

# Terms of Service



## TERMS OF SERVICE

This Terms of Service (“Agreement”), dated \_\_\_\_\_ is made between Density Labs LLC., a Texas corporation with its principal place of business at 17350 State Hwy 249, Ste 220 #20807, Houston, Texas 77064 (“Company”) and \_\_\_\_\_ having offices at \_\_\_\_\_, or its assigns (“Client”).

### RECITALS

WHEREAS, Company is in the business of computer software consulting and development services.

WHEREAS, Client desires to engage Company to provide software consulting and development services, and Company agrees to perform such services, on the terms and conditions set forth herein.

WHEREAS, Company and Client agree that this Agreement shall apply to all such future services.

### AGREEMENT

THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

#### 1. Services

Company agrees to perform services for Client as described in one or more Statements of Work, the form of which are attached hereto as exhibits (the “Services”). Any conflict or inconsistency between the provisions of this Agreement and any executed Statement of Work shall be resolved by giving precedence to the executed Statement of Work under which the Services are to be performed and then to this Agreement.

#### 2. Cooperation

Client shall assist Company in the performance of its obligations under this Agreement and shall undertake the responsibilities specified in this Section 2 at its own expense.

#### 3. Work Provisions

##### 4.1 Independent Contractor

For all purposes hereof and in the performance of its obligations under this Agreement, Company is and shall remain an independent contractor and nothing in this Agreement or in a Statement of Work shall be deemed or construed to create an employer/employee, joint venture or partnership relationship between Company and Client. Nothing herein shall be deemed or construed to create an employment relationship between Client and any employee, agent or independent contractor of Company. Neither party shall have any authority to insure any obligations on behalf of the other party or to make any promise, representation or contract of any nature on behalf of the other party.

##### 4.2 Company’s Personnel

Unless otherwise stated in the applicable Statement of Work, Company shall have sole discretion over the identity of its personnel used to provide the Services, provided that Company shall ensure that the personnel are in all cases suitably qualified and experienced. Where specific personnel are specified in an applicable Statement of Work, Company shall use reasonable efforts to provide the Services through those personnel, provided that Company shall be entitled to replace such personnel with

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personnel of equivalent qualification and experience on no less than 15 business days notice to Client. The Company's Consultants' payment terms and conditions are strictly confidential and sole discretion of the Company, therefore, Client may not discuss, ask or negotiate with any Company's Consultants their salaries and/or their per hour rate arranged with the Company. Moreover, as part of this Agreement Confidential Information, Client may not discuss and/or share with the Company's Consultants, Client's Fees and Payment terms agreed on with the Company for Company's Consultants. Client acknowledges and agrees that breach of this obligation may cause the Company irreparable damages, for which an award of damages would not be adequate compensation. In the event of this breach or threatened breach, the Company will be entitled to seek equitable relief.

## 4.3 Non-Exclusivity

Without authorizing Company (or its personnel) to engage in any conduct or activities which would result in a breach or violation of any term of this Agreement. Client recognizes that Company's personnel providing services to Client under this Agreement may perform similar services from time to time for other persons, and this Agreement shall not prevent Company from using such personnel for the performance of such similar services for such other persons. Company recognizes that Client may engage other consultants to perform similar services from time to time, and this Agreement shall not prevent Client from using such consultants.

## 4.4 Intellectual Property.

1. 4.4.1 Inventions and Intellectual Property Rights. As used in this Agreement, the term "Invention" means any ideas, concepts, information, materials, processes, data, programs, know-how, improvements, discoveries, developments, designs, artwork, formulae, software, works of authorship, other copyrightable works, and techniques and all Intellectual Property Rights therein. The term "Intellectual Property Rights" means all trade secrets, copyrights, trademarks, mask work rights, patents and other intellectual property rights recognized by the laws of any country. As used in this Agreement, the term "Work Product" means any Invention that is (a) delivered to Client by Company in connection with this Agreement or (b) solely or jointly conceived, made, reduced to practice, or learned by Consultant in the course of any services performed for Client or with the use of materials of Client during the term of this Agreement. Consultant hereby irrevocably assigns to Client all right, title and interest worldwide in and to the Work Product (including all Intellectual Property Rights therein or thereto).

