

PRO COMPUTER SERVICES, LLC PROFESSIONAL SERVICES AGREEMENT

1. **DESCRIPTION OF SERVICES**

- a. PRO is a provider of standard computer consulting and maintenance services, including, but not limited to, computer system development, web site design and hosting, creation of custom software, computer networking and other related services. PRO shall furnish all supervision and labor necessary for the completion of the Work contracted for herein. Client shall be responsible for the payment for all equipment, materials, supplies and all other things necessary for the completion of the Work.
- b. Client will provide PRO with access to all equipment and areas necessary for the performance of the Work and will designate a project leader who will be responsible and authorized to (i) make all decisions and give all approvals that PRO may need from Client, and (ii) provide PRO personnel on a timely basis with all information, data, access and support reasonably required for its performance under this Agreement, including but not limited to making available appropriate personnel to work with PRO as PRO may reasonably require.

2. **COMPENSATION AND PAYMENT TERMS**

Client shall pay PRO our standard hourly rate for the services set forth in this Agreement. The fee shall be due on the first day of each month. Any services provided by PRO are billed on time and material basis, unless otherwise agreed to in writing. PRO reserves the right to increase the hourly charge to CLIENT with thirty (30) days written notice.

3. **LIMITATION OF LIABILITY**

Notwithstanding anything in this Agreement to the contrary, PRO's entire liability for any Loss which may arise hereunder, for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, including PRO's negligence, or otherwise, shall be as follows:

- a. PRO's liability shall be limited to money damages in an amount equal to the lesser of (a) actual direct damages, or (b) the total price actually paid by CLIENT to PRO for the Work at the time the Loss arose; and
- b. PRO shall not be liable for any special, indirect, incidental or consequential damages, including but not limited to damages caused by Client's failure to perform any of its responsibilities, or for any loss or prospective loss of business, business opportunity, profits, savings, information, use or other commercial or economic loss, even if PRO has been advised of the possibility thereof.

4. **DISCLAIMER**

ALL WORK PERFORMED, SERVICES, PRODUCTS, SOFTWARE AND/ OR ANY OTHER MATERIALS ARE PROVIDED AND/OR SOLD "AS IS" WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY. PRO DOES NOT AND CANNOT GUARANTEE OR WARRANT CLIENT'S BACKUP SYSTEMS OR THE RECOVERY OF ANY FILES THAT MAY HAVE BECOME CORRUPT OR LOST FOR WHATEVER REASON. PRO DOES NOT AND CANNOT GUARANTEE THAT FILES ON CLIENT COMPUTERS AND SERVERS WILL BE FREE FROM VIRUSES, WORMS, TROJAN HORSES OR OTHER CODE THAT CONTAINS CONTAMINATING OR DESTRUCTIVE PROPERTIES.

5. **INDEMNIFICATION**

To the full extent permitted by law, CLIENT shall defend, indemnify and hold harmless PRO, and its directors, trustees, employees, and agents, from and against Losses arising out of or resulting from the following:

- a. Death, personal injury or property damage resulting, in whole or in part, from the intentional, reckless or negligent acts or omissions of the indemnifying party, its employees, subcontractors or suppliers in connection with the Work;
- b. Fines, penalties or other costs resulting from violation by the indemnifying party, its employees, subcontractors or suppliers of any applicable law concerning the health or safety of worker or other persons in connection with the Work;
- c. Claims of infringement of any patent or other intellectual property right in connection with the Work; or
- d. The unauthorized disclosure, use or infringement by the indemnifying party of any Proprietary Information (as defined in this Agreement) of the other party or any third party.

The indemnified party shall promptly notify the indemnifying party of such claim(s), if any, and shall cooperate with the indemnifying party and its agents in the defense of such claim(s). Each party's obligation to indemnify the other party shall survive the expiration or termination of this Agreement.

For purposes of this Agreement, the term "Loss(es)" is defined as claims, damages, expenses, liabilities, causes of action, and costs, including, without limitation, reasonable attorneys' fees.

6. **CESSATION OF PROVISION OF SERVICE**

PRO reserves the right to refuse to provide or to suspend service under this Agreement in the event that the CLIENT has failed to pay any invoice within (30) days of the invoice date, whether it be an invoice for services provided under this Agreement or any other agreement between the parties.

7. **LATE PAYMENT**

In the event payment in full is not received within twenty (20) days of the billing date, the unpaid balance will accrue a service charge of one and one-half percent (1 ½%) per month, computed on a daily basis from the billing date until payment is received.

8. **COLLECTION**

In the event that the CLIENT fails to pay any invoice or bill owed to PRO within 20 days of the date of invoice or bill, the CLIENT shall be responsible for payment of any and all fees and expenses for collection, including, but not limited to, attorney's fees, costs, collection agency

9. **INDEPENDENT ENGAGEMENT / NON-HIRE**

Because employees are one of PRO's most valuable assets, policy and professional ethics require that PRO employees not seek employment with, or be offered employment by any CLIENT during the term of this Agreement, including any and all renewals, and for period of 1-year thereafter. Your signature on this document on behalf of the CLIENT confirms the CLIENT's Agreement to adhere to this professional standard of conduct.

