



A Design and Marketing Company

14935 Dunwoody Bend, Suite 100  
Cypress, TX 77429

Page 1 of 8

## **Consulting Services Agreement**

This document outlines an Agreement for Odessey Technologies to provide Consulting and Marketing Services to the identified parties.

The parties, \_\_\_\_\_, (hereafter referred to as the Client) located at

\_\_\_\_\_ agree to retain Odessey Technologies, a Virtual Agency, Design and Marketing Company, (hereafter referred to as Odessey) located at 14935 Dunwoody Bend, Suite 100, Cypress, Texas 77429 for the purpose of consulting on marketing issues relating to, but not limited to, advertising, corporate and product branding, public relations, the design and production of electronic, print and media marketing services for the promotion of \_\_\_\_\_, business.

### ***Terms and Conditions***

Odessey agrees to make its consulting and marketing services available during normal office hours Monday through Friday from 08:30 to 17:30. However, for public relation issues, special or emergency projects, the service extends 24/7.

Ongoing, during the stated period and also at the specific request of the Client, Odessey, an experienced marketing company, for its part will act in good faith to provide prompt and professional consulting and marketing services to the Client for the fee structure outlined in Addendum A.

The terms of this Agreement will remain in effect between the parties for a period of three months from the date of signature and will automatically renew unless written termination is received from either party. It is agreed that the parties meet to review these services after a period of 3 months. If the Clients needs have changed from those originally agreed upon, the agreement for services will be updated to reflect the Clients changes.

All discussions and services between the parties will be subject to a Non-disclosure Agreement and signing this Agreement will form a binding contract between the parties and to the non-disclosure outlined in Addendum C. Specific consulting, services or project methodology are outlined in Addendum D.

### ***Termination of Agreement***

Either party in writing, one to the other may terminate this agreement with 90 days notice. At any time during the agreement and thereafter, each party will hold the other harmless.

### ***Invoice Payments***

Odessey's payment terms for Consulting and Marketing Services are outlined in Addendum B of this document.



## Addendum A – Fee Structure

### Section (i)

#### Fee Structure – Monthly Retainer

The purpose of a monthly retainer is to equalize cash flow and task related demands for both the Client and Odessey that are associated with pre-planned and scheduled marketing programs. Based on pre-defined Client needs, the Client agrees to pay Odessey a monthly consulting retainer of \$\_\_\_\_\_ to provide the Client with consulting and professional marketing services. In consideration of this retainer fee, Odessey agrees to provide consulting and marketing services for up to, but to not exceed \_\_\_\_ hours per week or a total of \_\_\_\_ hours per calendar month.

To further this relationship, Odessey agrees to aggregate the Consulting or Marketing Services hours it provides and average these over fixed three month periods beginning the month the agreement is signed. If the Clients need changes or the work involved grows beyond that originally agreed by more than 20%, Odessey retains the right to:

- (a.) Invoice the Client for the excessive overage hours worked at an hourly rate of \$80.00
- (b.) Renegotiate the Agreement to reflect the Client's changing needs.

The Client also agrees to reimburse Odessey for all normal and reasonable expenses incurred on the Client's behalf. This will include, but not limited to: out of town highway travel, airfare, travel hospitality, third party services and or materials used during consulting services, and the preparation or production of graphic, media and printed materials or data storage facilities. This amount shall not exceed \$\_\_\_\_\_ per month.

### Section (ii)

#### Fee Structure – Fixed Price Contract

Odessey agrees to complete the consulting service or project outlined in Request for Quotation (RFQ) #04-\_\_\_\_\_ for the sum of \$\_\_\_\_\_

### Section (iii)

#### Fee Structure – Hourly Rate Contract

To ensure quality, customer satisfaction and remain competitive, Odessey prices its consulting and marketing services at \$100.00 per hour with a minimum project charge of four hours. When so contracted, the Client also agrees to reimburse Odessey for all normal and reasonable expenses incurred on the Clients behalf. This will include, but not be limited to: Out of town highway travel, airfare, travel hospitality, third party services and/or materials used during consulting services, and the preparation or production of graphic, media and printed materials or data storage facilities.

### Section (iv)

All of the above options under Addendum A are subject to applicable federal, state and local taxes.



## **Addendum B – Payment Terms**

### **General**

Invoices or project documents will reflect a project number 04-\_\_\_\_\_. In order to obtain information quickly, please refer to this number when requesting work related information or images.

