confidentiality breach, each Party’s aggregate liability will not exceed the greater of (A) amounts actually paid or payable under this Agreement to the Service Provider and (B) \$[LIABILITY CAP FLOOR]. No claim may be asserted more than [TWELVE (12)] months after termination or expiration. For the Service Provider’s indemnification obligations, its aggregate liability will not exceed [TWO (2)] times the greater of (A) amounts actually paid or payable under this Agreement to the Service Provider and (B) \$[LIABILITY CAP FLOOR].

14. CONFLICTS OF INTEREST

The Company understands the Service Provider may provide similar services to other clients and may accept unrelated engagements, provided it does not violate confidentiality obligations hereunder.

15. RELATIONSHIP OF THE PARTIES

The Parties are independent contractors. Nothing herein creates an employer/employee, principal/agent, partnership, or joint venture relationship.

16. GOVERNING LAW; DISPUTE RESOLUTION

This Agreement shall be governed by the laws of [STATE]. Any dispute arising out of or relating to this Agreement shall be resolved by binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. Hearings shall be conducted in [COUNTY, STATE]. The arbitration shall be conducted by a panel of three arbitrators (one selected by each side, and a third selected by those arbitrators). Each Party bears its own costs and attorneys' fees and an equal share of arbitrator/administrative fees. Either Party may seek injunctive relief and/or specific performance for breach or threatened breach of confidentiality.

17. MISCELLANEOUS

17.1 Amendment; Entire Agreement. Amendments must be in writing signed by authorized representatives. This Agreement is the entire agreement between the Parties regarding its subject matter.

17.2 Testimony. If Service Provider personnel are required to testify in proceedings involving the Company, whether during or after the Term, they shall be compensated at regular hourly rates and reimbursed for reasonable out-of-pocket expenses, including attorneys' fees.

17.3 Waiver; Severability. Waiver of any breach is not a waiver of subsequent breach. If any provision is invalid or unenforceable, the remainder remains effective.

17.4 Assignment. Neither Party may assign this Agreement without the other Party's prior written consent, except as permitted here: [YES/NO], including to an affiliate or successor in connection with a Change of Control.

17.5 Authority; IP Chain-of-Title. The Company represents it has authority to enter this Agreement and has obtained valid written assignments from all contributors to the Intellectual Property.

18. SIGNATURES

[COMPANY NAME]

By: _____

Name: _____

Title: _____

Date: _____

[NEW COMPANY NAME]

By: _____

Name: _____

Title: _____

Date: _____