

# Business Contracts



## CONTRACT PACK

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**ENGAGEMENT LETTER**

THIS AGREEMENT is made this <<CurrentDay>> day of <<CurrentMonth>>, <<CurrentYear>> by and between <<Company>> (“Company”) and <<CustCompany>> (“Customer”).

We are pleased to accept your engagement to provide << Insert service description here >> services to you on an ongoing basis. This agreement's purpose is to define the capacity of <<Company>> and to help set forth the conditions and expectations under which <<Company>> will work on your behalf.

We shall have full discretion, subject to your prior approval, to engage our own employees, subcontractors or third parties to perform the Services described in Section 1. Any employee or subcontractor we contract with shall be considered an extension of <<Company>> and subject to any confidentiality agreements and provisions <<Company>> may be subject to while working for <<CustCompany>>.

Work shall be performed either as task-based (fixed price) or hourly, depending on the circumstances or in the case of troubleshooting technical problems. Work may be requested in person, by phone or email and always by unilateral agreement. <<Company>> will quote estimates for tasks and seek approval by one or more of the above methods. Usually a Scope of Work shall be

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## 1. Services.

Company shall, during the Term of Service (as defined below) provide to Customer the computer consulting services described below (the "Services" or "Work Product"), at such times as Customer may reasonably request.

Services include, but are not limited to:

- a) Evaluating and researching Customer's existing technology and development needs.
- b) Providing web and application hosting services.
- c) Providing graphic, web, content creation and multimedia design services.
- d) Providing any other consulting services or project management services required by Customer.

## 2. Specifications.

Company agrees to perform the Services pursuant to the specifications or Statement of Work set forth in Exhibit B attached hereto (the "Specifications").

## 3. Term of Service.

Term of this Agreement shall commence on <<StartDate>> and shall continue in full force and effect until terminated by either party upon at least thirty (30) days prior written notice. Absent a termination notice, no event (except breach) may terminate this Agreement prior to <<EndDate>>. Upon termination of this Agreement, Company shall transfer and make available to Customer all property and materials in Company's possession or subject to Company's control that are the rightful property of Customer. Company shall make every reasonable effort to secure all written or descriptive matter which pertains to the Services or Work Product and agrees to provide reasonable cooperation to arrange for the transfer of all property, contracts, agreements, supplies and other third-party interests, including those not then utilized, and all rights and claims thereto and therein. In the event of loss or destruction of any such material or descriptive matter, Company shall immediately notify Customer in writing of the details of the loss or destruction and provide the necessary information for a loss statement or other documentation to Customer.

## 4. Ownership Rights.

Company shall have ownership of all Company's Material. "Company's Material" consists of all copyrightable:

- a) Materials that do not constitute Services or Work Product (as defined in Section 1, Services and any Exhibit B, Specifications)

- b) Materials that are solely owned by Company or licensed to Company.

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- c) Materials that are incorporated into the Work Product or a part of the Services.

Company shall hold all rights, title, and interest in and to Company's Material. Customer shall not do anything that may infringe upon or in any way undermine Company's rights, title, and interest in Company's Material, as described in this paragraph 4. Notwithstanding the above, Company hereby grants Customer an unrestricted, nonexclusive, perpetual, fully paid-up worldwide license for the use or for the sublicense of the use of Company's Material for the purpose in which it was first employed and used by Customer.

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## 5. Compensation.

For all of Company's services under this Agreement, Customer shall compensate Company, in cash, pursuant to the terms of Exhibit A attached hereto. In the event Customer fails to make any of the payments referenced in Exhibit A by the deadlines set forth in Exhibit A, Company has the right, but is not obligated to pursue any or all of the following remedies: (1) terminate the Agreement (breach), (2) immediately stop all services, (3) bring legal action.

## 6. Mutual Confidentiality.

Customer and Company acknowledge and agree that the Specifications and all other documents and information related to the performance, production, creation or any expression of the services or work product are the property of Customer. Materials provided between Company and Customer (the "Confidential Information") including, but not limited to, documentation, product specifications, drawings, pictures, photographs, charts, correspondence, supplier lists, financial reports, analyses and other furnished property shall be the exclusive property of the respective owner (the "Owning Party") and will constitute valuable trade secrets. Both parties shall keep the Confidential Information in confidence and shall not, at any time during or after the term of this Agreement, without prior written consent from the Owning Party, disclose or otherwise make available to anyone, either directly or indirectly, all or any part of the Confidential Information. Excluded from the "Confidential Information" definition is anything that can be seen by the public or had been previously made available by the Owning Party in a public venue.

## 7. Limited Warranty and Limitation on Damages.

Company warrants the Services or Work Product(s) will conform to the Specifications. If the Services or Work Product do not conform to the Specifications, Company shall be responsible to correct the Services or Work Product without unreasonable delay, at Company's sole expense and without charge to Customer, to bring the Services or Work Product into conformance with the Specifications. This warranty shall be the exclusive warranty available to Customer. Customer waives any other warranty, express or implied. Customer acknowledges that Company is not responsible for the results obtained by Customer when using any Services or Work Product produced by Company. Customer waives any claim for damages, direct or indirect, and agrees that its sole and exclusive remedy for damages (either in contract or tort) is the return of the consideration paid to Company as set forth in Exhibit A attached hereto. No action, regardless of form, arising out of the Services rendered or Work Product, under the Agreement, may be brought by either party more than one year after the cause of action has occurred. In no event shall Company be held liable for consequential damages.

