

**J.D. Fox Exec
Business Systems Management**
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Business Systems Management Contract

Client: _____

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Section 1. Applicability

This Business Systems Management Contract (hereinafter referred to as the “**Contract**”) sets forth the terms by which J.D. Fox Exec shall provide Business Systems Management services on a term basis for the above-named Client (hereinafter referred to as “**Client**”). Except as specified in the Contract Appendix, this Contract supersedes any prior contract between J.D. Fox Exec and the same Client.

Section 2. Definitions

- a. **Business Impact Analysis** – A business process that involves evaluating the potential loss, in terms of direct costs, lost revenue, and intangible costs such as lost reputation, in the event of realized threats.
- b. **Business Continuity** – A business process that involves enabling a business to continue to operate with alternative arrangements in the event that:
 1. A failure in the information technology system occurs, with an impact to business operations beyond what the Disaster Recovery plan was designed to handle, due to cost and risk assessment considerations.
 2. The recovery procedures in the Disaster Recovery plan fail in execution, in spite of being designed and expected to handle the outage or problem at hand.
 3. There is an incident that impacts operations not related to information technology, such as an earthquake, fire, flood, terrorist attack, sudden loss of key personnel, or a key supplier or business partner going out of business.
- c. **Critical Function** – Any process of a business which, based on the stated mission, activities, and objectives of the business, is required by the business to such an extent that if the process is not functioning, the business itself is considered to be out of business.
- d. **Disaster Recovery** – A business process that involves restoring information technology systems to normal operations and recovering lost data in the event of an outage that, without active intervention to restore service, would impact critical business functions beyond a maximum specified threshold (how long the outage will last, the number of customers impacted, etc.). The outage can be hardware, software, or communications failure, or a loss of data due to accidental or malicious corruption or deletion.
- e. **Incident Response** – A planned business process by which an Information Security breach, or violation of policy, is detected, evaluated, and addressed, with defined roles and responsibilities and escalation thresholds.
- f. **Information Security** – A business process that protects information assets and the business functions that rely on them. These assets include the intangible value of the intellectual property, as well as physical information, particularly the information technology system.
- g. **Information Security Breach** – A full or partial realization of a Threat; that is, an incident that threatens to, or does in fact, impact the availability, confidentiality, or integrity of information assets protected by the information security program. This can include a malicious act, user error, hardware or software malfunction, or environmental conditions such as power loss or natural disaster.
- h. **Information Technology** – Hardware, software, and data used to store, process, and transmit information, including servers, storage devices, removable media (like tapes and disks), computers, laptops, tablets, conventional and IP-based telephony, mobile phones, routers, switches, Wi-Fi access points, printers, scanners, operating system software, server applications, user applications, unstructured data files, and databases.
- i. **Metrics** – Defined measures by which effectiveness of various plans and programs will be assessed.
- j. **Risk Assessment** – A subcomponent of Risk Management; this is the process of evaluating the likelihood that risks will be realized, and the expected impact. For information technology systems in particular, the Threat Modeling process is used, along with information from Vulnerability Management, to estimate the likelihood that threats will be realized.

- k. **Risk Controls** – Measures put in place to reduce the likelihood and/or impact of realized threat.
- l. **Risk Management** – A business process that involves identifying assets to protect, identifying and evaluating risks to those assets, identifying and evaluating Risk Controls, defining metrics, implementing selected Risk Controls, and measuring the performance using defined metrics.
- m. **Threat** – An event that can occur that affects information technology assets or resources. Each threat is defined by an actor, action, and resource affected. The actor can be a person, nature (flood, fire), or simply spontaneous (such as in the case of hardware failure, or manifestation of a software bug).
- n. **Threat Modeling** – The process of identifying threats and estimating likelihood and impact.
- o. **Vulnerability** - A weakness in an information technology system that can be exploited by a threat actor. This can be buggy software, a configuration error, ill-defined procedures, or users violating policies.
- p. **Vulnerability Management** – A business process that involves identifying and eliminating or mitigating vulnerabilities in the information technology system.

