



# PAY PER INCIDENT

## About

This option is for companies who opt to not participate in a Support Agreement Plan. We have an obligation to assist those participating in the Support Agreement Plan before assisting those who are not currently participating. However thank you for the opportunity to still serve your business on a per incident basis. I believe we can help you accomplish your goals and needs to achieve an amazing outcome of services when needed.

## Description of Services

During the term hereof, Cub3d IT Solutions shall perform Services, which shall be subject to Service Recipients written acceptance, and shall be performed by Cub3d IT Solution's employees, acceptable to the Service Recipient, who are skilled in the Operation and Maintenance of the Network. Service Recipient may, for any reason; request that such employees be replaced with other skilled employees of Cub3d IT Solutions.

## Travel Expenses

For work performed outside the scope from Cub3d IT Solutions facilities, customary and reasonable travel expenses will be invoiced to the Client.

## Limited Support

**Warranty Period.** Cub3d IT Solutions shall provide support and coverage on equipment or software that was purchased through Cub3d IT Solutions 30 days after installation has been started. Support Services means commercially reasonable technical support and assistance to correct any errors or deficiencies. Requests for additional support will be billed on a time and materials basis at Cub3d IT's standard rate. Cub3d It Solutions is to be contacted for all problems that arise on your equipment, even if they appear minor. We reserve the right to refuse support on third party equipment or software purchased through another vendor.

**No Enhancements:** The services in the Warranty Period and the Support Period do not include enhancements to the Project or other services outside the scope of the estimate.

## Excluded Services

Service or repair made necessary by the alteration of modification of the software or hardware other than those authorized by Cub3d IT solutions, including alterations, software installations, or modifications by Client's employees or anyone other than Cub3d IT Solutions. Not limited to the following.

Service	Rate
Service and repair made necessary by the alteration or modification of equipment other than those authorized by Cub3d IT Solutions, including alterations, software installations, or modifications of equipment made by Client's employees or anyone other than Cub3d IT Solutions.	Project Base or \$100.00/hour + Travel

Development and/or web design services.	Project Base or \$100.00/hour
Installation of 3 <sup>rd</sup> party purchased equipment. (computers, laptops, peripherals)	Project Base or \$100.00/hour
Enterprise-Class Software Deployments. (large-scale server-based products such as ERP, HRM, Document Control)	Project Base or \$100.00/hour
The cost of any software, licensing, or software renewal or upgrade fees of any kind.	Project Base or \$100.00/hour
Failure due to acts of natural disasters, building modifications, power failures or other adverse environmental conditions or factors.	Project Base or \$100.00/hour
Training services of any kind unless supported on Workstation Agreement list.	Project Base or \$100.00/hour
Drops of Ethernet or HDMI lines patched, terminated, and certified tested.	Project Base or Per Line

## Hours of Operation

Cub3d IT Solutions hours of operation are from 9:00AM – 5:00PM Monday – Friday, excluding public holidays. For work performed outside the scope from Cub3d IT Solutions facilities, customary and reasonable travel expenses will be invoiced to Client.

## Response

Cub3d IT supports all best efforts, if we can't resolve, we expect to contact the OEM based on current software and hardware agreements at that time. All products must have a valid and legal license's for each use of product(s). Cub3d IT is not held responsible for invalid or illegal licenses or any losses or damages during downtime or uptime. We reserve the right to make any first decisions based on any emergency or security threats without notice, point of contact will be notified with a report in this event. All Client employees are expected to follow this policy and agreement when using our services. By signing this Purchase Agreement you agree to this Purchase Agreement, services, price, and acknowledge you have received a copy of the Purchase Agreement and retain the latest version.

## Obligation

Client is responsible for all necessary preparations for installation of any equipment and hardware unless otherwise defined in the estimate. If the Client connects any third-party software, service or equipment to or uses same in conjunction with Cub3d IT Solution's network or service that impairs Cub3d IT Solution's network, equipment or service, the Client remains liable for payment, and may be required by Cub3d IT Solutions, and will, eliminate any such software, service or equipment. The Client is solely responsible for the payment of and will pay any licensing, royalty, maintenance or other third party fees required to utilize Cub3d IT Solution's, equipment or software in this event. Client will not attempt to connect or use equipment, services or software deemed unsuitable by Cub3d IT Solutions. Cub3d IT Solutions is not responsible for any installation, maintenance, compatibility, or performance of any equipment, service or software unless expressly stated and described in this Agreement or other documentation. Cub3d IT Solutions will conduct development remotely from Cub3d IT Solutions facilities. However if work is required at Client site, it is assumed that Client will provide adequate workstations including desks, phones, voicemail and e-mail/internet access for Cub3d IT Solutions staff working on Client's site, if any. Non-functioning working environment can be critical to ensure the success of services. During the course of Cub3d IT Solutions provision of Equipment, Services and Custom Software hereunder, each party may have access to information concerning the products and business of the other. Neither party shall make any use of such information of the other party except in connection with the exercise of its rights and responsibilities under this Agreement.