## 8. Independent Contractor.

Company is retained as an independent contractor. Company will be fully responsible for payment of Company's own income taxes on all compensation earned under this Agreement. Customer will not withhold or pay any income tax, social security tax, or any other payroll taxes on Company's behalf. Company understands that it will not be entitled to any fringe benefits that Customer provides for its employees generally or to any statutory employment benefits, including without limitation worker's compensation or unemployment insurance.

## 9. Insurance.

Company shall maintain throughout the entire term of this Agreement, adequate general liability insurance providing coverage against liability for bodily injury, death and property damage that may arise out of or be based upon any act or omission of Company or any of its employees, agents or

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subcontractors under this Agreement. Upon written request, Company shall provide certificates from its insurers indicating the amount of insurance coverage, the nature of such coverage and the expiration date of each applicable policy. Company shall not name Customer as an additional insured on any applicable policy at any time during this Agreement or as a condition of acceptance of this Agreement.

## 10. Equipment.

Customer agrees to make available to Company, for Company's use in performing the services required by this Agreement, such items of hardware and software as Customer and Company may agree are reasonably necessary for such purpose.

Customer agrees to make the following equipment and/or services available to Company:

- a) Servers and equipment required to operate all Customer's web sites, portals, LMS or other application frameworks.
- b) << Insert any additional equipment required here >>.

### 10.1 Expenses.

Company will not be reimbursed for any expenses incurred in connection with the Services or Work Product, whether direct or indirect, without the express written approval of Customer.

## 11. General Provisions.

### 11.1 Entire Agreement.

This Agreement contains the entire agreement between the parties relating to the subject matter hereof and supersedes any and all prior agreements or understandings, written or oral, between the parties related to the subject matter hereof. No modification of this Agreement shall be valid unless made in writing and signed by both of the parties hereto.

### 11.2 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of <<State>>. Exclusive jurisdiction and venue shall be in the <<County>> County, <<State>> Superior Court.

### 11.3 Binding Effect.

This Agreement shall be binding upon and inure to the benefit of Customer and Company and their respective successors and assigns, provided that Company may not assign any of its obligations under this Agreement without Customer's prior written consent.

### 11.4 Waiver.

The waiver by either party of any breach or failure to enforce any of the terms and conditions of this Agreement at any time shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance with every term and condition of this Agreement.

### 11.5 Good Faith.

Each party represents and warrants to the other that such party has acted in good faith, and agrees to continue to so act, in the negotiation, execution, delivery, performance, and any termination of this Agreement.

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### 11.6 No Right to Assign.

Company has no right to assign, sell, modify or otherwise alter this Agreement, except upon the express written advance approval of Customer, which consent can be withheld for any reason. Customer may freely assign its rights and obligations under this Agreement.

### 11.7 Payments.

In the event Customer fails to make any of the payments set forth in Exhibit A within the time prescribed in Exhibit A, Company shall have the right to withhold Services, remove Work Product from Company-owned resources, or seek legal remedy until payment in full is paid, plus accrued late charges of 1 ½% per month.

### 11.8 Indemnification.

Customer warrants that everything it gives Company in the execution or performance of services, or the creation of any and all Work Product is legally owned or licensed to Customer. Customer agrees to indemnify and hold Company harmless from any and all claims brought by any third party relating to any aspect of the Services or Work Product, including, but without limitation, any and all demands, liabilities, losses, costs and claims including attorney's fees arising out of injury caused by Customer's products/services, material supplied by Customer or copyright infringement.

### 11.9 Use of Descriptions of Services or Work Product for Promotional Purposes.

Customer grants Company the right to use descriptive text, testimonials, performance metrics, and other images, photos and/or graphics that demonstrate the Services or Work Product for promotional purposes and/or to cross-link these items with other promotional resources developed by Company.

### 11.10 No Responsibility for Theft.

Company has no responsibility for any third party taking all or any part of the Services or Work Product, results of Services or Work Performed, or the improper use by any third party of any Services or Work Product produced by Company.

### 11.11 Right to Make Derivative Works.

Company has the exclusive rights in making any derivative works of any Services, Methodology, or Work Product.

### 11.12 Attorney's Fees.

In the event any party to this Agreement employs an attorney to enforce any of the terms of the Agreement, the prevailing party shall be entitled to recover its actual attorney's fees and costs, including expert witness fees.

### 11.13 No Responsibility for Loss.

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Company is not responsible for any down time, lost files, equipment failures, acts of nature, or any damage resultant from activities considered beyond the control of Company, such as war, riots, natural disasters, vandalism and other events.

Each party represents and warrants that, on the date first written above, they are authorized to enter into this Agreement in entirety and duly bind their respective principals by their signature below:

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EXECUTED as of the date first written above.

<<CustCompany>>

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date signed: \_\_\_\_\_

<<Company>>

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date signed: \_\_\_\_\_

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