Section 3. Contract Appendix

The Contract Appendix shall be agreed upon by both Client and J.D. Fox Exec as an integral part of this Contract. It may include the following sections, as necessary and appropriate:

- a. **Selection of Services** (see Section 5).
- b. **Scope of Operations**, which specifies the legal entity or entities covered by this Contract, and the business functions that are and are not included.
- c. **Administrative Parameters**, which specify managerial roles and responsibilities, change control procedures, and a communications plan.
- d. **Fees and Billing**.

Section 4. Client's Responsibilities

- a. Client shall ensure that necessary authority is granted to individuals required to implement the plans. Program and Project Charters will be signed and backed by appropriate authority in the organization.
- b. Client will provide the following information. If any of this is not yet documented, Client will provide necessary input and full cooperation to assist J.D. Fox Exec in generating this documentation, by providing full and complete information.
 - 1. Master Business Plan and/or Statement of Objectives and Activities
 - 2. Summary of critical business functions
 - 3. List of Organic Assets and Resources, with designation of critical assets/resources
 - 4. Inventory of Information Systems, Internal and External, with designation of critical functions.
 - 5. Summary of supply chain relationship.
 - 6. Statement of risk tolerance in relation to the above.
- c. Client will provide input necessary to complete Threat Modeling, including participating in information analysis meetings.
- d. Client will provide information on all known statutes, regulations, or other rules, standards, or requirements imposed by any government agency, any standards-setting agency by which Client is obligated to comply, or any contractual requirements that apply to Client.
- e. Client shall, within a reasonable amount of time, allocate funds to complete purchases described in Section 6.

Section 5. Services Provided by J.D. Fox Exec

A. Scope of Service

J .D. Fox Exec will provide professional services to develop, implement, and maintain an Information Security Program and/or Business Continuity plan. Both of these services include Disaster Recovery planning for Client's information technology (IT) system. The services selected by Client will be specified in the Contract Appendix.

For both, the service will include:

1. Creation of governance documents, management plans, written policies, operating procedures, and risk management documentation, in close coordination with Client's goals and objectives.
2. Implementation of the Information Security program and/or Business Continuity plans as a project.
3. Development of tracking systems for monitoring performance metrics; systems for routine review of policies and input data; and procedures for reviewing, updating, and testing the plans. Client may choose to engage J.D. Fox Exec to perform this maintenance after the implementation project is complete, or rely on Client's own personnel.

The Information Security Program applies to:

1. Non-technical management of information assets;
2. Routine operations of Client's Information Technology systems; and
3. Integration of security during the software planning and development process to eliminate technological vulnerabilities that could lead to data breaches (if Client develops proprietary or in-house software).

B. Deliverables

In exchange for the Service Fees and in the phases specified in the Contract Appendix, J.D. Fox Exec will produce the following, based on Client requirements:

1. For the Information Security Program:
 - a. Enterprise Risk Management Program Charter and Policy
 - b. Information Security Program Charter
 - c. Information Security Management Strategy
 - d. Risk Management Plan for Information Security
 - e. Threat Modeling Chart and Business Impact Analysis
 - f. Vulnerability Management Program
 - g. Risk Assessment Chart for Information Security, including Risk Controls Register and Metrics
 - h. Information Security Policy
 - i. Register of Information Security Roles and Responsibilities
 - j. Data Classification Scheme and Data Permissions Register
 - k. Compliance Management Procedures
 - l. Incident Response Policy and Plans
 - m. Incident Monitoring and Alerts Register
 - n. Disaster Recovery Plan
 - o. User and Partner Training/Awareness Plans
 - p. Information Security Program Performance Assessment Plan

