



OSPOCO PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement and all exhibits or documents attached or incorporated herein (collectively, the “Agreement”) is entered into by and between _____, whose principal business address is at _____ (“You” or the “Client”), and **OSPOCO**, a Texas Limited Liability corporation whose principal office is located at 21750 Hardy Oak, Suite #102, San Antonio, TX 78258 (“Ospoco”), and is effective as of the date on which it is signed by the Client in the space designated below (the “Effective Date”).

This Agreement sets forth the terms and conditions under which Ospoco and Client have agreed to do business. By executing this Agreement, Ospoco and Client agree to be bound by the terms and conditions set forth herein.

Services Provided

1. Scope of Project. The Statement of Work (SOW) attached **Exhibit A** sets forth specific services (the “Services”) to be provided by Ospoco to Client. Additional SOWs may be added to this Agreement by the consent of both Parties.
2. Services By Request. Client may request additional services à la carte (“Client-Requested Services”). Any Client-Requested Services will be provided according to Ospoco’s Standard Terms, including Ospoco’s Standard Rates.

Relationship Between Ospoco and Client

1. Independent Contractor Status. Ospoco is an independent contractor in the performance of its duties under this Agreement. Client has the right to specify the form and manner of any results delivered to Client (the “Deliverables”), and Client may require that Ospoco conform to security and confidentiality practices consistent with Client’s regulatory or commercial requirements (“Shared Practices”). Ospoco, however, has sole and absolute discretion and judgment in the manner and means of providing the Services and the manner in which it implements the Shared Practices. Ospoco is solely responsible for the payment of all costs, expenses, and taxes, including, but not limited to, FICA, federal, state, and local withholding taxes, unemployment, health and disability insurance, and the like, which shall now or hereafter become due and payable by reason of payments made to Ospoco pursuant to this Agreement.
2. Consulting Services Only. Ospoco provides an expert consulting service, not a legal service. Ospoco contracts with professionally licensed lawyers (the “Firm”) who provide legal services as part of a regular attorney-client relationship between Client and the Firm. *Engagement with an Ospoco-affiliated law firm is required as part of the Ospoco services.* As requested by Client, and under the guidance of Counsel, individual Ospoco advisors provide confidential non-testifying expert advice in the context of the attorney-client relationship between Client and Firm. Ospoco will ensure that the Firm retained for purposes of this Agreement does not have a Conflict of Interest, but all Conflicts of Interest relate to the attorney-client

relationship between Firm and Client, not to the consulting relationship between Ospoco and Client. An engagement letter for an Ospoco-affiliated law firm is attached.

3. Use of External Experts. Client acknowledges that Ospoco will be using independent contractor experts (“Experts”) as part of providing Services to Client. These Experts are chosen for their specific capabilities and knowledge of open source and open source communities, and their expertise is an intrinsic part of the Services being purchased by Client. All Experts will be bound in writing to terms equally as protective of Client as the terms of this Agreement.

Confidentiality

1. Definitions.

- a. “Confidential Information” means any data, materials or information not generally known to the public and owned or possessed by a party (the “Disclosing Party”) and is disclosed to the other party (the “Receiving Party”), whether in oral, written, digital or other form of disclosure. Confidential Information also includes any third party information which the Disclosing Party is required to keep confidential (“Third Party Confidential Information”). Confidential Information does not include any data or information (a) already known to the Receiving Party or to the public at large, (b) independently developed by the Receiving Party, or (c) is communicated, directly or indirectly to the Receiving Party without any obligation of confidentiality. Confidential Information specifically includes all non-open-source code of Client, any internal policies of Client, or any nonpublic business or strategy information pertaining to Client.
- b. “Trade Secrets” means any information protected by the Defend Trade Secrets Act, 18 U.S. Code § 1832 *et seq.* All Trade Secrets are Confidential Information.

2. Proper Use of Confidential Information. Ospoco and the Client each agree that any use of Confidential Information by a Receiving Party is for the sole purpose of performing the Services or complying with the obligations of this Agreement. During the term of this Agreement and indefinitely thereafter, each Receiving Party will use appropriate means to store, transfer and otherwise manage Confidential Information. Receiving Party agrees to use at least the same degree of care to avoid and prevent disclosure of Disclosing Party's Confidential Information and Trade Secrets as Receiving Party uses to prevent disclosure of its own Confidential Information and Trade Secrets, or Receiving Party shall exercise a commercially reasonable degree of care, whichever degree of care is higher.