### **Payment Terms**

Payments terms are net 10 days. A payment cheque for invoiced services should be made payable to Odyssey Technologies, direct deposit only. Unless otherwise stated, on payment of invoice, the Client will own the intellectual property rights to the project numbered on the invoice.

While every effort will be made to work with the Client, outstanding invoice payments beyond 45 days will incur interest charges of 1% per month on the outstanding balance.

Applicable taxes will be added to all invoices as mandated by Federal, State and local laws

### **Retainer Agreements**

Retainer Invoices are submitted monthly in advance for retainer services, and in arrears for materials and additional detailed services documented to be outside of the retainer agreement. This will include, but not be limited to: out of town highway travel, airfare, travel hospitality, third party services and or materials used during consulting services, and the preparation or production of graphic, media and printed materials or data storage facilities.

### **Fee Structure – Fixed Price Contract**

Invoices in the amount stated on RFQ or fixed price contract will be sent to the Client for payment once the project is completed. However, if the project is expected to run for a period exceeding 90 days, the Client agrees to make partial payments for work undertaken. Odyssey will provide detailed invoices monthly, reflecting the project time-line and work undertaken for payment.

### **Fee Structure – Hourly Rate Contract**

An invoice in the amount reflecting the number of consulting hours or hours invested in the project at an hourly rate of \$100.00 (subject to the 4 hour minim rate) will be sent to the Client for payment. In addition, Odyssey will invoice the Client for out of town highway travel, airfare, travel hospitality, third party services and or materials used during consulting services, and the preparation or production of graphic, media and printed materials or data storage facilities.



## Addendum C - Mutual Non-disclosure Agreement

This Mutual Non-Disclosure Agreement ("Agreement") is dated and made effective on the \_\_\_\_th. day of March, 2004, between Odyssey Technologies, having a place of business at 14935 Dunwoody Bend, Suite 100, Cypress Texas 77429 ("Odyssey") and \_\_\_\_\_ ("\_\_\_\_\_").

WHEREAS, Odyssey and \_\_\_\_\_ contemplate discussions and negotiations concerning possible mutual business arrangements; and

WHEREAS, in order to facilitate such discussions and negotiations, certain confidential and proprietary technical, financial or business information (hereinafter "Information") have been or may be disclosed between the parties;

NOW THEREFORE, the parties agree as follows:

1. Such Information shall remain the property of the transmitting party. All copies of such Information shall be returned to the transmitting party upon request. Neither party will make copies of the Information received by it from the other party other than is necessary for its use under the terms hereof, and each such copy will be marked with the same confidentiality notice as appears on the originals.
2. All Information, in written or tangible form, of either party, transmitted hereunder, or in contemplation hereof, must be marked confidential or proprietary. If the Information is given orally it must be identified as confidential or proprietary at the time of disclosure. Either party shall have the right to correct any failure to designate information as confidential or proprietary by written notification as soon as practical after such error is determined. The party receiving said notification shall from that time forward treat such Information as confidential or proprietary as required under this Agreement.
3. The receiving party will protect the designated Information to prevent unauthorized use, dissemination or publication in accordance with the provisions of Paragraph 15 hereof.
4. Subject to the provisions of Paragraph 5 with respect to any Information provided hereunder, the receiving party shall use the same care and discretion to limit disclosure of such Information as it uses with similar confidential or proprietary information of its own which it does not desire to disclose or disseminate, including but not limited to taking steps to: (i) restrict disclosure of the Information solely to its employees, agents and/or subcontractors with written permission from the disclosing party who have a need to know such Information in connection with the purposes expressly provided for herein and not disclose such Information to any other parties; (ii) advise all receiving party employees, and agents and/or subcontractors with access to the Information of the obligation to protect the Information provided hereunder and obtain the agreement by agents and representatives to be so bound; and (iii) use the Information provided hereunder only for purposes expressly provided for herein and for no other purposes. The receiving party shall be responsible for the breach of this Agreement by any of its employees, officers, agents and representatives to whom it has disclosed the Information.
5. These restrictions on the use or disclosure of such Information shall not apply to Information:
  - (a) independently developed by the receiving party or lawfully received from another source who, to the best knowledge of the receiving party, is not under any fiduciary, contractual or legal obligation to the transmitting party not to disclose such information; or
  - (b) which is or becomes generally available to the public without breach of this Agreement by the receiving party; or
  - (c) which at the time of disclosure was known to the receiving party; or
  - (d) which the receiving party is required to disclose pursuant to a valid order of a court or other governmental body or any political subdivision thereof, provided, however, that the recipient of the Information shall first have given



notice to the disclosing party and made a reasonable effort to obtain a protective order requiring that the Information so disclosed be used only for the purposes for which the order was issued.

