



**318, Inc.**  
 830 Colorado Avenue  
 Santa Monica, CA 90401  
 310 581 9500 voice  
 310 581 9515 fax

318.com

# Terms of Service Agreement

June 2007

Thank you for engaging 318, Inc. ("318") as your technology consulting partner. We are very pleased to have you as a client. Experience has shown us that our relationship is enhanced when there is a mutual understanding about our fees, billing procedures and other important aspects of our professional services early in the process. This will serve as our agreement with you with regard to the below.

## Fees

318 is a professional services business for which we bill for our time on an hourly basis. All work will be billed at our standard hourly billing rates in effect at the time the work is performed. Currently our hourly rates vary based on the consultant performing the services and the timing of such services.

In some cases, our services can be arranged to be provided on a fixed-fee or a retainer basis. Such arrangements are entered into in advance and only by written agreement. Please contact our office if such an arrangement is desired. We have several pre-packaged cost effective plans to choose from, including our innovative **Rollover Retainers**, where unused hours in certain circumstances carry forward to the next month and in which certain discounts are available if purchased in advance in bulk.

All work performed (i) before 8:30am and after 6pm weekdays, (ii) on weekends, and (iii) on holidays is considered overtime. Weekday and Saturday overtime is billed at 150% of our standard rate; Sunday and Holiday overtime is billed at 200% of our standard rate.

## Hardware & Software

As a value to our clients, we have partnered with several computer retailers, manufacturers, and wholesalers to save you money on many items and volume licensing. Occasionally, our clients request that 318 provides such goods directly to them to save money on software volume licensing or to ensure accuracy of a complex deployments. For these special circumstances, upfront payment for hardware and software purchases is required when an estimate/quote is approved.

## Costs, Trip Charges, & Disbursements

We customarily charge a minimum number of hours for each onsite visit (the "Onsite Minimum") based on a number of factors, such as the location of your office. We also reserve the right to add a trip charge for jobs more than 20 miles from our offices in Santa Monica. 318 endeavors to keep several technology consultants on staff for remote resolution of support issues; which eliminates Onsite Minimums and enables the most rapid response possible using Remote Access Support technologies.

In addition to our standard hourly rate, out-of pocket expenses and disbursements related to the service will be separately billed.

There is a charge if you cancel an appointment within two (2) business-hours of the scheduled time. Our cancellation fee is equal to the greater of the scheduled billable hours for each day cancelled or the Onsite Minimum.

## Remote Support

We encourage you to use our remote support service whenever possible. With remote support, we can provide you with nearly immediate service and we do not then charge an Onsite Minimum.

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## Billing Procedures & Payment of Fees

For your convenience, 318 accepts all major credit cards as well as checks-by-fax. Our accounting department will work with you to setup payment according to your preference. All work will be billed to you at least once a month.

If you fail to make a payment within thirty (30) days of the invoice due date, 318 may charge a late fee of 1% on the outstanding balance per month. In the event of any non-payment, 318 is entitled to recover from you its costs of collection, including attorney fees.

## Data Backup

We urge you to have a routine data backup system. If you would like 318 to design and implement such a system, please contact us. We strongly recommend that data be backed-up prior to work being done on your computer system. We are available to assist with data recovery at our customary rates for the service. We are not responsible for any loss associated with your loss of data.

## Employee Hiring Discouraged

If during our engagement with you or the 180 day period following the last billable work performed by 318, you or any of your related companies hire or retain as an independent consultant, whether directly or indirectly, on a full time, part time or temporary basis, a current or former employee of 318 (a "Protected Person"), in addition to its other rights and remedies, 318 shall be entitled to a fee equal to 40% of such Protected Person's annual base salary or independent contractor fee and any guaranteed bonus with 318 (the "Conversion Fee"). If any such Protected Person is employed on a part time basis by you, the Conversion Fee shall be based upon the full time equivalent salary or independent contractor fee. In no event will a Conversion Fee be less than \$1,000 and there will be no refund of any Conversion Fee or any obligation to search for a replacement candidate if a Protected Person is subsequently terminated or resigns from your business. The Conversion Fee is not a penalty but rather a reasonable estimate of damages to compensate 318 for the valuable time and money 318 invests in attracting, hiring, and training its team of technology consultants.

## Your Confidentiality

We are committed to your privacy and the confidentiality of your information. All of the individuals that would be asked by 318 to perform services for you have executed an agreement by which they covenant to keep confidential your information and we will in good faith consider executing any reasonable nondisclosure agreement you provide us as a condition of performing services for you.

## Software Licensing

We will not knowingly install unlicensed software.

Each software title that is purchased and/or installed has a license agreement. The license may be for one (1) machine or may be for many machines. You are solely responsible for the adherence to the licensing rules. We will be pleased to load any software on any machine that you direct with the understanding that you know and properly adhere to the licensing rules for that software program.

If you request in writing, 318 can perform a complete license review of your entire company.

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## Termination of Services

We believe that if the relationship isn't working, either of us has the right to terminate our further services at any time on notice to the other. In the event of any termination, you remain liable, even after termination, for any fees and costs incurred or accrued prior to our termination.

## Miscellaneous

Occasionally, these standard Terms of Service may be modified and the modified Terms of Service will be provided to you. Of course, if you have any questions or comments on a revised Terms of Service, please contact us in writing.

If either party chooses not to enforce any provision(s) of these Terms of Service, it shall not be construed as a waiver or limitation of that party's right to later enforce and compel strict compliance with every provision of these Terms of Service.

The cumulative liability of 318 to you for all claims relating to the services rendered hereunder, in contract, tort, or otherwise, shall not exceed the amount paid to 318 for services out of which the claim arose within the ninety (90) day period immediately preceding 318's receipt of written notification of such claim from you. In no event shall 318 be liable to you for any consequential, indirect, special, or incidental damages, or damages for loss of profits, revenue, data, or use, even if 318 has been advised of the possibility of such potential loss or damage. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the success or effectiveness of other remedies. This limitation of liability allocates the risks between the parties to this agreement and the pricing reflects this allocation to which the parties have agreed.

If any provision of this Agreement is held invalid or unenforceable for any reason, the remaining provisions continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited. The laws of the State of California shall govern these Terms of Service.

We look forward to a long and mutually rewarding relationship.

Best Regards,

Kevin Klein,  
 President, 318, Inc.

Acknowledged and agreed to by **Belief**

\_\_\_\_\_  
 Client Signature

\_\_\_\_\_  
 Print Name

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date

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