



**PLEASE READ THIS AGREEMENT CAREFULLY.**

**USE OF F&S DIGITAL SERVICES CREATES A CONTRACT BETWEEN CUSTOMER AND COMPANY, CONSISTING OF THE ORDER, THE APPLICABLE SERVICE DESCRIPTION AND THIS AGREEMENT AND YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT AND ALL TERMS AND CONDITIONS INCORPORATED BY REFERENCE IN THIS AGREEMENT, INCLUDING COMPANY'S USAGE POLICIES. YOUR USE OF THE SERVICES CONSTITUTES ACCEPTANCE OF THIS AGREEMENT. YOUR AGREEMENT TO THE TERMS HEREOF ALSO CONSTITUTES YOUR AGREEMENT TO THE USER AGREEMENT AND OTHER "TERMS OF SERVICE"**

#### **RECITALS**

- A. F&S is a technology firm which helps clients attain a variety of digital solutions ranging from website and technology design, development, implementation, to hosting and providing event services for clients.
- B. The Client has requested products and/or services, as outlined below, from F&S and desires to engage F&S as set forth in this Agreement.

#### **AGREEMENT**

In consideration for the mutual promises set forth herein, the parties hereby agree as follows:

##### **1. F&S Services.**

1.1 F&S will provide the following services to Client, to commence on the day of first payment ("start date"). The Client elects to retain F&S for Hosting, Maintenance, or Management services as identified below:

- Hosting Package.
- Maintenance Package.
- Management Package.

## **2. Client Compensation.**

2.1 The Client shall pay F&S an engagement fee upon execution of the Agreement, for the initial one (1) month(s) of services (“engagement period”).

2.2 In addition to the engagement fee, the Client shall pay the sum of their monthly cost, by the day of each month in which the invoice is due, on a month-to-month basis, beginning on the first day, that is, the first day of the subscription following the engagement period, and continuing in perpetuity. All payments are due on the invoiced date the services are rendered.

2.3 If any payment, whether the engagement fee, or any additional fees are not paid within five (5) days of their due date, there shall be a one-time late fee of \$ 15.00, for each missed payment. If payment is not made within 30 days after the five (5) day grace period expires, then interest in the amount of 6% per annum will begin to accrue on any unpaid balances.

3. **General Terms and Conditions for Hosting, Maintenance, and Management.** The general terms and conditions set forth in “Appendix A” are made a part of and incorporated by reference into this Agreement.

## **Appendix A – General Terms and Conditions for Hosting, Maintenance, and Management**

1. **Good Faith Cooperation.** The Client shall cooperate with F&S in good faith. The Client shall promptly return telephone calls, emails, and requests for information, including providing all relevant information in the possession of the Client. The Client shall be available for teleconferences or in-person conferences with representatives of F&S upon reasonable notice from F&S. Additionally, the Client shall promptly pay invoices when presented and due.

Client agrees to perform all tasks assigned to Client as set forth in this Agreement or as requested by F&S to complete the services. Client agrees to provide all assistance and cooperation to F&S in order to complete the services ordered in a timely and efficient manner. If any failure or delay is caused by Client, then: (i) all of F&S’s time-frames, milestones, and/or deadlines shall be extended as necessary (including, but not limited to, the project completion date); and (ii) Client shall continue to make timely payments to F&S as set forth in this Agreement as if all time frames, schedules, or deadlines had been completed by F&S. Unless otherwise agreed, Client shall be responsible for initially populating any databases, as well as providing all content for Client’s requested service.

2. Change Orders. Any modifications to F&S services as described in Section 1 of the Agreement will require execution of a written change order by both parties to this Agreement (a “Change Order”), which shall substantially conform to the format of the document attached hereto as Appendix B. Each Change Order shall be deemed to be an amendment to and will become part of this Agreement.

