**Explanatory Cover Sheet For
Stage 2 Capital Advisor Agreement for Go-To-Market**

This form of Advisor Agreement should be used by Advisors and Companies when seeking to formalize the Advisor’s provision of advisory Services to Company. This form should only be used in the U.S. If you are entering into an Advisor Agreement with an advisor who resides outside of the U.S., the laws of one or more foreign countries may apply and you should consult with foreign counsel to make any appropriate modifications or to provide a separate form of agreement.

This Agreement is a simplified, basic form, and as such, may not be appropriate for all advisor engagements. This form does not include certain provisions that may be appropriate depending on the nature of the engagement. This Advisor Agreement has not been drafted to comply with any specific U.S. state law, including any state’s employment laws. If either the Advisor or the Company has any concerns or questions regarding this Agreement, please consult with your attorney.

**[*Usage Note: DELETE THIS EXPLANATORY COVER SHEET BEFORE USE*]**

**Advisor Agreement for Go-To-Market**

This Advisor Agreement (this “Agreement”) is entered into as of [\_\_\_\_\_\_\_\_\_\_\_\_\_] (the “Effective Date”) by and between the undersigned company (the “Company”) and the undersigned advisor (the “Advisor”).

The parties agree as follows:

1. **Services**. Advisor agrees to act as a mentor or advisor to the Company and provide advice and assistance to the Company from time to time as further described in Exhibit A attached hereto or as otherwise mutually agreed to by the parties (collectively, the “Services”). The parties acknowledge and agree that Advisor is customarily engaged in an independently established trade, occupation, or business of the same nature as the Services, and that the Company will not control the manner or means in which Advisor performs the Services.
2. **Compensation**. For the provision of the Services, Advisor shall be entitled to receive the compensation as detailed at Exhibit A hereto (“Compensation”).
3. **Expenses**. Advisor shall be entitled to reimbursement for reasonable, documented expenses incurred in performing the Services, and for which Advisor receives prior approval from Company, subject to Company’s standard reimbursement and payroll practices. Advisor shall submit an itemized invoice to the Company for reimbursement. Expenses shall be reimbursed no later than 30 days after invoicing.
4. **Term and Termination**. The term of this Agreement shall begin on the Effective Date and continue for the duration or until the date specified in Exhibit A hereto or until terminated by either party for any reason upon fourteen (14) days’ prior written notice without further obligation or liability except for the Compensation earned by Advisor through such date of termination.
5. **Independent Contractor**. Advisor’s relationship with the Company will be that of an independent contractor and not that of an employee. Advisor will not be eligible for any employee benefits, nor will the Company make deductions from payments made to Advisor for employment or income taxes, all of which will be Advisor’s responsibility. Advisor will have no authority to enter into contracts that bind the Company or create obligations on the part of the Company without the prior written authorization of the Company.
6. **Nondisclosure of Confidential Information**.
	1. Agreement Not to Disclose. Advisor agrees not to use any Confidential Information (as defined below) disclosed to Advisor by the Company for Advisor’s own use or for any purpose other than to carry out the Services. Advisor agrees to take all reasonable measures to protect the secrecy of and to avoid disclosure or use of Confidential Information of the Company in order to prevent it from falling into the public domain or the possession of persons other than agents of the Company or persons to whom the Company consents to such disclosure. Upon request by the Company, any materials or documents that have been furnished by the Company to Advisor in connection with the Services shall be promptly returned by Advisor to the Company.
	2. Definition of Confidential Information. “Confidential Information” means any information, technical data or know-how (whether disclosed before or after the date of this Agreement), including, but not limited to, information relating to business and product or service plans, financial projections, customer lists, business forecasts, sales and merchandising, human resources, patents, patent applications, computer object or source code, research, inventions, processes, designs, drawings, engineering, marketing or finance to be confidential or proprietary or which information would, under the circumstances, appear to a reasonable person to be confidential or proprietary. Confidential Information may include third party information as to which the Company has an obligation of confidentiality. Confidential Information does not include information, technical data or know-how that: (i) is in the possession of Advisor at the time of disclosure, as shown by Advisor’s files and records immediately prior to the time of disclosure; (ii) becomes part of the public knowledge or literature, not as a direct or indirect result of any improper inaction or action of Advisor; or (iii) has been rightfully received by Advisor from a third party who is authorized to make such disclosure. Notwithstanding the foregoing, Advisor may disclose Confidential Information with the prior written approval of the Company or pursuant to the order or requirement of a court, administrative agency or other governmental body.
	3. Former or Current Employer’s Confidential Information. Advisor agrees that Advisor will not, during the term of this Agreement, improperly use or disclose any proprietary information or trade secrets of any former or current employer or other person or entity with which Advisor has an agreement or duty to keep in confidence information acquired by Advisor, if any, and that Advisor will not bring onto the premises of the Company any unpublished document or proprietary information belonging to such employer, person or entity unless consented to in writing by such employer, person or entity.
	4. Return of Materials. Upon the termination of this Agreement, or upon Company’s earlier request, Advisor will deliver to the Company all of the Company’s property and Confidential Information that Advisor may have in Advisor’s possession or control.
7. **No Rights Granted**. Nothing in this Agreement shall be construed as granting to Advisor any Company Intellectual Property Rights (defined below), nor shall this Agreement grant Advisor any rights in or to the Company’s Confidential Information, except the limited right to use the Confidential Information in connection with providing the Services.
8. **O****wnership of Intellectual Property**.
	1. Assignment. The Advisor hereby assigns to Company any and all right, title, and interest in or relating to Work Product (defined below), acknowledges that all Work Product shall be the sole property of Company and its assigns, and acknowledges that the Company and its assigns shall be the sole owner of all patent rights, copyrights, trade secret rights, mask work rights and all other rights, including all intellectual property rights, throughout the world (the “Intellectual Property Rights”) in connection therewith. The term “Work Product” shall mean trade secrets, confidential knowledge, data or any other proprietary information resulting from the Services performed by the Advisor or from Advisor’s access to the Company’s Confidential Information, and the any written materials produced by the Advisor in connection with the Services and includes without limitation: (a) inventions, trade secrets, ideas, processes, formulas, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs and techniques; (b) information regarding plans for research, development, new products and services, marketing and selling, business plans, budgets and unpublished financial statements, licenses, prices and costs, suppliers and customers; and (c) information regarding the skills and compensation of other employees of Company. Work Product shall not include Pre-Existing Materials.
