

## SERVICE AGREEMENT

This Agreement is entered into on \_\_\_\_\_ by and between \_\_\_\_\_ ("Client"),  
and Foundation Database Systems at PO Box 1893, Alpine, TX 79831 ("FDS").

**1. Services and Fees:** FDS shall provide consulting and technical support services relating to the management and development of business solutions per criteria provided by Client to FDS. All services shall be rendered at the rate of \$100 per hour, to be billed weekly and payable upon issuance against prepaid retainer payments to be made in amounts as agreed to from time to time by and between Client and FDS during the course of any of the projects that may be the subject of this Agreement. The initial retainer shall be for \_\_\_\_\_ hours, nonrefundable. FDS may halt work if Client fails to maintain a reasonable credit balance or fails to pay any overdue charges. Hourly charges are assessed for all activities connected to any project, including but not limited to, any research, teleconferences, consultations, collaboration among staff, preparation of written documentation, testing and debugging, travel and on-site observation. Either party may terminate this Agreement at any time on a week to week basis upon written notice, however the provisions as set forth in paragraphs 4, 5, 6 and 7 of this Agreement shall remain in effect for a period of 1 year after any termination.

**2. Work for Hire, Copyrights:** Client acknowledges not all performance or design variables are known at this time and therefore FDS is providing said services on a "best-effort, work-for-hire" basis. All copyright, title and interest in any software solution being developed specifically for Client shall inure to Client upon completion and payment of all invoices for services rendered. Client acknowledges these deliverables may have restricted access to code until payment for services has been completed.

**3. Estimating Time and Costs:** Client acknowledges and agrees that any estimates of time or cost of any projects that may be provided by FDS to Client shall in no way be understood or construed as a job quotation or time guarantee in any way, and that any estimates of time or cost are intended purely as a "reference only opinion" for broad planning of the actual time requirements in providing the consulting services which are the subject of this Agreement. Any budget issues of the client shall not serve as a basis for payment and are not linked to or dependent upon any criteria involving the completion stage or implementation value of a project. Invoice and payment conditions are based strictly on hourly charges for services rendered.

**4. Limitation of Liability:** FDS shall not be liable to Client for incidental, consequential, or punitive damages of any nature, for any reason, including without limitation, the breach of this Agreement, whether such liability is asserted on the basis of contract, tort (including negligence and strict liability) or otherwise, whether or not Client has been warned of the possibility of such damages. All remedies provided by law (and not excluded pursuant herein), shall be deemed cumulative and not exclusive. In the event of litigation between FDS and Client, the liability of FDS to Client for damages, if any, shall in no event exceed the amount paid to FDS under this Agreement. FDS shall not be liable for any claimed loss of business by client, loss of prospective business by client, or any other damages that are not directly related to the performance of the parties herein.

**5. Client Confidential Information:** Client Confidential Information means information relating to the research, development, products, methods of manufacture, trade secrets, business plans, customers, finances, and personal data related to the business or affairs of Client. Client Confidential Information shall not be that information (i) which FDS knew before Client disclosed it to FDS; (ii) which has become publicly known through no wrongful act of FDS; or (iii) which FDS developed independently, as evidenced by appropriate documentation. FDS agrees not to disclose any Client Confidential Information and to take all reasonable precautions to prevent its unauthorized dissemination, both during and after the contract. Without limiting the scope of this duty, FDS agrees to limit its internal distribution of Client Confidential Information to its employees and agents who have a need to know and to take steps to ensure that the dissemination is so limited. FDS agrees not to use any Client Confidential Information for its own benefit or for the benefit of anyone other than Client. Without limiting the scope of this duty, FDS agrees not to design or manufacture any products which incorporate Client Confidential Information. All Client Confidential Information remains the property of Client and no license or other rights in the Confidential Information are granted hereby. All Information is provided "AS IS" and without any warranty, express, implied, or otherwise, regarding accuracy or performance. Further, upon Client's written request, FDS agrees to return to Client, all Client Confidential Information, including but not limited to all computer programs, documentation, notes, plans, drawings and copies thereof.

**6. Conversion, Placement Fee:** During the course of any and all projects the subject of this agreement and for a period of one year after any termination or completion of any project or termination of this agreement, Client agrees not to convert, solicit, recruit or hire any current or previous employee, independent contractor, consultant or agent of FDS unless Client pays a Placement Fee equal to 100% of the total gross compensation paid, or to be paid, by Client or any affiliate thereof, to any current or previous employee, independent contractor, consultant or agent of FDS converted, solicited, recruited or hired by Client.

**7. Legal:** In the event legal action and/or suit, including the commencement of arbitration proceedings, is necessary to enforce any of the terms of this Agreement, or to obtain damages for any alleged breach of any of the terms of this Agreement, or for a declaration of rights hereunder, the prevailing party shall be entitled to actual attorneys fees and costs whether or not such action proceeds to arbitration, trial or appeal. The parties agree that this contract was entered into, and is to be performed in the County of Brewster, State of Texas. In the event litigation may arise from this agreement, the parties consent to jurisdiction in the County of Brewster in the State of Texas.

\_\_\_\_\_  
Client

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David Kachel for Foundation Database Systems