**Copyright:** Cub3d IT Solutions retains all rights, title, and interest, including copyright interests and any other intellectual property, for software installed or used during the normal course of executing this agreement unless the software is specifically purchased by the Client.

**Legal:** Client is held responsible for everything they do on their systems. Cub3d IT Solutions will not be held accountable for the content, data, software, or anything that stored, viewed, or downloaded on Client systems. Cub3d IT Solutions is not responsible for any downtime that may occur on our servers, or any losses or damages that may occur such as, data, files, programs, hardware, or anything that will include our hardware, software, or services. Users must follow all current laws in the United States. Cub3d IT Solutions is also not liable for any damages, injuries, or losses that may occur from using our services or hardware. Any damages or tampered behavior that we find done intentionally on our hardware or system may result in a cancelation in your services. You may also be charged for the damages or the replacement cost of the hardware or to repair any broken aspects. Law enforcement will also be contacted to make a report of any instances or illegal breaches. Services and equipment provided by or through Cub3d IT Solutions may be used only for lawful purposes. Without limiting the foregoing, or any Agreement between Cub3d IT Solutions and the account holder, Cub3d IT Solutions resources may not be used for any of the following:

- A. The creation or distribution of any material illegal under federal, state, and local regulations.
- B. The transmission of unsolicited commercial or advertising material either to other persons or organizations or to persons or organizations connected to other networks that, in the sole judgment of Cub3d IT Solutions, could be considered inconsistent with Cub3d IT Solution's published policies regarding unsolicited electronic mail or that originates from any network or is delivered to any organization or person on Cub3d IT Solution's network or that references any network or hosting facilities connected to Cub3d IT Solution's network.
- C. Deliberate unauthorized access to facilities or services accessible via Cub3d IT Solution's network infrastructure, or any activity designed, either intentionally or unintentionally, to disrupt network or host resources or to degrade network performance to any users connected to either Cub3d IT Solution's network or to those networks Cub3d IT Solutions connects to.
- D. Any belligerence, hostility, use of profanity, abuse or antagonism on the part of, or lack of cooperation from, individuals at or in Client's organization or premises when dealing with any Cub3d IT Solutions personnel during enforcement of the Agreement, network troubleshooting, accounting or any other dialog - written, verbal or otherwise or in connection with use of Cub3d IT Solutions products or services. Will not be tolerated.
- E. Any use after Cub3d IT Solutions has requested that use cease because it is causing disruption to the correct functioning of Cub3d IT Solutions equipment or service or the equipment or service of third parties.
- F. Any violation of the foregoing in connection with access to or use of the Internet
- G. Any provision of service to a current Cub3d IT Solutions Client or a former Cub3d IT Solutions Client who has an outstanding balance due, must be payable to Cub3d IT Solutions or is in default or breach of their Agreement with Cub3d IT Solutions.

Cub3d IT Solutions' liability on any claim, whether in contract, negligence, tort, strict liability or otherwise, arising in whole or in part out of Services performed, or Equipment and/or Custom Software provided, under this Agreement, shall in no case exceed the lesser of the fees paid to Cub3d IT Solutions under this Agreement or the fees paid to Cub3d IT Solutions for the portion of Services or Equipment or Custom Software which give rise to the claim. Cub3d IT Solutions' liability with respect to the quality and conformity of Equipment, Services and Custom Software supplied to Client shall be limited to the provision of the warranties set forth or described in Section "Support" above. IN NO EVENT SHALL CUB3D IT SOLUTIONS BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER FOR BREACH OF WARRANTY OR OTHER CONTRACT BREACH, NEGLIGENCE OR OTHER TORT, STRICT LIABILITY OR OTHER THEORIES OF LAW. Without limiting the generality of the foregoing, Cub3d IT Solutions shall have no responsibility to compensate Client for delays in or loss of use of Equipment, loss or miscalculation of data, loss of revenue or increased costs, loss of facilities, loss or delays in services, or claims of Client's customer(s), or other third parties to whom it provides goods or services, loss of profits or revenue, cost of substitute goods, facilities or services, downtime costs, delays.

