

TERMS AND CONDITIONS

IMPORTANT: THIS AGREEMENT IS A LEGALLY BINDING AGREEMENT BETWEEN YOU, AN INDIVIDUAL OR An official representative of a Corporation, as such duly accredited to engage your organization to this agreement ("CLIENT", "YOU" or "YOUR"), AND Guentherman Consulting Group, Inc. (hereinafter "GCG"). THAT SETS FORTH THE TERMS AND CONDITIONS FOR THE USE BY YOU OF AND GCG SERVICES AND/OR OTHER DOCUMENTATION PROVIDED THEREWITH (THE "SERVICE"). GCG PROVIDES THE SERVICE TO YOU UPON THE EXPRESS CONDITION THAT YOU ACCEPT ALL OF THE TERMS AND CONDITIONS IN THIS AGREEMENT. **PLEASE READ THE AGREEMENT CAREFULLY BEFORE USING SERVICES.**

1. Term of Agreement.

This Agreement is effective upon the execution of this document and (except as stated otherwise in the following sentence) remains in full force and effect for the period indicated in the attached Exhibit(s) or until this Agreement has been completed, whichever occurs first. Client may terminate this Agreement prior to its completion or termination date, but in that event client must pay GCG for all work and services performed by GCG through the date of such termination.

2. Services to be Provided.

Subject to the terms and conditions set forth in this Agreement, GCG agrees to provide to the client computer programming and consulting services as are requested by the client.

In the event GCG is required to utilize personnel other than its own employees, it will notify the client in advance of such hiring. All personnel hired by GCG shall be bound by the terms of this Agreement.

3. Relationship of Parties.

The client and GCG acknowledge and agree that GCG is an independent contractor and not an employee of the client, and that GCG has no authority to bind the client or otherwise incur liability on behalf of the client. The client is under no obligation to provide any employee benefits or privileges of any kind or nature to GCG, including, but not limited to, insurance premiums, pension plan contributions, and travel privileges. The parties further agree that the client is not responsible to collect or withhold Federal, State, or local taxes, including income tax and social security tax, and that any and all taxes imposed, assessed, or levied to GCG as a result of this Agreement shall be paid by GCG.

4. Designated Representative.

The client shall designate a representative who, on its behalf, shall:

- (a) work with, and provide all necessary information to, GCG to determine the client's detailed requirements for GCG's services hereunder;
- (b) examine and review the work performed by GCG, and promptly notify GCG in writing in the event any such work is known to be unsatisfactory by the client; and
- (c) accept service of all notices from GCG pertaining to work performed hereunder and which are required by this Agreement. The client shall advise GCG of the name, address, and telephone number of the representative(s) so designated and of any changes to such designation within a reasonable period of time.

5. Compensation.

The client shall pay GCG as set forth in the Services Letter Agreement. GCG shall keep time records showing the number of hours of work performed, together with a detailed description of all such work. The client shall be given full access to all such records upon request. A monthly invoice, which is satisfactory in detail to the client, shall be submitted to the client at the address specified herein. The client shall remit payment to GCG pursuant to the Services Letter Agreement within thirty (30) days after receipt of such invoice.

In the event the client disputes any portion of such invoice submitted, the client shall approve the remainder of such invoice and make timely payment as provided for in this section of the Agreement. Neither party shall be liable for any costs or expenses incurred by the other party or its agents in the performance of its obligations hereunder, unless expressly agreed to by both parties in writing prior to incurring said costs and expenses.

6. Confidentiality and Proprietary Information.

It is anticipated that, during the term of this Agreement, each party will require access to confidential or proprietary information of the other party or the other party's clients, and each party agrees that such information of the other party shall remain strictly confidential and shall not be duplicated, used, disclosed to third parties, or made accessible without prior written authorization of the other party. For the purposes of this Agreement, "confidential or proprietary information" shall include all written and oral technical, financial, and business plans and data, products, pricing and operating methods, processes, inventions, trade secrets, improvements, method of operation, and lists of customers or suppliers, which are proprietary in nature, protected by law or which have been developed or acquired exclusively by the other party or the other party's clients and are not generally known to the public.

Each party agrees that its confidential and proprietary information shall not be deemed to include information which:

- (a) is at the time of disclosure, or thereafter becomes, a part of the public domain through no act or omission of the receiving party;
- (b) the receiving party can prove was lawfully in its possession prior to the date of disclosure to it by the other party, or was developed by or for the receiving party by a person or persons who had no knowledge of the information derived from disclosure by the disclosing party; or
- (c) is lawfully disclosed to the receiving party by a third party which did not acquire the same in violation of law or under, or in breach of, an obligation of confidentiality with or from either party.