	2. Pre-Existing Materials. Advisor agrees that if in the course of performing the Services, Advisor incorporates into any Work Product developed hereunder any invention, improvement, development, concept, discovery or other proprietary information owned by Advisor or in which Advisor has an interest (“Pre-Existing Materials”), (i) Advisor shall inform Company of such Pre-Existing Materials; and (ii) the Company is hereby granted and shall have a nonexclusive, royalty-free, perpetual, irrevocable, worldwide license to fully use, utilize, commercialize and otherwise exploit the Pre-Existing Materials and all Intellectual Property Rights related thereto, and all rights necessary to make, have made, use, sell, offer to sell, develop, have developed, make derivative works, distribute, display, import, lease or otherwise dispose of Company products embodying, incorporating, or otherwise based on such Pre-Existing Materials. Advisor shall not incorporate any Intellectual Property, invention, improvement, development, concept, discovery or other proprietary information owned by any third party into any Work Product without Company’s prior written permission.
	3. Further Assurances. Advisor agrees to assist Company, or its designee, in every proper way to secure the Company’s rights in the Intellectual Property Rights and the Work Product in any and all countries, including the disclosure to the Company of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments and all other instruments which the Company shall deem necessary in order to apply for and obtain such rights and in order to assign and convey to the Company, its successors, assigns and nominees the sole and exclusive right, title and interest in and to such Intellectual Property Rights and Work Product. Advisor agrees that if the Company is unable because of Advisor’s unavailability, mental or physical incapacity, or for any other reason, to secure Advisor’s signature to apply for or to pursue any application for any United States or foreign patents or mask work or copyright registrations covering the Intellectual Property Rights assigned to the Company above, then Advisor hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as Advisor’s agent and attorney in fact, to act for and in Advisor’s behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of patents, copyright and mask work registrations thereon with the same legal force and effect as if executed by Advisor.
	4. Obligation to Keep Company Informed. The Advisor shall promptly disclose to Company fully and in writing and will hold in trust for the sole right and benefit of Company any and all Intellectual Property Rights related to the Work Product.
	5. Delivery of Materials. Upon termination of this Agreement, the Advisor shall deliver to the Company all software, files, drawings, notes, memoranda, specifications, devices, formulas, and documents, together with all copies thereof, and any other material containing or disclosing any Work Product or Confidential Information.
9. **Company’s Right to Disclose.** During the term of this Agreement, the Company shall have the right to disclose the existence of this Agreement, Advisor’s status as an Advisor, and to include Advisor’s name, image or likeness, biographical information, and profile in various promotional materials, including, but not limited to, private placement memos or other offering materials, executive summaries and the Company’s world wide web page.
10. **No Conflicts**. Advisor represents that Advisor’s compliance with the terms of this Agreement and provision of Services hereunder will not violate any duty which Advisor may have to any other person or entity (such as a present or former employer), and Advisor agrees that Advisor will not do anything in the performance of Services hereunder that would violate any such duty. In addition, Advisor agrees that Advisor shall promptly notify the Company in writing if Advisor does any of the following: (i) works or performs any services or deliverables for a Competitor of the Company; (ii) invests in a Competitor of the Company; or (iii) invests in, joins, or provides services of any kind to any other fund or investment entity that has invested in a Competitor of the Company. It is understood that in such event, the Company in its sole discretion will review whether Advisor’s activities are consistent or harmonious with Advisor remaining as an advisor of the Company, and whether termination of this Agreement is warranted. “Competitor” is defined as “any individual, business or any other entity or enterprise engaged in or having publicly announced its intent to engage in the sale, offer, advertising, or marketing of any product or service that competes with any product or service of Company.”
11. **Non-Solicitation**. Advisor agrees that during the term of this Agreement and for one (1) year thereafter, Advisor will not encourage or solicit any employee or consultant of Company to leave Company for any reason.
12. **Indemnity; Limitation of Liability**. Each party (“Indemnifying Party”) agrees to indemnify the other party (“Indemnified Party”) for any costs, fees (including without limitation reasonable attorney’s fees), liabilities, awards, judgements, fines, damages, or penalties (collectively “Fees”) incurred by the Indemnified Party as a result of or arising from this Agreement and/or the provision and/or receipt of the Services hereunder, provided that all of the following are true as it relates to the activity, omission, or allegations giving rise to the Fees: (i) the Indemnified Party acted at all times in good faith; (ii) the Indemnified Party did not violate any laws, rules, orders, or regulations; and (iii) the Indemnified Party did not violate any Company rules, regulations, procedures, or policies. Without in any way limiting the applicability of the foregoing, the total liability for any party hereto, arising from this Agreement, shall not exceed the Compensation. In addition, neither party shall be liable to the other party for lost profits, loss of business, loss of revenue, or for any special, indirect, incidental, or consequential damages whether based in contract or tort and whether or not advised of the possibility of such damage.
13. **Miscellaneous**. This Agreement and the Services performed hereunder are personal to Advisor and Advisor shall not have the right or ability to assign, transfer or subcontract any obligations under this Agreement without the written consent of Company. Any attempt to do so shall be void. Company shall be free to transfer any of its rights under this Agreement to a third party. Any breach of Section 6 (“Confidential Information”) or Section 8 (“Ownership of Intellectual Property”) will cause irreparable harm to Company for which damages would not be an adequate remedy, and therefore, Company shall be entitled to injunctive relief with respect thereto in addition to any other remedies. Any term of this Agreement may be amended or waived only with the written consent of the parties. This Agreement, including any exhibits and/or attachments hereto, constitute the sole agreement of the parties and supersedes all oral negotiations and prior writings with respect to the subject matter hereof. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the state specified in Exhibit A hereto, without giving effect to the principles of conflict of laws. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act or other applicable law) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes. If any provision of this Agreement shall be found by a court to be void, invalid or unenforceable, the same shall be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of the remainder of this Agreement. In any action or proceeding to enforce rights under this Agreement, the prevailing party shall be entitled to recover costs and attorneys’ fees.

