

### **Disclaimer**

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### **SAMPLE CONSULTANT AGREEMENT**

**12/04/09**

**THIS CONSULTANT AGREEMENT** (this "Agreement") is entered into effective the \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_, Inc., a Texas corporation ("Agency"), and \_\_\_\_\_, ("Consultant").

### **WITNESSETH:**

**WHISEAS**, agency wishes to enter into this Agreement in order to obtain assistance, advice and consultation from Consultant with respect to the maintenance of accounting, bookkeeping and financial records of Agency; and,

**WHISEAS**, Consultant wishes to enter in this Agreement to provide such services in conjunction to the Agency.

**NOW, THISEFORE**, for and in consideration of the promises of Consultant and Agency contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Agency and Consultant, the parties hereto hereby agree as follows:

1. **Agreement.** Consultant agrees to render assistance, advice and consultation to Agency relative to the transition of the ownership change (the "Consulting Services"). During the term of this Agreement, Consultant agrees to make himself available (defined herein) for such Consulting Services as may be requested by Agency. The term "available" shall mean Consultant shall perform services for Agency on a part-time, non-exclusive basis, giving Agency first-priority availability over Consultant's other commitments, to the extent his services are reasonably required by Agency. Consultant shall use his best efforts to provide his expertise and knowledge in all matters that Agency may reasonably request.
2. **Independent Contractor.** It is agreed and understood between the parties hereto that Consultant is an independent contractor and is not an employee of Agency hereunder.

Consultant will be solely responsible for payment of all State and Federal taxes due or which may become due on monies paid by Agency to Consultant hereunder. Consultant shall not be entitled to corporate benefits of Agency provided to its employees.

3. Compensation. In consideration of Consultant's services and as compensation for the services, Agency shall pay to Consultant a fee of Dollars (\$\_.00) per month ("Consulting Fee").
4. Term. This Agreement shall continue indefinitely, until it is terminated as provided herein.
5. Termination. This Agreement shall terminate upon:
  - a. The death or permanent disability / incapacity of Consultant.
  - b. Mutual agreement of Consultant and Agency.
  - c. By either party providing not less than thirty (30) days written notice to the other party.

Termination of this Agreement shall not affect any of Agency's or Consultant's obligations, rights or remedies hereunder.

6. Confidentiality. Agency hereby agrees to provide Consultant access to confidential information relating to Agency's business. Consultant hereby acknowledges and agrees that all information concerning operations and customers of Agency (or the other individuals or agencies that are now or may later become associated with Agency) including, but not limited to, records and information with respect to accounting and financial matters, as well as lists or records of customers, leads or prospects, intellectual property, ideas, designs, processes, provider agreements, list and/or data, customer preferences, specifications, financial information, software, computer programs, marketing plans, strategies, business plans and methods relating in any manner to the actual or anticipated business of Agency and/or its customers and prospects (or the customers and prospects of the other individuals and entities that are now or may later become associated with Agency) is Confidential Information which constitutes proprietary assets and/or trade secrets; and will be treated as such by Consultant. Confidential Information also includes information belonging to others whom Agency may have confidentiality obligations.
7. Non-Disclosure / Use. In exchange for Agency's providing and/or continuing to provide Consultant proprietary and/or Confidential Information, Consultant hereby agrees that during the course of this Agreement or thereafter he will not directly or indirectly make use of any such proprietary assets, trade secrets, or any other Confidential Information of Agency (or other individuals or agencies that may be or have been associated with Agency) for his own benefit, nor divulge any information or reveal any such data (whether prepared by Consultant or otherwise) to anyone.
8. Access To Agency Systems. In addition, Consultant will also have access to Agency's data processing / agency management system, with authority to access Confidential Information while working at Agency's premises and from other remote locations. In consideration of Agency providing Consultant access to such Confidential Information and data processing system, Consultant agrees that he will maintain such Confidential Information in strict confidence, and will not disclose it to anyone without Agency's prior written consent. Consultant will not use, or permit others to use, the Confidential Information for any purpose other than the furtherance of Agency's business interests.
9. Restrictive Covenants. It is acknowledged by Consultant that all customers and prospects of Agency are the exclusive property of Agency (or other individuals or entities that may be or may have been associated with Agency). Consultant further acknowledges that Agency has a legitimate business interest in preventing others from using the business rapport established during his association with Agency in order to compete, either directly or indirectly, with the Agency.
10. Non-Piracy. In consideration of Agency providing Consultant monetary compensation and access to Confidential Information, trade secrets and trade practices, Consultant expressly agrees that he shall not while providing service to Agency, or for a period of twenty-four (24) months following termination of this Agreement, either solely or jointly, as an insurance agent, insurance service representative, or otherwise, directly or indirectly, solicit, accept, write or service any insurance or financial services business which involves a person, firm, corporation or other entity who did business with Agency during the term of this Agreement, or which Agency solicited for business during the term of this Agreement.
11. Developments / Intellectual Property Rights. Consultant hereby agrees that all software, documentation, modifications to systems or other documentation and inventions, as well