7. Security and Data Storage

The client shall not permit or allow other persons to have access to or to use client account information other than client employees, consultants or agents who have been notified of the restrictions set forth in this Agreement, absent GCG prior express written consent. The client agrees to maintain the confidentiality of all of the client's account information and agree to be primarily responsible for all activity pursuant to the client's account. Although GCG has taken significant measures to ensure the security of information submitted by the client, GCG cannot guarantee the security of the client's information and shall not be liable in any way for compromise of the client's data.

8. GCG Limited Liability. The client agrees that the liability limit of GCG shall in no event exceed the total dollar amount which the client has paid during the term of the agreement, including any reasonable attorneys' fees and court costs. Further, GCG expressly limits its damages for any non-accessibility time or other downtime to any service to no greater than the total dollar amount of GCG's contracted services during the period that the downtime occurred. The client acknowledges that the operation and availability of the communications systems, including, without limitation, telephone service, computer networks and the Internet, used for accessing and interacting with the Service can be unpredictable and may, from time to time, interfere with or prevent access to or operation of the Service. The client acknowledges that GCG is not responsible for any such interference with or prevention of the client's use of or access to any service.

9. Ownership of Property.

The client shall have sole ownership of all materials, programs and other products generated as a result of the services provided for under this Agreement, and all such materials, programs and products (including source codes) shall remain with the client upon completion of this Agreement.

10. Default.

If either party defaults in the performance of any term or condition of this Agreement, or does or permits anything to be done contrary to any term or condition herein, and such default continues uncured for a period of fifteen (15) days following written notice thereof from the non-defaulting party, then the non-defaulting party may terminate this Agreement upon written notice and pursue any other remedy available in law or in equity, except as limited above.

11. Indemnification.

GCG shall indemnify, defend, and hold harmless the client and all the client's employees, directors, officers, shareholders, and agents, against all expenses and claims of injury or damage to the person or property of the client, its employees, or any third party relating to the negligence, willful misconduct or breach of this Agreement by GCG or any of its directors, officers, employees, agents or subcontractors.

The client shall indemnify, defend, and hold harmless GCG and all GCG employees, directors, officers, shareholders, and agents, against all costs and expenses, including attorney's fees, costs and disbursements, and claims of injury or damage to the person or property of GCG, its employees, or any third party relating to the negligence, willful misconduct or breach of this Agreement by the client or any of its directors, officers, employees, agents or subcontractors.

Except as expressly provided otherwise in this Agreement, in no event shall the client or GCG be liable, one to the other, for indirect, special, or consequential damages arising out of or in connection with the furnishing, performance, or use of any products or services provided pursuant to this Agreement.

12. Warranties.

GCG does not make any express or implied warranties, including but not limited to, the implied warranties of merchantability and fitness for any particular purpose.

13. Survival.

Each party's representations, warranties and indemnification obligations shall survive the termination of this Agreement.

14. Further Assurances.

Each party agrees to execute such further documents and take such further action as may be necessary to carry out the intent of this Agreement.

15. No Assignment.

Neither party may assign this Agreement or any of its rights thereunder nor may it delegate any of its obligations under this Agreement without the prior written consent of the other party.

16. Amendment/Waiver.

No provision of this Agreement may be modified, waived, terminated, or amended except by a written instrument executed by both parties. A waiver of any condition or term of this Agreement shall not constitute a waiver or consent to any different or subsequent breach or omission.

17. Governing Law.

This Agreement shall be governed by and construed according to the laws of the State of Wisconsin.

18. Entire Agreement.

This document and the Exhibits referred to herein constitute the entire agreement between the parties and supersedes all previous communications, representations, understandings, and agreements, whether oral or written, between the parties or any officer or representative hereof.

19. Severability.

In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, legality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

20. Notices.

All notices required or permitted hereunder shall be in writing and deemed to have been given when delivered personally or upon deposit in the United States mail. It is further agreed that each party hereto will promptly submit a copy of any notice received by it from any third person affecting the rights of any party under the Letter Services Agreement or the Terms and Conditions.

21. No Waiver of Rights.

The failure of GCG to insist upon strict performance of any of the terms and conditions contained herein shall not be deemed a waiver of any of its rights or remedies and shall not be deemed a waiver of any subsequent breach or default of any term or condition.

22. Acceptance of Work Product.

If Client does not inform GCG in writing, within 30 days of project completion that work performed by GCG is for any reason unacceptable, the failure by Client to do so shall be deemed as a waiver of the Client's right to any claim for future damage.

23. Representations.

It is understood and agreed by the parties hereto that GCG and its agents have made no representations or promises with respect to the Letter Services Agreement and the Terms and Conditions thereof except as expressly set forth in those documents, and GCG shall not be liable by any reason of, breach of any representation or promise not expressly stated therein.

24. Consents.

In the event consent is required of either party to fulfill the terms of the Letter Services Agreement or the Terms and Conditions, upon the request of one to the other, such consent shall not be unreasonably withheld or delayed.