

Terms and Conditions of Service with Disclaimer and Limitation of Liability

STATEMENT OF PURPOSE

SoCal Consulting (Consultant) provides professional Information Technology (IT) services and performs for its clients those services usually provided by an internal company IT Department. **Customer** wishes to retain **Consultant** to perform certain of such services, and **Consultant** agrees to accept such engagement, under terms and conditions set forth here. References to **Consultant** and **Customer** include the parties' officers, employees, agents, and independent contractors and subcontractors. The parties hereto mutually consent, covenant, represent, warrant and agree as follows:

Work Definition: **Customer** agrees to pay all fees associated with **Consultant's WORK** requested by and provided on behalf of **Customer**, which can include but is not limited to: consultations, research, programming, web design, system and network installation, remedial, repair, preventative and other computer and software maintenance services, diagnoses and troubleshooting of hardware or software, training, or Information Technology (IT) services of any kind, and any attempts(s) to repair computers or recover data, regardless of whether or not these attempts are successful.

Warranties: Warranties for any systems or hardware parts provided by **Consultant**, or acquired otherwise by **Customer**, are limited to the original manufacturers' warranties only, and there are no other warranties expressed or implied. **Consultant** will charge fees for time spent diagnosing and/or troubleshooting, pickup and delivery, reinstallation of software or other labor as required to return computers, networks or peripherals to their most recent working order, or for time spent to secure warranty coverage from a manufacturer, regardless of whether or not hardware is still covered by a warranty from its manufacturer. Changes made to software or hardware by **Customer** will void any such warranties. **Consultant** provides no warranties for any software regardless of whether the software was installed by **Consultant** or not.

Payment: In consideration of **Consultant's** performance of these services, **Customer** agrees to pay **Consultant** as follows: Amounts due **Consultant** for the **WORK** will be based upon the **WORK** performed and any agreed upon rate schedule, if attached, or rates agreed upon for specific **WORK**, or as agreed upon by both parties prior to commencement of the **WORK**. Unless other arrangements are made, **Customer** will make payments to **Consultant** upon receipt of **Consultant's** invoice. In addition to the fees, **Customer** agrees on demand to pay to **Consultant**, or reimburse **Consultant** for, the expenses of required materials and facilities to complete the services. Late payments by **Customer** shall be subject to late penalty fees of 21% APR accrued monthly from the due date until the amount is paid.

Data Integrity: **Customer** understands that computer software and data are volatile and can become corrupted, unstable or unrecoverable from a variety of **Customer** actions, possible "computer viruses", as well as a number of software or hardware problems and agrees that **Consultant** is NOT RESPONSIBLE for saving or maintaining **Customer's** data. **Customer** must have their hard drive(s) and data backed up prior to requesting repair. **Consultant** will charge to back up **Customer** data if required, however, **Customer** understands and acknowledges that **Consultant** provides NO WARRANTY as to the effectiveness or accuracy of any backup. All of these services are defined as **WORK** and are subject to fees.

CONSULTANT MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, ABOUT THE USEFULNESS FOR ANY SPECIFIC PURPOSE OF SYSTEMS, SOFTWARE, OPERATING SYSTEMS OR COMPUTER PARTS AND/OR EQUIPMENT, OR THE ABILITY TO USE ANY DATA RECOVERED. CUSTOMER HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS CONSULTANT FROM ANY CLAIM FOR CONSEQUENTIAL DAMAGES, LOST TIME OR WAGES, OR ANY OTHER CLAIM RESULTING FROM THE WORK PERFORMED BY CONSULTANT, OR ANY ATTEMPT TO RECOVER CUSTOMER'S DATA OR TO REPAIR CUSTOMER'S EQUIPMENT.

Software Licensing: **Customer** warrants that **Customer** has the legal right to use any software that is installed or requested to be installed on its computers or network and that it is NOT necessary or incumbent upon **Consultant** to verify this claim. **Customer** agrees to indemnify and hold **Consultant** harmless for any breach of any licensing agreement pertaining to any software on **Customer's** computers or network.

Solicitation for Hire: Upon acceptance by **Customer** of any quote from **Consultant** and/or commencement of **WORK** by **Consultant**, **Customer** agrees not to solicit for hire or hire **Consultant's** employees, independent contractors, consultants, and/or any other person performing work for **Customer** on behalf of **Consultant**. **Customer** acknowledges that **Consultant** has invested time, energy, effort, and expense recruiting, hiring, and training the persons provided to **Customer**, and that **Consultant's** worker provides other valuable services for **Consultant** and **Consultant's** clients, and therefore, if **Customer** desires to hire **Consultant's** worker for any **WORK**, even work outside the scope of this agreement, **Customer** agrees to pay **Consultant** a reasonable finder's fee in the amount of \$15,000 or 25% of the first year's compensation offered **Consultant's** worker by **Customer**, whichever is greater. **Customer** agrees that subject to this finder's fee and/or liquidated damages, during the term of this agreement, and for a period of six months following any termination, **Customer** shall not, directly or indirectly, hire, solicit, or encourage to leave **Consultant's** employment or contractual engagement, any employee, consultant, or independent contractor of **Consultant** or hire any such employee, consultant, or independent contractor who has left **Consultant's** employment or contractual engagement within six months of such employment or engagement.

Nondisclosure by Customer: **Customer** agrees that the method by which **Consultant** has networked, programmed or otherwise customized its computers is a trade secret of **Consultant**. **Customer** agrees that the method used shall be for all time and for all purposes regarded as strictly confidential and shall not be directly or indirectly disclosed by **Customer** to any person without the prior written permission of **Consultant**.

Severability: Should any provision of this Agreement or part thereof be held under any circumstances in any jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision of this Agreement or other part of such provision.

This Agreement shall not be changed or modified orally but only by an instrument in writing signed by the parties, which states that it is an amendment to this Agreement.

THIS AGREEMENT, INCLUDING ANY AMENDMENTS, EXHIBITS OR ADDENDA, CONSTITUTES THE SOLE, FINAL AND EXCLUSIVE AGREEMENT BETWEEN THE PARTIES, AND IS INTENDED AS THE COMPLETE AND FINAL EXPRESSION OF THE INTENT OF THE PARTIES HERETO. ALL PRIOR CONTEMPORANEOUS OR OTHER ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR AGREEMENTS BY OR BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF ARE MERGED HEREIN.

By utilizing or agreeing to use **Consultant's** services **Customer** agrees to all of the statements written herein regarding terms of service, limitations of liability, and terms of payment and understands that **Customer** may choose not to accept service under these terms and conditions. **Customer** hereby authorizes **Consultant** to work on its equipment and with its data, and agrees to the same terms and limitations of liability for any future work performed by **Consultant** on its behalf.