2. 4.4.2 Background Technology. As used in this Agreement, the term "Background Technology" means all Inventions developed by Consultant other than in connection with providing services to Client and all Inventions acquired or licensed by Consultant that Consultant uses (or has used) in performing services for Client or incorporates into Work Product (defined below).

3. 4.4.3 License to Background Technology. Unless otherwise stated in the SOW, if any Work Product incorporates or relies upon Background Technology, Consultant hereby grants to Client, at no additional cost, a perpetual, irrevocable, non-exclusive, worldwide, fully sublicensable, royalty free license to use, execute, produce, display, perform, modify and create derivative works of, copy, distribute (internally or externally), and otherwise exploit such Background Technology, and to authorize others to do any, some, or all of the foregoing.

## 4.5 Non-solicitation.

Client acknowledges that Density Labs invests significant effort and funds in attracting and retaining its candidates and that such efforts possess an inherent monetary value. Candidate information submitted to Client is confidential and for Client use only. Client agrees that Density Labs is the representative of all candidates for which information is submitted to Client by Density Labs in response to Client requests. Once candidate information is presented to Client by Density Labs, Client shall not undertake to contact a candidate unless such contact is previously approved in writing by Density Labs. All job offers details shall be discussed between Client and Density Labs. All interviews of candidates performed directly by Client, in whatever medium performed, shall be conducted solely with the express written permission of Density Labs.

## 4.6 Hiring and Conversion.

It is the intent of this agreement that Client will contract the services of the candidate through Density Labs as intermediary. If at any time during the time that the candidate is engaged to perform services for Client through Density Labs as intermediary,

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or within one year after the candidate ceased providing services to Client through Density Labs as intermediary, or within one year after Density Labs shared the candidate's information with Client (and where Client rejected the candidate), Client engages the candidate, directly or indirectly, without Density Labs as an intermediary, then Client agrees to pay Density Labs a conversion fee of \$50,000.00 USD, payable immediately upon request.

## 5. Warranties

### 5.1 Warranty of Authority; No Conflict

Each party warrants that it is authorized to enter into this Agreement and to perform its obligations hereunder, and that its performance hereunder shall not conflict with, limit or be contrary to any other agreement.

### 5.2 Warranty of Services and Software

**5.2.1 Professional Manner** Company warrants that all services will be performed in a professional manner using qualified professional personnel. Company shall not willingly infringe on the copyright of a third party in the performance of this Agreement or delivery of any Work Product.

THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT WHEN OTHERWISE STATED IN WRITING THE MATERIALS PRODUCED UNDER THE TERMS OF THIS AGREEMENT ARE PROVIDED TO CLIENT "AS IS," THAT IS, WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SOFTWARE AND/OR SERVICES PROVIDED UNDER THIS AGREEMENT RESTS SOLELY WITH THE CLIENT. SHOULD THE SOFTWARE OR PROGRAM PROVE DEFECTIVE, CLIENT SOLELY ASSUMES THE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION, INCLUDING WITHOUT LIMITATION ANY "DEBUGGING."

EXCEPT AS OTHERWISE STATED ABOVE, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES RELATED TO INFORMATION OR BUSINESS ADVICE PROVIDED, WARRANTIES RELATED TO OUTCOMES BASED ON INFORMATION OR ADVICE PROVIDED, WARRANTIES OF MERCHANTABILITY OR MERCANTILE QUALITY, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR USE, WARRANTIES OR CONDITIONS ARISING BY STATUTE OR OTHERWISE IN LAW, OR WARRANTIES OF ANY PRODUCTS OR SERVICES PROVIDED BY THIRD PARTY VENDORS.