## Payment Terms

**Terms:** Payment terms are within Cub3d IT Solutions sole discretion. You agree not to violate the terms of any offer or concession made available by Cub3d IT Solutions. Cub3d IT Solutions may invoice or ship items of an order separately. Cub3d IT Solutions may, at its sole discretion and without affecting its rights under this purchase agreement, cancel or suspend work on this or any pending agreement's and/or eliminates any stated discount on

fees for services rendered. If you breach the provisions of this Agreement or the terms of any offer, Cub3d IT Solutions may charge or re-debit your account or credit card in full. Client shall reimburse Cub3d IT Solutions for any expense that it may incur in the collection of all amounts due, including attorney fees and court costs. If Client fails to make any payment to Cub3d IT Solutions when due (under this SLA or a separate Agreement), Cub3d IT Solutions may, at its sole discretion and without affecting its rights under this purchase agreement, cancel or suspend services on this or any pending agreement's and/or eliminate any stated discount on fees for Services rendered. Payments must be made in U.S Dollars. If late balances are not paid within 90 days of due date, services will be suspended and account is moved to collections. This could affect your credit score as well. All leased or rented hardware given to the user must be returned to Cub3d IT Solutions or the User will be charged for the hardware and (or) will be reported to collections and (or) to law enforcement as stolen property.

**Late Fee:** Any invoiced amount not paid when due shall be subject to a service charge of (\$25.00) per 30 days or the maximum rate permitted by law.

**Crediting Late Payments:** Payments will be credited to late payments first, then to unpaid balances

**Collection Expenses:** Client shall pay all collection or legal fees caused by late or non-payments.

**Withholding Delivery:** Cub3d IT may withhold delivery and transfer of ownership of any current work if accounts are not current or overdue invoices are not paid in full

**Withholding License:** All grants of any license to use or transfer ownership of any intellectual property rights under this Agreement are conditioned on full payment, including all outstanding Additional Costs, Expenses, Fees, or any other charges

## Confidentiality

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Cub3d IT Solutions, and its employees, agents, or representatives will not at any time or in any manner, either directly or indirectly, use for the personal benefit of Cub3d IT Solutions, or divulge, disclose, or communicate in any manner, any information that is proprietary to the Client. Cub3d IT Solutions and its employees, agents, and representatives will protect such information and treat it as strictly confidential, except as necessary to or consistent with providing the contracted services, and will protect against unauthorized use.

During the course of Cub3d IT Solutions provision of Equipment, Services and Custom Software hereunder, each party may have access to information concerning the products and business of the other. Neither party shall make any use of such information of the other party except in connection with the exercise of its rights and responsibilities under this Agreement.

## Warranty

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Cub3d IT supports all best efforts, if we can't resolve, we expect to contact the OEM based on current software and hardware agreements at that time. All products must have a valid and legal license's for each use of product(s). Cub3d IT is not held responsible for invalid or illegal licenses or any losses or damages during downtime or uptime. We reserve the right to make any first decisions based on any emergency or security threats without notice, point of contact will be notified with a report in this event. By signing this purchase agreement you agree to the, services, price, and acknowledge you have retained a copy of this Agreement.

Cub3d IT Solutions shall provide its services and meet its obligations under this Agreement in a timely and workmanlike manner, using knowledge and recommendations for performing the services which meet generally acceptable standards in Cub3d IT Solution's industry

Cub3d IT Solutions warrants that the Services shall be of good quality and workmanship and in accordance with acceptable procedures for the Network, and that the Network will meet the specifications therefor.

If the Client connects any third-party software, service or equipment to or uses same in conjunction with Cub3d IT Solution's network or service that impairs Cub3d IT Solution's network, equipment or service, the Client remains liable for payment, and may be required by Cub3d IT Solutions, and will, eliminate any such software, service or equipment.

Client will not attempt to connect or use equipment, services or software deemed unsuitable by Cub3d IT Solutions. Cub3d IT Solutions is not responsible for any installation, maintenance, compatibility, or performance of any equipment, service or software unless expressly stated and described in this Agreement or other documentation.