as all papers, records and other materials prepared or produced by Consultant under this Agreement (collectively the "Developments") shall be the sole and exclusive property of Agency, or Agency's client if Agency confers property rights to its clients. Consultant agrees that the Developments shall be works made for hire and that Agency shall retain all copyright, patent, trade secret, trademark and any other intellectual property rights ("Intellectual Property Rights") in the Developments. Consultant hereby assigns to Agency all right, title and interest in all Intellectual Property Rights in the Developments and extensions and renewals thereof. Consultant hereby agrees not to assert at any time and otherwise waives any rights that Consultant may have in Developments, and Consultant hereby assigns to Agency all moral rights therein. Upon termination of this Agreement, Consultant shall provide complete copies of all Developments to Agency unless otherwise directed by Agency in writing.

12. Geographic Limitations. The promises and covenants provided in this Agreement shall apply within \_\_ County and contiguous surrounding counties of Texas; and shall apply outside those counties only to the extent that the protected customers, accounts or prospects have operations, locations, or affiliates outside those counties.
13. Agency Employees. Consultant agrees that during the term of this Agreement and for a period of twenty-four (24) months following the termination of this Agreement, Consultant will not directly or indirectly solicit for employment, hire or cause any employee, independent contractor, or other individual to leave their employment or association with Agency because Consultant's offer, recommendation or referral.
14. Remedies. It is expressly agreed that the remedy at law for a breach of the confidentiality or other restrictive covenants of this Agreement, would be inadequate, and that injunctive relief shall be available to Agency to prevent a breach or threatened breach thereof. Nothing contained herein, however, shall be construed as prohibiting Agency from pursuing any other remedies, at law or in equity, available to Agency for such breach or violation or threatened breach or violation. Should a court of competent jurisdiction declare the restrictive covenants set forth herein to be unenforceable due to an unreasonable restriction of duration or geographical area or otherwise, both Agency and Consultant hereby agree that such court shall be empowered reform such restrictions to the maximum time, scope and geographic limitations permitted by applicable law; and shall grant the injunctive relief reasonably necessary to protect the respective interests of Agency and Consultant in accordance with the revised limitations.
15. Attorney's Fees / Costs. In the event that any action, suit or proceeding in law or in equity is brought to enforce the provisions of this Agreement, Agency shall also be entitled to recover from Consultant all reasonable expenses incurred, including attorney's fees, court costs, and any other expenses associated with such matter.
16. Terms Binding. The provisions of contained in Sections 8 through 15 of this Agreement shall continue to be binding upon Consultant in accordance with their terms, notwithstanding termination of Consultant's association with Agency hereunder for any reason.
17. Successors and Assigns. Agency may assign any of its rights or delegate any of its duties under this Agreement to any person or entity without the prior written consent of Consultant. Consultant may not assign any of his rights or delegate any of his duties under this Agreement to any person without the prior written consent of Agency. Except as expressly set forth in the Section, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties.

- 18. Amendment. This Agreement may be amended only with the written consent of Agency and Consultant.
- 19. Governing Law. This Agreement shall governed by and construed in accordance with the laws of the State of Texas applicable to contracts made and to performed in Texas. Venue for any proceedings shall be in \_\_ County, Texas.
- 20. Severability. If any provision in this Agreement is rendered or declared illegal, invalid, or unenforceable by reason of any rule of law, public policy, or final judicial decision, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby are not affected in any manner adverse to Agency or Consultant. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, Agency and Consultant shall negotiate in good faith to modify this Agreement so as to affect the original intent of the parties hereto as closely as possible to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.
- 21. Entire Agreement. There are no oral agreements between the parties. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and thereof and all prior agreements relative thereto which are not contained herein are terminated.

**EXECUTED AND EFFECTIVE** as of the first date first written above.

\_\_\_\_\_, Inc ("Agency")

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

\_\_\_\_\_ ("Consultant")