2. For Business Continuity:

- a. Enterprise Risk Management Program Charter and Policy
- b. Business Continuity Program Charter
- c. Business Continuity Management Strategy
- d. Risk Management Plan for Business Continuity
- e. Threat Modeling Chart and Business Impact Analysis
- f. Vulnerability Management Program
- g. Risk Assessment Chart for Business Continuity, including Risk Controls Register and Metrics
- h. Incident Response Policy and Plans
- i. Incident Monitoring and Alerts Register
- j. Disaster Recovery Plan
- k. Business Continuity Plan
- l. User and Partner Training/Awareness Plans
- m. Business Continuity Testing and Validation Plan

All plans will be developed so that Client can manage them internally following completion of the projects. Procedures will be included in the relevant Testing and Validation Plans.

Section 6. Hardware, Software, and Subscription Purchases

As development of Information Security and/or Business Continuity programs proceed, Client may need to purchase information technology hardware and/or software licenses, or subscribe to third-party services either to gather or analyze information related to these projects, or to implement the resulting plans themselves. For any such hardware, software, or subscriptions (hereinafter referred to as “support equipment”), J.D. Fox Exec will present the business case for the purchase, and any feasible alternatives, to describe how the investment will result in returns profitable to Client. Client shall, within a reasonable amount of time, allocate funds to complete purchases described in this paragraph to support the program development in progress.

Client may purchase support equipment from any source. While J.D. Fox Exec may provide pricing for support equipment to purchase from J.D. Fox Micro, Client is under no obligation to purchase from J.D. Fox Micro, and may purchase support equipment from any provider.

Section 7. Billing

Service Fees under this Contract will be invoiced and due as specified in the Contract Appendix.

Client will pay invoices using only the currencies and payment methods specified in the Contract Appendix. For payments made or attempted by any other currencies or methods, Client shall reimburse J.D. Fox Exec for any fees charged to J.D. Fox Exec (including but not limited to wire transfer or currency conversion fees), and for deductions or discounts made by any direct or intermediary payment processor.

J.D. Fox Exec shall have the right to pursue lawful and reasonable collection actions on past-due invoices, and Client shall reimburse J.D. Fox Exec, to the extent allowed by law, for direct collection costs reasonably incurred. The terms specified in this Section and the related portions of the Contract Appendix shall survive expiration or termination of this Contract.

Section 8. Contract Renewal

This Contract shall **not** automatically renew. Any extension or renewal of this Contract shall be in writing signed by both Client and J.D. Fox Exec.

Section 9. Early Termination

This Contract may be terminated early in the following circumstances. In all cases, Client shall remain liable for any outstanding charges incurred, irrespective of how Monthly Service Fees are adjusted.

Client Option. Client may terminate this Contract early for any reason by providing written notice to J.D. Fox Exec specifying the effective date, which shall not be earlier than the date notice is received. For services billed monthly, Client will remain liable for all Monthly Service Fees through the effective date of termination, plus an early termination fee of 20% of the remaining Monthly Service Fees that would have been billed. For Fixed Fee services, Client will remain liable for the Fixed Fee *pro rata* based on the number of tasks completed.

J.D. Fox Exec Option. J.D. Fox Exec may terminate this Contract early for any reason by providing written notice to Client specifying the effective date, which shall not be earlier than the date notice is received. For services billed monthly, J.D. Fox Exec will credit to Client an amount equal to the Monthly Service Fee. For Fixed Fee services, Client will remain liable for the Fixed Fee *pro rata* based on the number of tasks completed, less 20% of the overall Fixed Fee.

Client Non-Compliance. If Client does not comply with its obligations under this Contract, J.D. Fox Exec shall make reasonable efforts to help resolve the situation. If the problems are not resolved within a reasonable amount of time, J.D. Fox Exec may terminate the Contract upon written notice to Client. Such termination will be considered to have been effectuated by Client. Client will remain liable for all service fees as described in the Client Option paragraph above.

Non-Payment by Client. If invoices become past-due by ten or more calendar days, J.D. Fox Exec may terminate this Contract upon written notice to Client. Such termination will be considered to have been effectuated by Client. Client will remain liable for all service fees as described in the Client Option paragraph above.