EXCEPT TO THE EXTENT EXPRESSLY PROVIDED HEREIN, CUB3D IT SOLUTIONS DOES NOT WARRANT THE SERVICES PERFORMED HEREUNDER OR THE ACCURACY OR CORRECTNESS OF THE RESULTS OF THE SERVICES, AND THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF: 1) MERCHANTABILITY; 2) FITNESS FOR PARTICULAR PURPOSE; 3) EFFORT TO ACHIEVE PURPOSE; 4) QUALITY; 5) ACCURACY; 6) NON-INFRINGEMENT; 7) TITLE; 8) MARKETABILITY; 9) PROFITABILITY; 10) SUITABILITY; AND/OR 11) ANY TYPE ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

## Default

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The occurrence of any of the following shall constitute a material default under this Agreement:

- a) The failure to make a required payment when due.
- b) The insolvency or bankruptcy of either party.
- c) The subjection of any of either party's property to any levy, seizure, general assignment for the benefit of creditors, application or sale for or by any creditor or government agency.
- d) The failure to make available or deliver the Services in the time and manner provided for in this Agreement.

## Remedies

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The parties will attempt to resolve any claim, dispute, or controversy (whether in contract, tort or otherwise) against Cub3d IT Solutions, its agents, employees, successors, assigns, or affiliates (collectively for purposes of this paragraph, "Cub3d IT Solutions") arising out of or relating to this Agreement, Cub3d IT Solutions advertising, or any related purchase (a "Dispute") through face-to-face negotiation with persons fully authorized to resolve the Dispute or through mediation utilizing a mutually agreeable mediator, rather than through litigation.

In addition to any and all other rights a party may have available according to law, if a party defaults by failing to substantially perform any provision, term or condition of this Agreement (including without limitation the failure to make a monetary payment when due), the other party may terminate the Agreement by providing written notice to the defaulting party. This notice shall describe with sufficient detail the nature of the default. The party receiving such notice shall have 7 days from the effective date of such notice to cure the default(s). Unless waived by a party providing notice, the failure to cure the default(s) within such time period shall result in the automatic termination of this Agreement.

## No Third Party Beneficiary

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This Agreement is intended to be solely between the Client and Cub3d IT Solutions. Nothing in this Agreement accords any third party any legal or equitable rights whatsoever which may be enforced by any nonparty to this Agreement even after this Agreement is in effect with additional parties related to parent Client or companies.

## Force Majeure

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If performance of this Agreement or any obligation under this Agreement is prevented, restricted, or interfered with by causes beyond either party's reasonable control ("Force Majeure"), and if the party unable to carry out its obligations gives the other party prompt written notice of such event, then the obligations of the party invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, without limitation, acts of God, fire, explosion, vandalism, storm or other similar occurrence, orders or acts of military or civil authority, or by national emergencies, insurrections, riots, or wars, or strikes, lock-outs, work stoppages, or other labor disputes, or supplier failures. The excused party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. An act or omission shall be deemed within the reasonable control of a party if committed, omitted, or caused by such party, or its employees, officers, agents, or affiliates.

## Entire Agreement

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This Agreement contains the entire agreement of the parties, and there are no other promises or conditions in any other agreement whether oral or written concerning the subject matter of this Agreement. This Agreement supersedes any oral or unauthorized written agreements between the parties.

## Severability

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If any provision of this Agreement will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid.

## Non-Discrimination

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In the performance of the obligations under this Agreement, the Parties agree not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin, ancestry, income level, source of income, arrest record, conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, or student status. The Parties further agree not to discriminate against any subcontractor or person who offers to subcontract under this Agreement because of race, religion, color, age, disability, sex, or national origin.

## Amendment

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This Agreement may be modified or amended in writing, if the writing is signed by both parties.

## Governing Law

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This Agreement shall be governed by the laws of the State of Michigan. Any act by either party in violation of this Agreement shall be remedied by the courts of the said jurisdiction. This Agreement is intended to provide Cub3d IT Solutions with the right and standing to seek any available legal or equitable remedy to enforce or seek damages for the breach of this Agreement. All cost, expenses, and attorney fees that Cub3d IT Solutions incurs to pursue

enforcement of this Agreement or its addendums shall be paid by the account holder or reimbursed to Cub3d IT Solutions.

## Changes to Project Scope

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**Change Request:** If Client wants to change the Scope of Work after acceptance of this Agreement, Client shall send Cub3d IT a written Change Order describing the requested changes in detail. Within **7 business days** of receiving a Change Order, Cub3d IT will respond with a statement proposing designers availability, additional fees, changes to delivery dates, and any modification to the Terms and Conditions. Cub3d IT will evaluate each Change Order at its standard rate and charges.

**Major Change:** If Client requests are at or near **within 3 business days** of the time required to produce Deliverables, or the value of the Scope of Services, Cub3d IT shall be entitled to submit a new and separate Proposal to Client for written approval. Cub3d IT shall not begin work on the revised services until a new fully signed revised proposal is given with any additional fees. Cub3d IT Solutions will work closely with Client's project team and management to identify the impact to the overall cost and time for the project.

**Minor Change:** If Client requests are not Major Changes, Client will be billed on a time and materials basis at Cub3d ITs current hourly rate. Such charges shall be in addition to all other amount payable under this Agreement, despite any maximum budget, contract price or final price identified. Cub3d IT may extend or modify any delivery schedule or deadlines in the Agreement as may be required by such changes.

**Acceptance/Rejection:** Client will have **7 business days** to respond in writing accepting or rejecting the new proposal. If Client rejects the proposal, Cub3d IT will not be obligated to perform any services beyond those in the original Agreement.

## Delays

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**Cub3d IT Delays:** Cub3d IT shall use all reasonable efforts to fix the issue and delivery schedule. Cub3d IT may extend the due date for any deliverable.

**Client Delays:** Client shall use all reasonable efforts to provide needed information, materials and approvals. Any delay by Client will result in a day-for-day extension of the due date for all deliverables.

**General Delays:** Any delay caused by conditions beyond the reasonable control of the parties shall not be considered a breach and will result in a day-for-day extension any performance due. Each party shall use reasonable efforts to notify the other party, in writing, of a delay. Conditions beyond the reasonable control of the parties include, but are not limited to, natural disasters, acts of government after the date of agreement, power failure, acts of God, labor disputes, riots, acts of war, terrorism and epidemics.

## Evaluation and Acceptance

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**Testing:** Cub3d IT will test and correct Deliverables using commercially reasonable efforts before providing Deliverables to Client

**Approval Periods:** Client shall, within **1 business days** after receiving each Deliverable, notify Cub3d IT in writing of any failure to comply with the specification of the Project Proposal or of any other objections, corrections or changes required. Cub3d IT shall, within **7 business days** of receiving Client's notification, correct and submit a revised Deliverable to Client. Client shall, within **1 business days** of receiving a revised Deliverable, either approve the corrected version or make further changes. If Client fails to provide approval or comments during any approval

period, those Deliverables will be considered approved and accepted. All objections, corrections and changes shall be subject to the terms and conditions of this Agreement.

## Response

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We support all best efforts, if we can't resolve, we expect to contact the OEM based on current software and hardware agreements at that time. All products must have a valid and legal license's for each use of product(s). We are not held responsible for invalid or illegal licenses or any losses or damages during downtime or uptime. We reserve the right to make any first decisions based on any emergency or security threats without notice, point of contact will be notified with a report in this event. All Client employees are expected to follow this policy and agreement when using our services. By signing this contract agreement you agree to our Service Agreement, services, price, and acknowledge you have received a copy of the Purchase Agreement and will retain the latest version.

## Accreditation and Promotion

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**Accreditation:** A credit line or powered by line suitable to the design of the pages will be used. Client agrees to pay an additional fifty percent (100%) of the total fee, excluding expenses, for failure to include credit line. Cub3d IT reserves the right to include screen shots of the completed work in any portfolios or advertisements. Cub3d IT shall be entitled to place accreditation, as a hyperlink or otherwise, in the form, size and location as incorporated by Cub3d IT in the Deliverables on each page of the Final Deliverables.

**Promotion:** Cub3d IT retains the right to reproduce, publish and display the Deliverables in Cub3d IT's portfolios and websites, in galleries, design periodicals and other media or exhibits for the purposes of recognition of creative excellence or professional advancement, and to be credited with authorship of the Deliverables in connection with such uses.

**Promotional Approval:** Either party, subject to the other's reasonable approval, may describe its role in the Project on its website and in other promotional and marketing materials, and, if not expressly objected to, include a link to the other party's website.

## Confidential Information

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Client's "Confidential Information" includes information that Cub3d IT should reasonably believe to be confidential. Cub3d IT's "Confidential Information" includes the source code of any Cub3d IT Tools. All material considered confidential by either party shall be designated as confidential. Confidential Information shall not be disclosed to third parties and shall only use as needed to perform this Agreement.

Confidential Information shall not include any information that is already known by the recipient, becomes publicly known through no fault of the recipient, or is received from a third party without a restriction on disclosure.



## Relationship of the Parties

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**Independent Contractor:** Cub3d IT is an independent contractor. Designer & Cub3d IT shall determine, in its sole discretion, the manner and means by which the Services are accomplished. No agency, partnership, joint venture, or employee-employer relationship is intended or created by this Agreement. Neither party is authorized to act as agent or bind the other party except as expressly stated in this Agreement. Designer and the work product or Deliverables prepared by Designer shall not be deemed a work for hire as defined under Copyright Law. All rights granted to Client are contractual in nature and are expressly defined by this Agreement.

**Design Agents.** Cub3d IT shall be allowed to use third party's as independent contractors in connection with the Services ("Design Agents"). Cub3d IT shall remain fully responsible for Design Agents' compliance with this Agreement.

**No Exclusivity.** This Agreement does not create an exclusive relationship between the parties. Client is free to engage others to perform services of the same or similar nature to those provided by Cub3d IT, and Cub3d IT shall be entitled to offer and provide services to others, solicit other clients and otherwise advertise the services offered by Cub3d IT.

## Representations and Warranties

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**By Client.** Client represents and warrants to Cub3d IT that: (a) To the best of Client's knowledge, use of the Client Content does not infringe the rights of any third party; (b) Client shall comply with the terms and conditions of any licensing agreements which govern the use of Third Party Materials; (c) Client will obtain all necessary and appropriate rights and licenses to grant license to Cub3d IT to use Third Party Materials.

**By Designer:** Cub3d IT represents and warranty to Client that: (a) Cub3d IT will provide the Services identified in the Agreement in a professional and workmanlike manner; (b) Cub3d IT shall secure all necessary rights, title, and interest in and to the Final Deliverables, including Cub3d IT Tools, sufficient for Cub3d IT to grant the intellectual property rights provided in this Agreement; (c) To the best of Cub3d IT's knowledge, the Deliverables will not violate the rights of any third parties; (d) If Client or third parties modify the Deliverables or use the Deliverables outside of the scope or purpose of this Agreement, all representations and warranties of Cub3d IT shall be void.

EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS AGREEMENT, CUB3D IT MAKES NO WARRANTIES WHATSOEVER. CUB3D IT EXPLICITLY DISCLAIMS ANY OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR COMPLIANCE WITH LAWS OR GOVERNMENT RULES OR REGULATIONS APPLICABLE TO THE PROJECT.

## Indemnification and Liability

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**By Client:** Client shall indemnify Cub3d IT from any and all damages, liabilities, costs, losses, expenses or attorney fees arising out of any claim, demand, or action by a third party arising out of any breach of Client's responsibilities or obligations, representations or warranties under this Agreement. Cub3d IT shall promptly notify Client in writing of any third party claim or suit. Client shall have the right to fully control the defense and any settlement of such claim or suit.

**By Cub3d IT:** In the case of a third party lawsuit or proceeding based on a claim that Deliverables breach the third party's intellectual property rights, and it is determined that such infringement has occurred, Cub3d IT may at Client's expense, replace any infringing content with non-infringing content.

**Limitation of Liability.** THE SERVICES AND THE WORK PRODUCT OF CUB3D IT ARE SOLD "AS IS." IN ALL CIRCUMSTANCES, THE MAXIMUM LIABILITY OF CUB3D IT, ITS DIRECTORS, OFFICERS, EMPLOYEES, DESIGN AGENTS AND AFFILIATES ("CUB3D IT PARTIES"), TO CLIENT FOR DAMAGES FOR ANY AND ALL CAUSES WHATSOEVER, AND CLIENT'S MAXIMUM REMEDY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL BE LIMITED TO THE NET PROFIT OF CUB3D IT. IN

[www.Cub3dit.com](http://www.Cub3dit.com)

PO Box 462, Washington Michigan 48094

[Contact@Cub3dit.com](mailto:Contact@Cub3dit.com)

NO EVENT SHALL CUB3D IT BE LIABLE FOR ANY LOST DATA OR CONTENT, LOST PROFITS, BUSINESS INTERRUPTION OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THE MATERIALS OR THE SERVICES PROVIDED BY CUB3D IT, EVEN IF CUB3D IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## Term and Termination

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**Term:** This agreement shall begin when both parties sign and shall continue until all Services are complete and delivered, or until the Agreement is terminated.