- (e) which is disclosed pursuant to consent of the other party.
6. Notwithstanding any other provisions of this Agreement, the receiving party agrees not to export directly or indirectly any U.S. source technical data acquired from the disclosing party or any products utilizing such data unless such export is in compliance with the United States export laws and regulations.
  7. No license to the other party under any trademark, patent, or copyright is either granted or implied by the disclosing of Information to that party. It is expressly understood and agreed that this Agreement does not grant to either party any exclusive privileges or rights and that either party may contract with third parties for the procurement of comparable products and services.
  8. Neither party shall, without first obtaining written consent of the other, use any trademark or trade name of the other or refer to the subject matter of this Agreement in any promotional activity or otherwise with respect to this Agreement or the parties' activities pursuant to this Agreement, nor disclose to others any specific information about the subject matter of this Agreement nor the fact that discussion or negotiations are taking place regarding a possible business relationship between the parties or any of the terms, conditions or other facts with respect to any such business relationship, including the status thereof except as to a public disclosure, if any, required by security laws. Each party acknowledges that in its examination of the Information it may obtain non-public information concerning the other. Each party, therefore, agrees to advise whomever receives the Information of the restrictions imposed by the US securities laws on the purchase or sale of securities by any person who has received material non-public information concerning the issuer or such securities and on the communication or such information to any other person.
  9. Neither this Agreement nor any rights hereunder in whole or in part shall be assignable or otherwise transferable by either party and the obligations contained in this Agreement shall survive and continue after termination of this Agreement, provided that either party may assign or transfer this Agreement and rights hereunder to any current or future affiliates or successor company if such assignee agrees in writing to the terms and conditions hereunder.
  10. This Agreement constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior or contemporaneous oral or written Agreements or understandings between the parties on such subject matter.
  11. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and shall benefit and be binding upon the parties hereto, their respective successors and assigns. Jurisdiction in Harris County, Texas as to any cause of action. The prevailing party in any proceeding seeking to enforce compliance with this Agreement shall be entitled to recover from the other all costs of such enforcement, including reasonable attorney's fees.
  12. The furnishing of Information hereunder shall not obligate either party to (i) enter into any further Agreement or negotiation with the other or (ii) to continue any negotiations, in good faith or provide any information or (iii) to refrain from entering into an agreement or negotiation with any other person, including without limitation any other person engaged in the same or a similar line of business as the other party hereto. Neither party, nor any representative or advisor, have made or make any representation or warranty, express or implied, as to the accuracy or completeness of the information. Neither party shall have any liability to the other resulting from the use of the Information.
  13. In the event either party discloses, disseminates or releases any Information received from the other party, except as provided above, such disclosure, dissemination or release will be deemed a material breach of this Agreement. The provision of this Section 13 is in addition to any other legal right or remedies the party whose Information has been disclosed, disseminated or released may have under federal or state law. A party is liable for any actual damages relating to breaches of the Agreement, which involve gross negligence or unwilful malfeasance by such party. The parties waive any right to a jury trial and any right to consolidate with a cause of action involving and any right or claim to consequential, punitive, indirect or incidental damages. There are no third party beneficiaries to this agreement.



14. In the event of a breach of the provisions of this Agreement by either party, the other party, in addition to any other rights or remedies available to it, shall be entitled to seek an injunction restraining the breaching party from disclosing or making unauthorized use of any Information, and shall not be required to post bond in connection with any such injunction.
15. This Agreement shall expire one (1) year from the effective date hereof for confidential Information but will not expire for any Information which is considered trade secret Information under applicable law so long as such Information remains a trade secret. Any Information which the disclosing party considers to be trade secret Information shall be designated as such. Any claim for breach of this Agreement must be made and filed within six (6) months of the alleged breach.
16. No failure or delay by either party in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right, power or privilege hereunder.
17. If any term, covenant or condition in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of the Agreement and the covenants herein contained shall not be affected thereby and the residue shall be valid and enforceable to the fullest extent permitted by law.
18. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, legal and personal representatives, successors and assigns, as the case may be. An executed faxed copy of this Agreement should be construed as a forcible agreement.

For Odyssey Technologies

For \_\_\_\_\_

By: Nigel J. Pestell

By: \_\_\_\_\_

Title: Sr. Partner

Title: \_\_\_\_\_



## Addendum D - Consulting and Services Methodology

### General

All consulting, marketing services and media projects will be given a project number 04-XXXX, please refer to this number when requesting work related information or images.

### Work Methodology

After initial discussions with the Client to define the parameters of the project and establish work methodology, a work or project number will be assigned.

Phase 1: The project details will be outlined in writing and depending on the project a storyboard written. Once the outline or storyboard has received approval and sign off by the Client, work will begin on the next phase of the assignment.

*Text supplied by the Client for insertion in a project will be vetted by Odessey for its origins, assigns, grammatical, written, and or typing, errors, and the Client advised of said, but the final responsibility for the Client inserted text will remain with the Client and will be subject to normal proofing sign off and copyright laws. (Also see section on Copyright)*

Phase 2: During the project development, two proofing editions will be communicated to the Client for clarity of message, design guideline approval and sign off. This is where errors and omissions are rectified by all parties. Once proofing editions are approved by the Client, and signed off, Odessey will initiate Phase 3.

Phase 3 In this phase the project is often moved to production facilities outside of Odessey's direct control, whether it is print, electronic or media production. It is therefore imperative that pre-production image proofs communicated to the Client in Phase 2 be final, approved and signed off.

In a print scenario, errors or omissions past this point cannot be rectified and will result in either Client acceptance of a flawed product (however minor) or a reprint incurring a Change Order and substantial additional Client cost. In an electronic format, whereas additional costs and a Change Order will be required recovery does not incur the heavy financial burden of print, paper or binding costs.

Phase 4 Delivery of finished project. Unless otherwise stated, on payment of invoice, the Client will own the intellectual property rights to the project numbered on the invoice. Odessey strives for excellence in all areas and nothing but total customer satisfaction is acceptable. To meet this goal we will apply our professional talents, the skills of our associates and do everything in our power to ensure acceptance, repeat customer business and your recommendation of Odessey to others.

### Change Orders

Changes made to the assignment or project after the outline or storyboard is agreed to at the finalization of Phase 2 will be reflected in a Change Order. While every effort will be made to assist the Client with changes, Change Orders will most likely incur additional charges, but will be dependent upon the impact on the work completed to date, and/or contracted outside services.



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### *Data Storage*

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Were applicable, completed text and graphic work undertaken by Odessey will be referred to by project number, stored on a CD ROM/DVD and delivered to the Client for safe keeping. Whereas, Odessey will keep a record of the work done, it accepts no liability written or implied for storage or retrieval of the finalized project work past 90 days of invoice or the completion of the project.

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### *Web Based Services*

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Web based services or projects, Odessey contracts on behalf of the Client with reputable, professional Internet Service Providers (ISP's) to provide web hosting and email services for its Clients. The ISP's selected by Odessey will provide at minimum secure premises, battery back-up and or standby power services, mirrored or RAID storage and broadband access that surpass industry access standards.

After the initial 90 days of service, the ISP will invoice the Client directly for ongoing services (usually 90 days in advance). Discounts may be obtained for annualized payments and these will be optioned on behalf of the Client. Once established with the ISP, the initial contract is automatically transferred to the Client and the Client accepts responsibility for payment.

While acting on behalf of the Client, every effort is made to select reputable ISP's. However, Odessey is not liable for breaks in contracted Internet or email service, Internet virus-infections or any other part of the ISP service contracted for on behalf of the Client.

Note... Odessey strongly recommends that the Client obtain professional Computer Networking (IT) advice on protecting its network and intellectual property before connecting any of its computers to the Internet.

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### *Copyright and Use of Photographic Images*

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The selection of professionally produced photographic images to enhance the Clients marketing message can usually be obtained in one of two ways:

- (i) The use of a Free-lance Photographer, noted for work in the select field or
- (ii) The use of Stock images

Item (i) is a custom approach and can result in daily shoot and production costs of between \$1,000 .00 and \$5,000.00 per day depending on subject matter and the degree of difficulty in obtaining the required images.

Item (ii) often the preferred method and usually the most economical is to obtain images from a Stock Portfolio. Odessey represents several stock image agencies and the choice of images can vary in their application cost depending on size, type and ultimate use. Royalty-Free images, the most economical, vary in usage fees from \$49.00 to \$600.00. Web size images usually cost \$60.00; larger images suitable for print use are more expensive. Images not classified "Royalty-Free" will often restrict use to a one time application and the intellectual property ownership will remain with the image agency.

Working within US Copyright laws and acting in the best interests of its Client, Odessey will not use an image or text of unknown or undisclosed origin without obtaining a formal release in any reproduction task it undertakes on behalf of the Client.

End.