Non-Performance by J.D. Fox Exec. If Client believes J.D. Fox Exec is not fulfilling its obligations under this Contract, Client shall notify J.D. Fox Exec in writing of the specific reasons for such belief. J.D. Fox Exec shall coordinate with Client and promptly issue a written plan to address the Client's concerns, and a timeline for implementation. If Client is not reasonably satisfied with the remedy, Client may terminate this Contract early by providing written notice to J.D. Fox Exec specifying the effective date, which shall not be earlier than the date notice is received, and providing the reasons Client is not satisfied with the remedy. For services billed monthly, Client will remain liable only for the Monthly Service Fees through the effective date of termination. For Fixed Fee services, Client will remain liable for the Fixed Fee *pro rata* based on the number of tasks completed, less 10% of the overall Fixed Fee.

Section 10. Additional Terms

Third-Party Service Providers

As part of the services provided under this Contract, J.D. Fox Exec may make referrals to or recommendations regarding third-party service providers. Unless otherwise specified in a separate contract between Client and J.D. Fox Exec, any and all third-party service providers with which Client engages are independent from J.D. Fox Exec. J.D. Fox Exec's obligation with regard to performance of these third-party service providers is strictly limited to the scope of work defined in this or any separate applicable written contract between Client and J.D. Fox Exec. J.D. Fox Exec makes no warranty or guarantee, and disclaims all responsibility, with regard to any aspect of any contract between Client and any third-party service provider.

Employee Solicitation and Hiring

Client acknowledges the significant investment required by J.D. Fox Exec to secure and train qualified employees to execute the obligations of J.D. Fox Exec under this Contract. Client also acknowledges the financial and operational impact J.D. Fox Exec would suffer if Client were to hire or contract separately with an employee or agent of J.D. Fox Exec to supplant this Contract or work derived under it. Client therefore agrees not to solicit for employment, hire, or contract with any employee or agent of J.D. Fox Exec known to Client as a result of its relationship with J.D. Fox Exec, where such solicitation or hiring is intended to supplant business with J.D. Fox Exec. Breach of this covenant shall be construed as a material breach subject to payment of monetary damages by Client to J.D. Fox Exec of an amount to be determined as reasonable with respect to the nature of the work involved; the cost Client would expect to incur to have found, evaluated, and recruited an otherwise unknown employee or contractor with equivalent skills, capabilities, and knowledge in general and with respect to Client's Business Systems Management requirements; and the cost to J.D. Fox Exec to locate, recruit, and/or train replacement employees or contractors. The provisions of this paragraph shall survive the termination of this Contract.

Legal Compliance

Client acknowledges its responsibility to seek legal advice to assure compliance with all legal requirements directly or indirectly related to its operation. J.D. Fox Exec shall not be liable for Client's nonconformance with any applicable codes, regulations, or laws, including but not limited to commercial, electrical, building, safety, health, employment discrimination, intellectual property, privacy, mandatory reporting, financial reporting, data retention, or data confidentiality, even if the Business Systems Management activities are a factor in the violation. Client shall indemnify, hold harmless, and defend J.D. Fox Exec against any and all claims by any person, or public or private entity, alleging liability of J.D. Fox Exec with respect to or related to the services provided pursuant to this Contract.

Confidentiality

In connection with this Contract, J.D. Fox Exec may have access to or possession of proprietary information of Client, such as trade secrets, contact lists, and accounting information. J.D. Fox Exec understands that all such information is and shall remain the property of Client, and, except for information already conspicuously available to the public, is of a confidential nature. J.D. Fox Exec shall not disclose such information to any other party, nor utilize such information for the benefit of itself or any other party, except specifically for the purpose of performing services in good faith under this Contract. The covenant in this paragraph shall survive the expiration of this Contract in perpetuity.