3. Confidentiality Obligations. Receiving Party agrees to comply with any confidentiality agreements or similar obligations to which Disclosing Party is a party to the extent Disclosing Party notifies Receiving Party of such agreements and obligations in writing prior to execution of this Agreement. Prior to disclosing Confidential Information or Trade Secrets to such employees or agents, Receiving Party will verify with Disclosing Party that such employees or agents are subject to appropriate confidentiality agreements with terms at least as restrictive as those contained herein.

4. Equitable Relief. Receiving Party acknowledges and agrees that the misappropriation, unauthorized use or disclosure of Confidential Information or Trade Secrets would cause irreparable harm to the Disclosing Party. In the event of any breach of any part of this Section by Receiving Party, Disclosing Party shall be entitled to equitable relief, including, but not limited to, a temporary restraining order, temporary injunction and/or a permanent injunction.

Intellectual Property

1. Definitions. “Intellectual Property” (or “IP”) collectively refers to both (1) party Confidential Information, and (2) all other materials registrable or protectable under the patent, copyright, trademark, or trade secret laws of the United States, including (3) the right to register any of the above as well as any patents, copyrights, or trademarks resulting from any such registrations, including all provisional, continuation, reissue, or divisional patents, the right to license, and the rights to receive past damages.
2. License of Intellectual Property. Any Ospoco IP delivered to Client as part of the Services provided under this Agreement (a “Deliverable”), will be delivered with a non-royalty-bearing, world-wide, perpetual, nonexclusive license to Client to exercise all necessary rights for Client’s enjoyment and development of the intellectual property, subject only to the Intellectual Property rights of third parties relating to third party components included in the Deliverables. Ospoco templates, policies, and generic documents, and client-specific documents provided as Deliverables are Confidential Information and shall not be shared with non-affiliate third parties without written consent of Ospoco.
3. Ownership of Intellectual Property. Except as explicitly laid out in a SOW, or as included in a Deliverable, this Agreement does not provide any rights to any Intellectual Property created, owned, or licensed by either party before or during the term of this Agreement.

Limitations on Engagement

1. Limited Engagement. This engagement is for a limited time and purpose as set forth in Exhibit A. Ospoco and Client jointly agree that Ospoco’s total liability for any Project is capped at the total value of the Project as set forth in the associated SOW for that Project. In no event will Ospoco be liable for any direct or indirect damages including any lost profits, lost savings, or other special, incidental or consequential damages arising from any defects, or the use or inability to use the services, even if Ospoco has been advised of the possibility of such damages. This limitation of liability applies in the aggregate and not on a per claim basis, whether any damages are characterized in tort, negligence, contract, or other theory of liability, regardless of whether a party has been advised of the possibility of or could have foreseen any damages, and irrespective of any failure of essential purpose of a limited remedy.

Term and Termination

1. Term and Termination. This Agreement will remain in effect until the end of the identified Project, or until terminated for cause. If a party (the “Breaching Party”) fails to perform its obligations under this Agreement, including any payment obligations, the non-breaching party may initiate a dispute by providing a written notice of breach to the Breaching party. If the Breaching Party fails to cure within 30 days of the notice of breach, the non-breaching party may elect to terminate the Agreement for Cause.
2. Effect of Non-Payment. If Client fails to make any timely payment that is due under this Agreement, Ospoco may, in its sole discretion, stop performing the Services after providing the written notice of breach to Client. Ospoco’s stoppage for non-payment is not a breach of this Agreement.
3. Effect of Termination. If this Agreement is terminated for cause, then the entire amounts a) due for the Services, and b) due for any actually performed Client-Requested Services will be immediately due and payable by Client.