CLIENT acknowledges that PRO is involved in a highly strategic and competitive business. CLIENT

further acknowledges that CLIENT would gain substantial benefit and that PRO would be deprived of such benefit, if CLIENT were to directly hire any personnel employed by PRO.

Except as otherwise provided by law, the CLIENT shall not, without the prior written consent of PRO, solicit the employment PRO personnel during the term of this Agreement, including any and all renewals, and for a period of one (1) year following expiration of this Agreement.

CLIENT agrees that PRO's damages resulting from breach of this provision by CLIENT would be impracticable and that it would be extremely difficult to ascertain the actual amount of damages. Therefore, in the event that CLIENT violates this provision, CLIENT shall immediately pay PRO an amount equal to 50% of employee's total annual compensation, as liquidated damages and PRO shall have the option to terminate this Agreement without further notice or liability to CLIENT. The amount of the liquidated damages reflected herein is not intended as a penalty and is stipulated by and between the parties to this Agreement to be reasonably calculated based upon the projected costs PRO would incur to identify, recruit, hire and train suitable replacements for such personnel.

10. **THIRD PARTY SOFTWARE:** PRO supports completed software packages ("Third Party Software"). If CLIENT purchases Third Party Software, CLIENT shall be required to sign a separate agreement with the manufacturer of the Third Party Software to ensure Pro's ability to support Third Party Software.

11. **PROSOFT:** At CLIENTS request, PRO shall create a distinct software product for CLIENT (hereinafter "PROSOFT"). PRO grants CLIENT, as well as CLIENT'S successors and assigns, a non-exclusive, non-transferable license (hereinafter "License") to use the PROSOFT, without any usage charge or royalty. CLIENT is free to modify, expand, and copy, for its own direct use, the PROSOFT, to the extent that CLIENT (a) is in compliance with this Agreement and, (b) does not (1) distribute PROSOFT or (2) allow the PROSOFT or any component part thereof to be copied by any person or entity other than CLIENT, unless CLIENT has written approval from PRO. All source codes for the PROSOFT shall be provided to CLIENT, upon CLIENT'S request, provided CLIENT has paid PRO for all services performed and products provided (not merely invoiced). If CLIENT fails to comply with any portion of this Agreement, including, but not limited to, CLIENT'S payment obligations to PRO, CLIENT will lose its License and PRO may terminate CLIENT'S services and will be entitled to injunctive relief to bar CLIENT from utilizing the PROSOFT. CLIENT stipulates that CLIENT'S failure to adhere to any portion of this agreement may constitute violation(s) of one or more state and/or federal laws.

12. **GENERAL PROVISIONS**

- a) **Sole Agreement:** This Agreement constitutes the entire and only understanding and Agreement between the parties hereto with respect to the subject matter hereof and, except as expressly set forth herein, maybe amended only by a writing signed by each of the parties hereto. All services provided by PRO to CLIENT shall be provided under the terms of this Agreement.
- b) **Severability:** If a court of competent jurisdiction determines that any terms or provision of this Agreement is invalid or unenforceable, such determination shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement, which shall continue to be given full force and effect.
- c) **Captions:** The captions of the paragraphs of this Agreement are for convenience only and shall not affect in any way the meaning or interpretation of this Agreement or any of the provisions hereof.

- d) Customer Warranty On Software: It is the sole responsibility of CLIENT to legally obtain software in accordance with the licensing agreements for each software title. CLIENT expressly warrants that all software CLIENT is utilizing is properly licensed by the manufacturer.
- e) Binding Effect: This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their heirs, legal representatives, personal representatives, administrators, successors, and permitted assigns, as the case may be.
- f) Waiver: Any failure of either party to comply with any obligation, covenant, agreement, or condition herein may be expressly waived, but only if such waiver is in writing and signed by the other parties. Any such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement, or conditions shall not operate as a waiver of and/or set precedence with respect to any subsequent and/or other failure.
- g) Governing Law: Notwithstanding the place where this Agreement may be executed by any party, this Agreement, the rights and obligations of the parties, and any claims and disputes relating hereto shall be subject to and governed by the laws of the State of New Jersey as applied to agreements among New Jersey residents to be entered into and performed entirely within the State of New Jersey, and such laws shall govern all aspects of this Agreement. The parties agree to submit to the personal jurisdiction and venue of the state and federal courts in the State of New Jersey, in the county or federal district where PRO has its principal office, for resolution of all disputes and causes of action arising out of this Agreement, and the parties hereby waive all questions of personal jurisdiction and venue of such courts, including, without limitation, the claim or defense therein that such courts constitute an inconvenient forum.
- h) Assignment: This Agreement and the rights and duties hereunder shall not be assignable by either party hereto except upon written consent of the other.
- i) Force Majeure: PRO shall not be liable for any problems due to external causes beyond its control including, but not limited to, terroristic acts, natural catastrophe, fire, flood, or other act of God, and/or power failure, virus propagation, improper shut down of the Network and related Network Systems/Services.
- j) Attorneys' Fees: In any action between the parties to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover all expenses, including reasonable attorneys' fees.
- k) Modifications: The terms and conditions of this agreement may be modified or amended only by a written agreement entered into and signed by all of the parties.