THE PARTIES AGREE THAT NEITHER PARTY'S LIABILITY FOR DAMAGES FROM ANY CAUSE OF ACTION WHATSOEVER, REGARDLESS OF THE FORM OF ACTION, WILL EXCEED THE FEES PAID OR TO BE PAID BY CLIENT PURSUANT TO AN APPLICABLE STATEMENT OF WORK UNDER THIS AGREEMENT. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR LOST PROFITS OR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES ARISING FROM LOSS OF USE OF ANY SOFTWARE OR HARDWARE, COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOST DATA, LOST PROFITS OR REVENUE, OR FOR ANY CLAIM OR DEMAND BY ANY THIRD PERSON, ARISING OUT OF OR RELATED TO THE AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF, EVEN IF ADVISED OF THIS POSSIBILITY.

**5.2.2 No Infringement** The parties represent and warrant that their disclosure and delivery of any information, documents, software and other materials, and use thereof, as contemplated by this Agreement, will not knowingly infringe or violate any proprietary right of any third party, including, without limitation, any copyright, known patent or trade secret right.

## 6. Fees, Invoices, Payment

### 6.1 Fees

Client shall pay Company on a time and materials basis at the rate set forth on the applicable Statements of Work.

**6.1.1 Invoices/Payment** Company shall invoice Client weekly for Fees and Expenses. Any such invoice shall be payable by check or wire transfer or ACH net fifteen (15) days from the receipt thereof. Late payments shall accrue interest at a rate of the lesser of one and one-half percent (1.5%) per month or the highest rate allowed by law. In the event of any dispute with regard to a portion of an invoice, the undisputed portion shall be paid as provided herein.

**6.1.2 Expenses** Client shall reimburse Company for all materials and reasonable out-of-pocket Fees and Expenses incurred in connection with the performance of its obligations under this Agreement ("Expenses"). Company shall obtain Client's

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prior written approval for any single out-of-pocket Expense.

## 7. Term and Termination

### 7.1 Notice

Either party may terminate this Agreement or any Statement of Work upon thirty (30) days written notice to the other party.

### 7.2 Monetary Breach

If a party fails to make a monetary payment as specified in this Agreement, the non-breaching party shall notify the other party of such failure and if the breaching party fails to cure such breach within three (3) business days, the non-breaching party may immediately terminate this Agreement or any Statement of Work.

### 7.3 Continuation

This Agreement shall remain in full force and effect and govern Services provided to Client by Company until this Agreement is terminated, or the parties mutually agree otherwise.

### 7.4 Termination

Upon termination of this Agreement for any reason: (a) Client shall immediately pay to Company all amounts owed to Company pursuant to Section 6 hereof for Services performed and expenses incurred prior to the date of termination; (b) each party shall immediately cease all use of and shall return to the other party within five (5) business days all Confidential Information and materials of such other party and all copies, portions and abstracts thereof, that are in its possession or under its control, other than any materials for which Client has paid or agrees to pay. Company shall deliver to Client such portion of the Services that are complete.

## 8. Confidentiality

### 8.1 Confidential Information

In connection with this Agreement, Client may disclose, or Company may learn of or have access to, certain confidential proprietary information owned by Client or its affiliates, business partners or clients ("Confidential Information"). Confidential Information includes, but is not limited to, any data or information, oral or written, that relates to Client or any of Client's existing or contemplated business activities, technology, developments, software, methods, trade secrets, and clients. Confidential Information also includes the terms of this Agreement and the Services.

### 8.2 Public Domain

Notwithstanding the foregoing, Confidential Information is deemed not to include information that: (i) is publicly available or in the public domain at the time disclosed, (ii) is or becomes publicly available or enters the public domain through no fault of Company, (iii) is rightfully communicated to Company by persons not bound by confidentiality obligations with respect thereto, (iv) is already in Company's possession free of any confidentiality obligations with respect thereto, (v) is independently developed by Company without use of any Confidential Information or (vi) is approved for release or disclosure by Client in writing without restriction.