**Termination for Cause:** Either party may terminate this agreement at any time, on 7 days prior written notice if the other party breaches any of its material responsibilities or obligations under this Agreement and fails to cure that breach during that 30 day period.

**Termination for Insolvency:** Either party may terminate this agreement at any time, on written notice to the other party, if the other party ceases to conduct business in its normal course; makes an assignment for the benefit of creditors; is liquidated or otherwise dissolved; becomes insolvent; files a petition in bankruptcy; or a receiver, trustee, or custodian is appointed for it.

**Termination by Mutual Agreement:** This agreement may be terminated by the mutual agreement of the parties.

**Termination Fees:** In the event of termination, Client shall pay Cub3d IT for the Services performed through the date of termination in the amount of a prorated portion of the fees due. Client shall pay all Expenses, Fees, and Additional Costs incurred through the date of termination.

**Intellectual Property:** If Client terminates and on full payment of compensation, Cub3d IT grants Client right and title as provided by this Agreement with respect to those Deliverables provided and accepted by Client as of the date of termination.

**Confidential Information:** On expiration or termination of this Agreement: (a) each party shall return or, at the disclosing party's request, destroy the Confidential Information of the other party, and (b) all rights and obligations regarding Confidential Information shall survive.

**Downtime:** Cub3d IT Solutions is not responsible for any downtime that may occur on our servers, or any losses that may occur.

**Domains:** All domain names are billed annually at a rate per year. We reserve the right to sell or release any domain names that are not paid for by due date, to anyone after any agreements with the domain name is expired.

**Cancellation Fees:** In the event of Cancellation, Cub3d IT will be compensated for services performed through the date of cancellation in the amount of a prorated portion of the fees due. Upon cancellation all rights to the website revert to Cub3d IT and all original art must be returned, including mockups, comps, or other preliminary materials.

## Rights to Final Art

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**License:** Cub3d IT grants to Client a non-exclusive, perpetual and worldwide license to use and display the Final Deliverables in accordance with this Agreement. The rights granted to Client are for use of the Final Deliverables in its original form only. Client may not change, create derivative works or extract portions of the Final Deliverables. All e-commerce and content management software licensing is retained and owned by Cub3dIT Solutions. This license does not transfer ownership or when site is moved off our hosting.

**Liquidation for unlicensed use:** Additional use of any Deliverables by Client outside the scope of the license granted above requires additional fees. Cub3d IT shall be entitled to further compensation equal to 25% percent of

the total original Project fee unless otherwise agreed in writing by both parties. In the event of non-payment, Cub3d IT shall be entitled to pursue all remedies under law and equity.

## Rights to Deliverables

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**Preliminary Works.** Cub3d IT retains all rights in and to all Preliminary Works. Client shall return all Preliminary Works to Cub3d IT within thirty (15) days of completion of the Services.

**Cub3d IT Tools.** All Cub3d IT Tools are and shall remain the exclusive property of Cub3d IT. Cub3d IT grants Client a nonexclusive, nontransferable, perpetual, worldwide license to use the Cub3d IT Tools solely to the extent necessary with the Final Deliverables for the Project.

## Enhancements

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**Alterations.** Alteration of any Deliverable is prohibited without the express permission of Cub3d IT. Cub3d IT will be given the first opportunity to make the required alterations. Unauthorized alterations shall constitute additional use and will be billed accordingly.

## Dispute Resolution

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**Negotiation:** Parties agree to attempt to resolve any dispute by negotiation between the parties.

**Arbitration/Mediation:** If parties are unable to resolve the dispute by negotiation, either party may start mediation and/or binding arbitration in a forum mutually agreed to by the parties.

**Litigation:** In all other circumstances, the parties specifically consent to the local, state, and federal courts located in the state of *Michigan*. The parties waive any jurisdictional or venue defenses available to them and further consent to service of process by mail.

**Attorney Fees:** The prevailing party shall be entitled to recover its attorneys' fees and costs in any dispute resolved by binding arbitration or litigation.

## Acceptance

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By using our services and website the information and terms in this Pay Per Incident Agreement you agree to.

Cub3d IT Services is maintained by Litsair Holdings LLC.