

## Stone Creek Standard Terms of Service

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These terms apply to all relationships where Stone Creek Business Group, Inc. (hereafter, "Stone Creek") performs services for an individual or organization whether formally or informally unless expressly stated otherwise in a signed agreement.

### Consulting Services

1. Stone Creek will provide consulting services to the Customer relating to the creation or modification of a Website, Internet Marketing Services, or other media development. The specific nature of the services to be provided by Stone Creek will be as specified in the "Letter of Engagement." Subject to any lawful restraint imposed upon it by any other party (such as an obligation as to confidence), Stone Creek will make available to the Customer all knowledge, information and expertise in its possession in performing the Services. If the Customer wishes Stone Creek to perform any services other than those specified in the "Letter of Engagement" and Project Definition Document (including without limitation to provide any additional functionality) or to provide further or other Products or software, then Stone Creek shall be entitled to quote the Customer separately for the provision of those services or the provision of those products or software. If the Customer accepts that quotation then the provisions of this Agreement will apply to the provision of those additional services, products or software.
2. Unless otherwise agreed in writing by the parties, the term of this Agreement will commence on the date specified in the "Letter of Engagement".
3. Unless specifically stated as a fixed price quote, any cost estimates that are or have been given by Stone Creek are estimates only. Actual time spent and Products supplied may be used as the basis for billing.

### Products

4. Stone Creek may also supply the Customer with Products (as ordered by Customer and agreed by Stone Creek) from time to time. In the context of this Agreement, "Products" means any hardware and/or third party software provided to the Customer by or on behalf of Stone Creek pursuant to this Agreement.

### Reporting and Meetings

5. The Customer shall make its employee (specified in the "Letter of Engagement" or such other person as the Customer shall nominate in writing) (the "Customer Contact") available to meet with Stone Creek when reasonably required by Stone Creek for the purposes of discussing the status of the Services. Stone Creek will meet regularly with the Customer Contact (by remote communication facility if necessary) and report to the Customer on the status of the Services.

### Consulting Rates, and Other Expenses

6. Stone Creek will provide Services to the Customer and will be entitled to charge the Customer for such Services at the rates specified in the "Letter of Engagement".
7. Stone Creek shall be entitled to provide the Services remotely from its own premises and will not be required to attend the Customer's premises. If Stone Creek is required to attend the Customer's premises for any reason pursuant to this Agreement, the Customer will reimburse Stone Creek for reasonable transport and/or accommodation expenses incurred by Stone Creek in doing so. However this does not include transport or accommodation expenses where the Customer's premises are located within 30 miles of Olathe, Kansas.
8. The Customer authorizes Stone Creek to obtain access to the Customer's computing facilities referred to in the "Letter of Engagement" (the "Facilities") using the remote means of access referred to in the "Letter of Engagement" ("Means of Access") and subject to any Restrictions on Access set out in the "Letter of Engagement", for the purposes of providing the Customer with Services.
9. Stone Creek will not use the Means of Access (or any other methods of remote access) to access the Facilities for any purpose other than to provide the Services. However, Stone Creek shall be permitted to gain remote access to the Facilities for lawful purposes using any publicly available means (such as the World Wide Web), which do not require special authorization.
10. Stone Creek will take the following steps to ensure the security of the Facilities (insofar as the use of Stone Creek's systems and the Means of Access are concerned):
  - a) ensuring that no passwords are stored in easily recognizable form on Stone Creek's own systems in circumstances where a breach of Stone Creek's own internal security may reveal them;
  - b) ensuring that only those employees and contractors of Stone Creek who are required to access the Facilities using Stone Creek's systems and the Means of Access are able to do so;
  - c) ensuring that the Facilities are not capable of being accessed by a system or user, which transits Stone Creek's own systems, except as permitted by this Agreement.
11. The Customer indemnifies Stone Creek against any loss or damage arising directly or indirectly from any unauthorized use of the Facilities to which Stone Creek has been granted remote access, provided that such unauthorized use has not arisen as the result of any material breach by Stone Creek of its own obligations under Clause 10 of this Agreement.
12. The Customer will also reimburse Stone Creek for all expenses incurred by Stone Creek on the Customer's behalf or in carrying out its obligations under this Agreement.
13. The Customer will pay Stone Creek for the cost of any Products (including any licensing that Stone Creek is required to pay to obtain a sub-license in favor of the Customer for any third party software) together with Stone Creek's own charge that it levies for handling and/or obtaining any relevant sub-licenses.

### **Payment of Invoices**

14. Stone Creek will be entitled to invoice the Customer on an interim basis at least monthly for progress payments for any Services performed or Products supplied during the previous month (or during any earlier period which has not previously been invoiced) together with such expenses as

the Customer is required to reimburse Stone Creek. Such invoices shall contain such information and detail as the Customer may reasonably require to permit the Customer to account for the Services and Products (for instance, by attaching copies of any time sheets) reasonably prescribed by the Customer. If Customer is contracted on a monthly maintenance plan, payment will be due upon the first of each month.

15. All invoices rendered by Stone Creek are payable within fourteen (14) days from the date of invoice. The Customer agrees to pay Stone Creek in full within this time period.
16. If the Customer fails to pay any invoice by the due date for payment, then without prejudice to Stone Creek's rights under this Agreement, the Customer shall also pay Stone Creek interest on the outstanding amount at the rate of 2% per month.

### **Confidentiality**

17. Stone Creek will not disclose to any third party or use other than for the purposes of this Agreement any knowledge or information imparted to or obtained by it during or in connection with the fulfillment of this Agreement which is of a secret or confidential nature relating to the business, equipment, processes relating to the equipment, the products, services, process or business strategies offered or employed by the Customer. This obligation of confidence will cease to apply in relation to information that Stone Creek is required to disclose by any law, or which becomes part of the public domain other than as the result of a breach by Stone Creek of its obligations of confidence under this Agreement.

### **Intellectual Property**

18. Unless otherwise agreed in writing by Stone Creek, the copyright and all other rights relating to any software provided to the Customer by or on behalf of Stone Creek pursuant to this Agreement (the "Intellectual Property") will remain the property of Stone Creek or where applicable its licensors.
19. Upon payment in full for the Services provided by or on behalf of Stone Creek pursuant to this Agreement, Stone Creek grants the Customer a non-exclusive and non-transferable perpetual license to use the Intellectual Property for the Customer's own business purposes, and in the case of the third party software, will obtain a sub-license in favor of the Customer in similar terms.
20. Stone Creek warrants to the Customer that to the best of its knowledge, it has the right to grant the licenses referred to in this Agreement, and the use by the Customer of any software provided by Stone Creek will not infringe the rights of any third party.
21. Stone Creek also grants the Customer the right to copy the Intellectual Property for the purposes of staff and subcontractor education and system backups. However, the Customer must not copy any of the Intellectual Property for any other purposes.
22. The Customer must not de-compile, disassemble, decrypt, extract or otherwise reverse engineer any part of any software that is provided to the Customer by Stone Creek without Stone Creek's prior written consent.

23. The Customer must hold any software (in source and/or in object code) and other materials provided to the Customer by Stone Creek confidential. The Customer must not disclose any of those materials to any third party without Stone Creek's prior written consent. The Customer must also take all reasonable steps within its power to protect the Intellectual Property of Stone Creek

### **High Risk Activities**

24. None of the software or the Products provided pursuant to this Agreement is designed or intended to be fault-tolerant or designed or intended for use as or for use where their failure or malfunction could lead to death, personal injury, or economic, physical or environmental damage ("High Risk Activities"). The term "High Risk Activities" includes but is not limited to on-line control equipment in hazardous environments requiring fail-safe performance (such as in the operation of nuclear facilities, aircraft navigation or communications systems, air traffic control, direct life support machines, weapons systems, banking or financial control or reporting systems, or security systems). The Customer warrants that it will not use, distribute or resell any of the Products or the software for any High Risk Activities and that it will ensure that permitted end-users of such Products or software are provided with a notice in the form set out in this Clause. The Customer will indemnify Stone Creek for any loss, cost, damage or third party claim arising from the Customer's use of any of the Products in High Risk Activities or from any breach by the Customer of this clause.

### **Liability**

25. Except for express undertakings to indemnify and any warranties set out in this Agreement:
- a) To the extent permitted by the law, Stone Creek expressly excludes all conditions and warranties whether express or implied.
  - b) Notwithstanding any other provision in this Agreement, in no event will Stone Creek be liable to any party including the Customer for any indirect, punitive, special, incidental or consequential damage in connection with or arising out of this Agreement (including for loss of profits, use, data, or other economic advantage), however it arises, whether for breach of this Agreement or in tort, and even if Stone Creek has been previously advised of the possibility of such damage. Further, liability for such damages shall be excluded, even if inclusive remedies provided hereunder fail their essential purpose. The Customer will indemnify Stone Creek and keep it indemnified from and against any claims by any third party for or in respect of such damages.
26. Certain provisions relating to the trading of goods and services and other statutes, rules and regulations in the United States of America may imply certain non-excludable warranties or conditions. To the extent that they are not permitted to be excluded, Stone Creek's liability for breach of such conditions or warranties and the Customer's sole and exclusive remedy in relation to such breaches shall be limited to:
- a) in the case of Products or software or other goods supplied by Stone Creek, at Stone Creek's option:

- i) the replacement or repair of those Products or software or goods, or the supply of equivalent goods; or
    - ii) the payment of the cost of replacing or repairing the Products or software or goods or of acquiring equivalent goods; and/or
  - b) in the case of Services, at Stone Creek's option:
    - i) supplying the Services again; or
    - ii) the payment of the cost of having the Services supplied again.
27. The Customer is solely responsible for the proper backup and protection of all of its software and data, as well as the implementation and maintenance of firewalls and security measures (including proper virus control) in relation to the Facilities.