### 8.3 Limitation of Disclosures

During the term of its engagement and for all periods thereafter, Company shall maintain the Confidential Information in strict confidence and shall not disclose, publish or copy any part of the Confidential Information. Company shall use the Confidential Information solely for the purpose of performing its obligations under this Agreement. Company shall not use the Confidential Information, or any portion thereof, for its own benefit or for the benefit of any third-party. Company shall take all necessary precautions in handling the Confidential Information and limit disclosures on a strict need-to-know basis. However, Company may disclose Confidential Information pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that Company gives reasonable prior notice to Client to contest such order or requirement. Upon the termination or expiration of this Agreement, Company shall return to Client or certify the destruction of all Confidential Information.

### 8.4 Reference

Notwithstanding anything to the contrary in the Agreement or applicable Statements of Work, each party is entitled to reference the other party and describe work completed under this Agreement and any related Statements of Work in summary and general

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form, without revealing any of the other party's confidential information.

## 9. General Provisions

### 9.1 Notices

All notices required shall be in writing and shall be effective on the date of mailing to the parties at the addresses previously indicated, to the attention of the signers of this Agreement, or to such other address as designated by the parties in writing, and sent via registered U.S. mail, or by a mutually recognized overnight delivery service.

### 9.2 Severability

Each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision hereof. Any invalid or unenforceable provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular provision(s) held to be invalid or unenforceable.

### 9.3 Waiver

The waiver of a breach of this Agreement or the failure of a party to exercise any right under this Agreement shall in no event constitute a waiver as to any other breach, whether similar or dissimilar in nature, or prevent the exercise of any right under this Agreement.

### 9.4 Force Majeure

Neither party shall be responsible for any failure to perform, or delay in performing any of its obligations under this Agreement, where and to the extent that such a failure or delay results from causes outside the control of such party. Such causes shall include, without limitation, delays caused by the other party, acts of God or of the public enemy, acts of the government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, freight embargoes, strikes, civil commotion, or the like.

### 9.5 Headings

Section headings are for the convenience of the parties and should not be construed as part of this Agreement.

### 9.6 Governing Law

This Agreement shall be deemed executed in Dallas, Texas and shall be governed by the laws of the State of Texas. For purposes of enforcement of arbitration awards, equitable relief, or if for any other reason litigation is permissible under this agreement, each party hereby irrevocably agrees to the personal jurisdiction and venue of any court located in Dallas, Texas.

### 9.7 Survival

The provisions of Sections 4, 5, and 8 shall survive the expiration or termination of this Agreement. All other provisions of this Agreement, including any Exhibits and Statements of Work hereto which by their terms or import are intended to survive such expiration or termination, shall survive.

### 9.8 Entire Agreement

This Agreement supersedes all prior oral or written representations, communications, or agreements between the parties, and, together with any appendices, constitutes the final and entire understanding of the parties regarding the subject matter of this Agreement. Neither party has relied on any such prior oral or written representations, communications, or agreements.

### 9.9 Disputes

Any controversy or claim between the parties shall be settled first by negotiation between the parties' respective project managers. In the event the project managers are unable to resolve the dispute in a reasonable period of time, the parties agree to elevate the dispute to their respective Presidents or equivalent officer. If, after a reasonable period of time, the parties' are still unable to resolve the dispute, the parties agree to settle the dispute by arbitration before a single, mutually agreed upon arbitrator under the then current rules of the American Arbitration Association. The decision and award of the arbitrator shall be final and binding and the award so rendered may be entered in any court having jurisdiction thereof. The arbitration shall be held in the jurisdiction of the non-filing party. Each party shall pay its own costs and expenses related to the arbitration, and shall split the cost of the arbitrator. The arbitrator will have no authority to award punitive or other non-compensatory damages to either party.

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No damages excluded by or in excess of any damage limitations set forth in this Agreement shall be awarded.

## **9.10 Execution**

This Agreement may be executed (including by facsimile or Internet-based service) by one or more of the parties on any number of separate counterparts. All of such counterparts taken together shall be deemed to constitute one and the same instrument, and (if by facsimile) each such facsimile shall have the same force and effect as if an original.

**Federico Ramallo, CEO Density Labs LLC**

By:

Date:

Address: 17350 State Hwy 249, Ste 220 #20807, Houston, Texas 77064 US.

email: federico@densitylabs.io

By:

Date:

Address:

email: