

QUEXION, LLC ENTERPRISE WEB AGREEMENT

Agreement. This is an agreement between you ("Client") and Quexion, LLC ("Quexion" or "Consultant") regarding your use of Quexion's EnterpriseWeb service (the "Quexion Services" or "Services"). PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. BY ACCEPTING SERVICES FROM QUEXION, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE, YOU WILL NOT BE SIGNED UP TO USE THE QUEXION SERVICES.

1. Consultant's Services

Consultant will provide to you the Services described in the EnterpriseWeb Sign-Up Form.

2. Payment for Services

a. *Fees, Price Protection.* Client agrees to pay Consultant a monthly fee as quoted in the EnterpriseWeb Sign-Up Form. Consultant may increase billing rates, due to inflation, due to changes in market conditions, or for any other reason, upon 30 days' notice.

b. *Fee Schedule.* The fees specified herein will be payable as follows: Consultant will invoice Client on a monthly basis for the Services rendered. Client will pay Consultant's invoice within fifteen (15) days after receipt.

c. *First Payment.* Client must pay the first month's payment and any deposit, if specified in the EnterpriseWeb Sign-Up Form, in full before Consultant will commence providing Services.

3. Consultant's Other Obligations

Work on Client's Premises. Consultant will ensure that its employees and agents will, whenever on Client's premises, obey all reasonable instructions and directions issued by Client. Consultant will secure and maintain worker's compensation, unemployment, and any other employee insurance or benefit due to its employees.

4. Client's Other Obligations

Damages for Hiring. If for any reason whatsoever, Client hires as an employee or independent contractor, or on any other basis, any agent or employee of Consultant who has worked on any project performed for Client by Consultant within twelve months of the date of the completion or termination of this Agreement, the parties agree that Consultant will be damaged, but that the amount of this damage will be difficult to ascertain. Accordingly, the parties agree that for each such agent, consultant, or employee directly or indirectly employed or utilized as an employee, consultant or independent contractor by Client within such period, Client will pay Consultant Fifty Thousand Dollars (\$50,000.00) as liquidated damages.

5. Termination

Client or Consultant may terminate this Agreement without any reason by giving 30 days written notice to the other party. Termination will not relieve Client from any payment requirements as described in paragraph 2.

6. Rights to the Web Site and Content.

You will own the Customer Content, but you will not own either the Third-Party Material or Background Technology (all as defined below). "Customer Content" means all content or information (including, without limitation, any text, music, sound, photographs, video, graphics, data, or software), in any medium, that you provide to Quexion. "Third-Party Material" means any content, software, or other computer programming material used by Quexion to provide the Services that is owned by an entity other than Quexion and either licensed by Quexion or generally available to the public under published licensing terms. Quexion owns and retains all rights to the design of the web site we create for your use. If you stop paying the monthly fee for the Services you will no longer be entitled to use the web site for any purpose whatsoever.

7. Limited License to the Background Technology.

"Background Technology" means computer programming/formatting code or operating instructions developed by or for Quexion and used to host or operate your web site or a web server in connection with your web site, and includes, but is not limited to, any files necessary to make forms, buttons, checkboxes, and similar functions and underlying technology or components, including style sheets, animation templates, interface programs that link multimedia and other programs, customized graphics manipulation engines, and menu utilities, whether in database form or dynamically driven. Background Technology does not include any Customer Content. Customer may not duplicate or distribute any Background Technology to any third-party without the prior written consent of Quexion. All rights to the Background Technology not expressly granted to Customer hereunder are retained by Quexion. Customer agrees not to reverse-engineer, reverse-assemble, decompile, or otherwise attempt to derive any source code of the Background Technology.

8. Limited License to Content.

Customer hereby grants to Quexion the limited nonexclusive right and license to copy, distribute, transmit, display, perform, create derivative works from, modify, and otherwise use any Customer Content and any copyrights, trademarks, or other intellectual property belonging to the Customer and provided to Quexion for the purpose of enabling Quexion to provide the Services to the Customer. This limited right and license will terminate automatically upon termination of this Agreement.

9. Content Standards.

Customer agrees not to provide any Customer Content, and Quexion agrees to not intentionally provide to Customer any content, that either (a) infringes on any third-party's intellectual property or publicity/privacy rights, (b) violates any applicable law or regulation, (c) is defamatory, violent, clearly harmful, obscene or pornographic, or infringes on citizens' rights, or (d) contains any viruses, Trojan horses, worms, time bombs, cancel bots, or other computer programming routines intended to destroy, damage or otherwise interfere with any system, data, or personal

information. Customer agrees to comply with all applicable local, national, and international laws. Quexion reserves the right to refuse any subject matter it deems inappropriate.

10. Confidential Information

a. *Non-Disclosure.* Each party agrees not to use, disclose, sell, license, publish, reproduce or otherwise make available the Confidential Information of the other party except and only to the extent necessary to perform under this Agreement. Each party agrees to secure and protect the other party's Confidential Information in a manner consistent with the maintenance of the other party's confidential and proprietary rights in the information and to take appropriate action by instruction or agreement with its employees, consultants or other agents who are permitted access to the other party's Confidential Information to satisfy its obligations under this paragraph.

b. *Definition.* "Confidential Information" means a party's information, not generally known by non-party personnel, used by the party and which is proprietary to the party or the disclosure of which would be detrimental to the party.

11. Limitation of Liability

IN NO EVENT SHALL EITHER OF THE PARTIES HERETO BE LIABLE TO THE OTHER FOR THE PAYMENT OF ANY DAMAGES, INCLUDING DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR DATA USE, INCURRED BY CLIENT OR ANY THIRD PARTY, WHETHER IN AN ACTION IN AGREEMENT OR TORT, EVEN IF CLIENT OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO CASE WILL THE AMOUNT RECOVERABLE BY CLIENT IN ANY ACTION AGAINST CONSULTANT EXCEED THE SUM OF PAYMENTS MADE TO CONSULTANT PURSUANT TO THIS AGREEMENT IN THE PRECEDING 60 DAYS.

12. Thirty Day Money Back Guarantee.

If you are not satisfied with the Services provided under this Agreement you may receive a full refund by canceling your account within thirty days of the order date. This guarantee does not include or apply to fees paid for services not included under this Agreement.

13. Other Provisions

a. *Status as Independent Contractor.* Consultant and Client are contractors independent of one another and neither party's employees will be considered employees of the other party for any purpose. This Agreement does not create a joint venture or partnership, and neither party has the authority to bind the other to any third party.

b. *Applicable Law and Forum.* This Agreement shall be governed and construed in accordance with the laws of the State of California without regard to the conflicts of laws or principles thereof. Any action or suit related to this Agreement shall be brought in the state or federal courts of San Diego, CA.

c. *Arbitration.* At the option of both parties, any dispute arising from or with respect to this Agreement may be decided by arbitration in accordance with the guidelines of the San Diego Better Business Bureau.

d. *Waiver.* No waiver by Client of any breach by Consultant of any of the provisions of this Agreement shall be deemed a waiver of any preceding or succeeding breach of the same or any other provisions hereof. No such waiver shall be effective unless in writing and then only to the extent expressly set forth in writing.

e. *Entire Agreement.* This Agreement constitutes the entire agreement between Consultant and Client and merges all prior and contemporaneous understandings and agreements. No modification of this Agreement shall be effective unless in writing and signed by both parties. If any provision of this Agreement is invalid or unenforceable under any statute or rule of law, such provision will be deemed omitted, and all other provisions will remain valid and enforceable.