

Consulting Agreement between BERRY DIGITAL SOLUTIONS LLC, West Liberty, OH

“Berry Digital Solutions”

and “the Client”

### **BACKGROUND:**

- a. The Client is of the opinion that Berry Digital Solutions has the necessary qualifications, experience, and abilities to provide services to the Client.
- b. Berry Digital Solutions is agreeable to providing such services to the Client on the terms and conditions set out in this agreement.

**IN CONSIDERATION OF** the matters described above and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the Client and Berry Digital Solutions agree as follows:

### Services Provided

1. The Client hereby agrees to engage Berry Digital Solutions to provide the Client with services consisting of but not limited to
  - Business Services. These services may include website development, social media development, Search Engine Optimization activities, business analysis, social networking, advertising and marketing opportunities, logo and custom graphic assets, and digital property management.
2. The Services will also include and other tasks that the Client and Berry Digital Solutions agree upon. Berry Digital Solutions hereby agrees to provide such services.

### Term of Agreement

3. The term of this Agreement (“the Term”) will begin on the date of payment and will remain in full force for 1 year (or month-to-month for auto-debited monthly Clients who’s auto-debit payments are on time without issue on the 1<sup>st</sup> of each month), subject to earlier termination provided in this Agreement. The Term of this Agreement may be extended by mutual written agreement between the Client and Berry Digital Solutions.
4. In the event either the Client or Berry Digital Solutions wishes to terminate the agreement, that party will be required to provide 30 days written notice to the other party.
5. In the event that a Client’s account is not in good standing due to late payments, services may be withheld at Berry Digital Solutions’ discretion until payments are caught up and the Client’s account is back in good standing.
6. If the Client fails to provide 30 days written notice to terminate Berry Digital Solutions services and services continue to be provided, the Client is responsible for payment of those services at the agreed upon sum.

### Performance

7. The Client and Berry Digital Solutions agree to do everything necessary to ensure the terms of this Agreement take effect.
8. Berry Digital Solutions often works with Independent Contractors. Due to the nature of the business model, Berry Digital Solutions is not set up to support on call services.

Within the duration of this Contract Berry Digital Solutions will make every effort to reply to inquiries within 48 hours except where the Client has been previously notified of a period of limited availability. Berry Digital Solutions will respond in good faith but cannot guarantee any specific action within a given time frame.

#### Confidentiality

9. Confidential Information refers to any data or information relating to the business of the Client which would reasonably be considered to be proprietary to the Client including, but not limited to, accounting records, business processes, and client records and is not generally known in to cause harm to the Client.
10. Berry Digital Solutions agrees that they will not disclose, divulge, reveal, report for any purpose, any confidential information which Berry Digital Solutions has obtained, except as authorized by the client. This obligation will end upon the termination of this agreement.

#### Ownership of Materials and Intellectual Property

11. All intellectual property and related material including any works in progress that is developed or deployed under this agreement, will be the sole property of the Client. The use of intellectual property will not be restricted in any way.
12. Berry Digital Solutions may not use any intellectual property for any purpose other than what is contracted for in this Agreement
13. All digital content posted online is owned and represented by the client. Any copyright infringement or inappropriate content is of the client's responsibility. All website and social media content is approved by the client unless otherwise stated.

#### Return of Property

14. Upon the expiration or termination of this Agreement, Berry Digital Solutions will return to the Client all property, materials, documentation, records, or any intellectual property to the Client as long as the Client's account is in good standing and there remains no outstanding balance for services provided.

#### Capacity/Independent Contractor

15. In providing service under this Agreement, it is expressly agreed that Berry Digital Solutions is acting as an independent contractor and not as an employee. Berry Digital Solutions and the Client acknowledge that this Agreement does not create a partnership or a joint venture between them, and is strictly a contract for service.

#### Indemnification

16. Each party to this Agreement will indemnify and hold harmless the other party, as permitted by law, from and against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or amount whatsoever to the extent that on foregoing is directly or proximately caused by the negligent or willful acts or omissions by the indemnifying party or its agents or representatives and which result directly from or arise out of the indemnifying party's participation of this Agreement. The indemnification will survive the expiration or termination of this Agreement.

### Limitation of Liability

17. It is understood and agreed that Berry Digital Solutions will not be liable to the Client, or any agent or representative of the Client, for a mistake in judgement or for any omission done in good faith and believed to be within the scope of authority conferred or implied by this Agreement.

### Dependencies

18. In the event that any aspect of this Contract is dependent on a separate third party or the Client's in house team, the quality and punctuality of the Finished Product(s) may be subject to said party's ability to meet the required time lines and/or level of quality. Berry Digital Solutions is not responsible for any delay or defect caused by separate third party or the Client's in house teams.

### Hosting

19. Berry Digital Solutions includes Hosting services including temporary internal development environments. The Client is responsible for choosing, paying for, and maintaining any required Domain solutions and associated services. As a courtesy, Berry Digital Solutions may offer suggestions, however, Berry Digital Solutions is NOT responsible for down time, poor performance, or loss of data caused by the Hosting Provider. Additionally, Berry Digital Solutions is not responsible for any bug caused by changes on the Host after the Acceptance of this Contract, including but not limited to updates to operating system, compile systems, code libraries and languages, or any changes resulting from security violations.

### Backups

20. Berry Digital Solutions maintains internal backups of active project code and design files. This backup system is not intended as a solution for The Client, rather as a code archive through the duration of this Contract. While the Berry Digital Solutions backup system is fully redundant, it is not guaranteed and does not support any content produced by the Client. The Client is solely responsible for the Backup and Restoration of the Finished Product(s) and any associated data.

### Security

21. Although Berry Digital Solutions makes every effort to provide secure Finished Product(s), due to the nature of rapidly advancing technology, Berry Digital Solutions can in no way guaranty that the Finished Product(s) will not be subject security breaches. Berry Digital Solutions recommends the use of strong passwords and the observance of standard security practices. In order to minimize the chances of security violations, systems should be updated often. The Client is solely responsible for tracking software updates. Any updates during the life of or after the expiration of the Contract can be negotiated as an addendum to this Contract or as an additional Contract.

### Entire Agreement

22. It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressly provided in this Agreement.

Titles/Heading

23. The titles and headings are inserted for the convenience of the Client and Berry Digital Solutions only and are not to be considered when interpreting this Agreement

Gender

24. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

Governing Law

25. All suits and proceedings under this Agreement will be construed in accordance with and governed by the laws of the state of Ohio, without regard for jurisdiction in which any action or proceeding may be instituted.