[*Signature page follows*]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of

\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

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| --- | --- | --- |
| COMPANY: |  | ADVISOR: |
| By:                                                                     |   | By:                                                                     |
| Signature:                                                          |   | Signature:                                                         |
| Title:                                                                 |   | Title:                                                                 |
| Address:                                                           |   | Address:                                                           |
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| E-mail:                                                               |   | E-mail:                                                              |

**EXHIBIT A**

**SERVICES AND COMPENSATION**

Duration of Advisor Engagement (in months) OR specific End Date (*fill in “N/A” if month-to-month*):\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

State of Governing Law (*enter state and country where company is based as governing jurisdiction*):\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Advisor shall render to Company the following Services:

1. Hours per month (*Usage Note: fill in “N/A” if not applicable*):\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. [*Usage Note: fill in this section with detail based on the specific services discussed and agreed to with the company. Be as detailed and specific as you want regarding deliverables, communication expectations, degree of hands-on work, reporting structure, etc.*]
3. [*Usage Note: please use the following section as a general description of services if you’d prefer not to specify any particular duties and responsibilities*] Serve as an expert advisor, including: meet with Company management, employees, consultants and other advisory board members, review goals of the Company and help develop strategies to achieve them, provide advice regarding the Company’s business model, timely respond to e-mail messages and phone calls, facilitate introductions to potential partners, prospects and other relevant contacts and speak with prospective or current investors to validate the Company’s strategy; and otherwise collaborate and provide advice and assistance to the Company per mutual agreement.