Limitation of Liability

Service Levels. The maximum liability of J.D. Fox Exec under this Contract shall be provision of services and credits as explicitly called for in this Contract. Under no circumstances will J.D. Fox Exec be liable to provide services beyond the scope of this Contract, nor be liable in any manner for any direct, special, incidental, or consequential damages resulting from any legal theory, including but not limited to strict liability, regulatory or statutory liability, loss of use, lost profits/revenue, loss of anticipated savings, loss of goodwill, cost of repair or recovery for damage to other equipment and property, or third-party claims for damages, arising from the services provided under this Contract, or from Client or its agents following or attempting to follow advice given by J.D. Fox Exec.

Force Majeure. Neither Client nor J.D. Fox Exec shall be liable for any failure to perform under this Contract where such failure results from forces beyond reasonable control, such as but not limited to acts of God (such as fire, flood, earthquake, storm, or other natural disaster), acts of war, civil unrest, terrorist activities, nationalization, government sanction or embargo, labor disputes, accidents, or other unavailability of equipment and services from third-party providers (including but not limited to vendors, distributors, resellers, shipping contractors, electricity providers, public voice or data network service providers, application service providers, etc.). Upon the occurrence of any such event and to the extent such occurrences interfere with the performance by Client or J.D. Fox Exec of its obligations under this Contract, upon notice to the other party, this Contract shall be suspended without extension, provided each party uses reasonable efforts to work around or remove such causes of nonperformance.

Miscellaneous Provisions

- a. This Contract, as may be amended, constitutes the entire understanding between the parties, and supersedes any and all prior oral and written representations, communications, and understandings between the parties with respect to this Contract. The parties agree that neither Client nor J.D. Fox Exec is entering into this Contract on the basis of any representations or promises not expressly contained herein or in the Contract Appendix.
- b. No failure to strictly enforce any provision of this Contract shall be construed as a waiver of that provision or a change in terms, and any such provisions so waived shall remain enforceable and in effect.
- c. If any portion of this Contract is found void or unenforceable, the remainder will remain valid and enforceable according to its terms.
- d. Client represents and warrants that it has full power to enter into this Contract and that it has not assigned, encumbered, or in any manner transferred all or any portion of this Contract.
- e. Neither party may assign to another entity any interest, right, or obligation it has in this Contract without the prior written consent of the other party, which consent shall not unreasonably be withheld.
- f. If Client is a corporation, this Contract shall remain in force despite merger or consolidation of the corporation into or with any other entity.
- g. J.D. Fox Exec and Client are independent contractors, and each will not be considered an agent, partner, or employee of the other.
- h. This Contract shall be construed and governed under the laws of the State of California. Venue for any action arising out of this Contract shall be the Superior Court of California, County of Los Angeles.
- i. J.D. Fox Exec makes no representation as to exclusivity of this Contract, and reserves the right to effect similar contracts with other clients so long as obligations incurred by J.D. Fox Exec from these other contracts do not interfere with the ability of J.D. Fox Exec to faithfully execute its responsibilities under this Contract.
- j. Both Client and J.D. Fox Exec will comply with all requirements, negotiate on offers, and make assessments as called for in this Contract, in good faith.

- k. Written notices required under this Contract shall be transmitted as specified in the Contract Appendix. If valid written notice is refused by either party, that communication will be deemed to have been received for purposes of meeting requirements for written notification.

Copyright

This document, all electronic and physical copies, and the intellectual property contained herein are the property of J.D. Fox Exec and are protected by copyright. Client may make, use, and keep copies of this Contract only for legitimate administration of business related to this Contract. J.D. Fox Exec reserves all other rights under the laws of the United States and applicable international law. Any other use of this Contract or the intellectual property contained herein, such as sharing with third parties, without express written permission of J.D. Fox Exec, is a violation of copyright law, which would subject the violator(s) to damages recoverable by J.D. Fox Exec.

for Client:

for J.D. Fox Exec:

Sign

Sign

Print Name

Print Name

Date

Date