General

1. Standard Terms. This Agreement incorporates Ospoco's Standard Terms and Conditions as if included textually herein.
2. Assignment. Neither party may assign this Agreement without the written consent of the other party, except that either party may assign this Agreement in conjunction with the sale of substantially all assets of the assigning party or a controlling ownership interest in the assigning party after ten (10) days' advance written notice to the other party. This prohibition against assignment does not preclude the use of independent contractors by Ospoco.
3. Execution by Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same document.
4. Survival. The terms and conditions of this Agreement that, by their sense and context, are intended to survive the termination, performance or completion of this Agreement shall so survive.
5. Applicable Law; Venue; Arbitration. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without regard to its conflict of laws provisions. We do not expect that any dispute between us will arise. Nonetheless, in the event of a dispute under this Agreement, the parties agree to resolve the dispute by binding arbitration pursuant to the JAMS arbitration rules, with arbitration to take place in San Antonio, Texas (unless a different venue or rules are mutually agreed upon). Each party shall bear their own expenses for the arbitration. Judgment upon the award rendered by an arbitrator or arbitration panel may be entered in any court that can exercise personal jurisdiction.
6. Attorneys' Fees. Unless explicitly stated otherwise the prevailing party shall have the right to collect from the other party its reasonable costs and necessary disbursements and attorneys' fees incurred in enforcing this Agreement.
7. Entire Agreement & Modification. This Agreement represents the entire agreement between the parties as to the matters referenced herein and is not subject to change or modification, except: a) by written agreement signed by both parties, or b) by the revision or change control procedure included within any exhibit or incorporated document.
8. Notices. Communications in the ordinary course of performance will be delivered electronically via email, ticket, or similar. All notices made pursuant to this Agreement shall be sent both electronically and by certified mail, registered mail, or private carrier such that the notifying party can prove both delivery of notice and that the recipient received the notice (or refused to receive) and the respective dates thereof. Notices shall be sent to the address below or to any successor address provided by either party.
9. Severability. The covenants set forth in this Agreement shall be considered and construed as separate and independent covenants. Should any part or provision of any covenant be held invalid, void or unenforceable in any court of competent jurisdiction, such invalidity, voidness or unenforceability shall not render invalid, void or unenforceable any other part or provision of this Agreement.
10. Waiver. No waiver, amendment or modification of any provision of this Agreement or any agreements in connection with such waiver, amendment, or modification shall be valid unless in writing, duly executed by both parties. No delay or failure by either party to exercise or enforce at any time any right or provision of this Agreement will be considered a waiver thereof or of such party's right thereafter to exercise or enforce each and every right and provision of the Agreement. No single waiver will constitute a continuing or subsequent waiver. Except if expressly stated otherwise, all remedies under this Agreement, at Law or in equity, are cumulative and nonexclusive.

11. Force Majeure. Neither party shall be liable for any delay or nonperformance of any covenant contained in this Agreement, nor shall any such delay or non-performance constitute a default, or give rise to any liability or damages if such delay or nonperformance is caused by an event of force majeure beyond the reasonable control of such party. All parties shall make a good faith effort to effectuate this Agreement where there is an occurrence of a force majeure during and after the occurrence to the extent commercially reasonable.

Signatures Follow

For Ospoco:

For Client:

SIGNATURE

SIGNATURE

PRINT NAME

PRINT NAME

TITLE

TITLE

DATE

DATE

Exhibit A: Statement of Work #1

The purpose of this SOW is to describe the Services and Deliverables that Ospoco will provide to Client under the terms of the Professional Services Agreement entered into between Ospoco and Client on during the active term of the OSPOCO Professional Services Agreement (the "Agreement"). Capitalized terms used and not defined in this SOW have the meanings given such terms in the Agreement. This SOW is effective as of _____ ("SOW Effective Date").

Further SOWs may supplement or run concurrently with this SOW.

CONTACT INFORMATION:

For Ospoco:	For Client:
Primary Contact:	Primary Contact: _____
Email:	Email: _____

Services. Ospoco shall provide the following Services to Client:

1.1 Monthly Services: Ospoco shall provide the following virtual open source office services to Client on a monthly fee basis:

Service	Description	Quantity	Amount

1.2 À la carte Services: Ospoco shall provide the following virtual open source office services to Client on a time and materials basis:

Service	Description	Quantity	Amount

1.3 Expenses: Expenses other than the ordinary costs of providing the Services will be passed on to Client. Any expense greater than \$50 will be approved in advance by client. The following are known expenses that are approved as part of this SOW:

Item	Description	Quantity	Amount

<p>Accepted and agreed to by OSPOCO:</p> <p>Signature: _____</p> <p>Name: _____</p> <p>Title: _____</p>	<p>Accepted and agreed to by Client:</p> <p>Signature: _____</p> <p>Name: _____</p> <p>Title: _____</p>
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