**EXHIBIT A (continued)**

**SERVICES AND COMPENSATION**

Company shall compensate Advisor for the Services as follows [*Usage Note: please fill out and use the below sections as needed. Please insert “N/A” for elements that are not relevant to your situation*]:

**Equity Compensation (if applicable)**

1. Subject to the approval of the Company’s Board of Directors (the “Board”), the Company will grant Advisor either a non-qualified stock option to purchase, or restricted stock in the amount of, [\_\_\_\_\_\_\_\_] shares of the Company’s Common Stock (the “Shares”) at a price per share equal to the fair market value per share of the Common Stock on the date of grant, as determined by the Company’s Board of Directors (the “Grant”) . [\_\_\_\_\_\_\_\_] of the Shares shall vest each month, subject to Advisor continuing to provide Services to the Company pursuant to this Agreement. The Shares will be subject to the terms and conditions of the Company’s equity incentive plan and the applicable grant agreement. All unvested shares shall vest immediately upon closing of sale of the Company.
2. [*Usage Note: If you and the company prefer to specify equity compensation in a format outside of this Agreement, please use the following section and delete the above section.*] Company shall pay to Advisor Company equity in an amount and subject to terms to be agreed upon in a signed writing by Company and Advisor at a future date. As part of this, Company represents in good faith that it will take all practicable efforts to enter into this agreement and will, where necessary, obtain all necessary internal approvals to effectuate the agreement with Advisor on terms agreeable to Company.

**Cash Compensation (if applicable)**

1. Company shall pay Advisor $[\_\_\_\_\_\_\_\_] per month of Services provided.
2. Payment Terms: Invoices shall be sent on the first day of the month. Payment shall be remitted on a net 30-day basis via method agreeable by both parties (e.g., direct deposit, check, etc.).

**Expenses**

1. Per Section 3, expenses incurred in normal business activities shall be reimbursed within 30 days of invoicing.

**EXHIBIT B**

**CONSIDERATIONS FOR DETERMINING ADVISOR SERVICES & COMPENSATION**

Below are several considerations to help Company and Advisor determine the appropriate scope of services and level of compensation for an advisor. Each party is encouraged to do their own diligence to determine the specific terms most appropriate for their particular Agreement.

**Time Commitment:** The amount of time the advisor spends actively working on the engagement impacts the scope of responsibilities and level of compensation. Engagements typically fall into buckets of 5 hours per month, 10 hours per month, 20 hours per month, or 40 hours per month. Once advisors commit over 40 hours per month, they begin to take on a part-time or fractional role which would be discussion beyond an advisor engagement.

**Level of Advisor Involvement:** The degree of hands-on responsibility of the Advisor should be considered. Is the advisor serving as a soundboard for the CEO a few times a week? Or is the advisor running sales calls, building discovery guides, and coaching SDRs? The more hands-on, the greater the compensation and scope. Level of involvement also helps to set expectations of deliverables and goals that are achievable during the engagement.

**Advisor Seniority and Experience:** Senior executives with relationships and years of “in-seat” experience will generally bring judgment and connections. However, their availability and time may be constrained. Therefore, scope and compensation should reflect the specific ways in which they bring value. A rising star, on the other hand, may bring value in other ways, such as execution and being more hands-on. Assessing the degree of depth needed will help when weighing experience in the discussion.

**Advisor Expertise:** While related to seniority and experience, expertise stands alone as the skills directly relevant to addressing the Company’s needs. The greater the depth of knowledge and tactical know-how, the greater the impact and value.

**Company Stage:** Company stage of development drives the overall risk of the engagement. A company earlier in its development, while having less built, offers an opportunity for an advisor to help establish processes and best practices without layers of bureaucracy, creating a strong foundation on which the company can continue building. A company that is further along in its development may already have structure and process in place, in which risk is lower and the advisor’s purview may fall more in refinement and honing what already exists. Of course, there are exceptions to these generalities so be sure to assess the degree of product development, customer adoption and metrics, team structure and specialization when factoring in company stage.

**Company Funding:** Company balance sheet will influence the magnitude and mix of equity compensation vs. cash compensation. Younger high growth B2B software companies often issue to equity given the alignment of incentives and a state of cash preservation. Growth stage companies that are flush with funding will often default to a cash-heavy compensation package. Specific needs of the advisor and financial state of the company will dictate the mix of compensation.