#### **Assistance and Facilities**

28. The Customer will provide Stone Creek with all reasonable assistance and facilities free of charge (including without limitation of the Means of Access and the other Items referred to in the "Letter of Engagement", office facilities, and liaison with the necessary officers and employees of the Customer) in order to permit Stone Creek to efficiently provide the Services.

#### **No Poaching**

29. The Customer undertakes to Stone Creek that it will not for a period of two years from the termination of this Agreement entice away or endeavor to entice away from Stone Creek any employee of Stone Creek. The Customer acknowledges that the prohibition and restriction contained in this clause are reasonable in the circumstances and necessary to protect the business of Stone Creek.

#### **Agreement Non-exclusive**

30. The Customer acknowledges that Stone Creek is providing Services to the Customer on a non-exclusive basis and that Stone Creek may provide services of the same or a similar nature as the Services to any other party.

#### **Termination**

31. This Agreement may be terminated in the following circumstances:
- a) By either party by giving the other party thirty (30) days notice in writing to that effect;

- b) Immediately by Stone Creek by notice in writing if the Customer fails to remedy a breach of this Agreement (including any provision as to payment) within fourteen (14) days of receipt of a notice from Stone Creek of such breach requiring it to do so; or
  - c) By either party immediately by notice in writing if the other party takes any corporate action or other steps are taken or legal proceedings are started (and are not withdrawn, discontinued or struck out within twenty-one days) for its winding up, liquidation or dissolution (other than for the purposes of reconstruction) or the appointment of an administrator, receiver, receiver and manager, official manager, Liquidator, provisional Liquidator, trustee or similar office of it or of any or all of its revenues and assets ("Insolvency Event"), and such Insolvency Event remains in existence in respect of such party as the time of service of the Notice.
32. On termination of this Agreement however occurring, all moneys unpaid by the Customer pursuant to this Agreement will immediately become due and payable. If such moneys remain unpaid for a period of thirty days then (without prejudice to any other rights that Stone Creek may have for breach of this Agreement or otherwise) Stone Creek will be entitled to retake possession of the Products and to disable any software provided pursuant to this Agreement (including by remote means).
33. The Customer's obligations (including any obligations to indemnify) under clauses 11, 18 to 23 inclusive (Intellectual Property), 24 (High Risk Activities), 25 to 27 inclusive (Liability), and Stone Creek's obligations under clause 17 (Confidentiality) shall survive the termination of this Agreement for whatever reason.

### **General**

34. Any notice required or contemplated by this Agreement shall be deemed to have been duly given if it is in writing, properly addressed and delivered personally or mailed by registered or certified mail, postage prepaid addressed or by fax or electronic mail to the Customer or Stone Creek at the address set out in the "Letter of Engagement" or this Agreement or such other address nominated by a party in writing.
35. The Customer may not assign any of its obligations under this Agreement without the prior written consent of Stone Creek. However Stone Creek may arrange for subcontractors to perform any of Stone Creek's obligations under this Agreement.
36. Stone Creek will not be liable to the Customer or to any third party for any non-performance or delay in the performance of its obligations under this Agreement, if events or conditions beyond its reasonable control cause the non-performance or delay and Stone Creek gives the Customer prompt notice thereof. In no event will this provision affect Customer's obligation to make payments to Stone Creek under this Agreement except in respect of Services that are unable to be performed by Stone Creek, until they can be performed.
37. A failure, delay, relaxation or indulgence by either Party in exercising any right, power or privilege conferred on the Party by this Agreement shall not operate as a waiver of the power or right. A single or partial exercise of any right, power or privilege hereunder does not preclude the further exercise of the same right or the exercise of any other right hereunder. A waiver of a breach does not operate as a waiver of any other breach.

38. If any part of this Agreement is held by a court of competent jurisdiction to be invalid, then;
- a) Where the offending provision can be read down so as to give it a valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result; and
  - b) In any case the offending provision must be severed from this Agreement the remainder of this Agreement shall continue in full force and effect unless such reading down or severance affects the basic nature of this Agreement.
39. This Agreement shall be governed by and must be construed in accordance with the laws of Kansas and the United States of America, and the Customer irrevocably submits to the non-exclusive jurisdiction of the courts thereof.

### **Maintenance Contracts**

40. All maintenance contracts, regardless of length or frequency, automatically renew when the previous contract ends. Cancellation requests must be presented in writing or via email. Early cancellation of any contract will result in a penalty fee as outlined in the "Letter of Engagement".

### **Modifications, Updates and Amendments to the Terms**

41. These Terms of Service may be modified, updated or amended at any time without notice.

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STONE CREEK CONSUTLING INC

14670 S Harrison St. Suite 200

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