This Agreement constitutes the entire understanding of the parties, and revokes and supersedes all prior agreements between the parties and is intended as a final expression of the parties’ Agreement. It shall not be modified or amended except through Change Orders. This Agreement, as amended by any Change Orders, shall take precedence over any other documents which may conflict with this Agreement.

3. Non-Solicitation. Unless otherwise mutually agreed to by the parties in writing, Client agrees not to hire, retain, or seek to retain any current and/or former employee, consultant, agent, or other personnel of F&S during the term of this Agreement and for a period of twelve (12) consecutive months thereafter.
4. Publicity. Unless otherwise mutually agreed, F&S may disclose in general terms its role in providing services to Client, and Client can include mention of F&S as its service provider in any press release or public announcement.
5. Expenses. Client acknowledges that it will reimburse F&S for any reasonable out-of-pocket travel, hotel, and meal expenses which F&S might incur in connection with providing services to Client. All expenses will be pre-approved by Client in writing prior to their expenditure.
6. Definitions of Packages.

6.1 **Hosting Package** (What’s included).

F&S provides cloud computing for on-demand delivery of IT resources over the Internet with pay-as-you-go pricing, billed monthly. Instead of buying, owning, and maintaining physical data centers and servers, you can access technology services, such as computing power, storage, and databases, on an as-needed basis from one of F&S’s cloud providers. Hosting from F&S provides Infrastructure as a Service (IaaS) containing the basic building blocks for cloud computing. Providing access to networking features, servers (virtual or on dedicated hardware), and data storage space.

6.1.1 **Bound by Third-Party Terms & Acceptable Use Policies.**

PLEASE KEEP IN MIND THAT SOME OF THE CONTENT THAT F&S MAKES AVAILABLE TO YOU THROUGH F&S SERVICES MAY ORIGINATE FROM THIRD PARTY CLOUD SERVICES AND APPLICATIONS. ALL SUCH THIRD PARTY CONTENT IS PROVIDED TO CLIENT “AS IS.” AND CLIENT’S USE THEREOF MAY BE SUBJECT TO CHANGE AND/OR REMOVAL AT ANY TIME.

THIS IS BEYOND THE CONTROL OF F&S, AND F&S SHALL UNDER NO CIRCUMSTANCES WHATSOEVER ACCEPT LIABILITY RESULTING FROM CLIENT'S USE OF ANY SUCH THIRD PARTY SERVICES AND/OR CONTENT. BOTH THIRD-PARTY AND F&S RESERVE THE RIGHT TO INTERRUPT ACCESS TO THE SERVICES TO PERFORM REGULAR AND EMERGENCY MAINTENANCE AS-NEEDED WITH AND WITHOUT PRIOR NOTICE.

6.1.2 Service Line Agreement (SLA).

F&S shall offer compensation to Client for all unscheduled interruptions (excluding emergencies) in the provision of the Service in accordance with the underlying policy.

6.1.3 Service Guarantee.

F&S will guarantee 100% server and network availability to Client. Service will be deemed available if F&S's servers are available and responding to network queries properly. For all unscheduled interruptions in the provision of the Services, which are due to hardware, operating system, or telecommunications failures that last longer than one (1) minute, F&S shall offer compensation to the Client.

6.1.4 Scheduled Interruptions.

F&S will notify the Client by e-mail about scheduled interruptions at least 24 hours in advance, with the exception of important security updates and patches which F&S may deploy without prior notice.

6.1.5 Error Notifications.

In case of an interruption in the Services, Client has to notify F&S by e-mail to hello@fsdigitalagency.com or through F&S's assigned account representative. The interruption is deemed to begin when the failure starts to affect the Client's use of the Services, and to end when the failure has been corrected. F&S will notify the Client about the correction of the failure.

6.1.6 Payment of Compensation.

When a failure in the Services has been corrected, F&S will apply Client compensation towards the following month's bill. The compensation will be paid to the Client's account in the form of a credit and may not be exchanged for cash or other forms of payment.

6.1.7 Amount of Compensation.

The amount of compensation will be 1.5% of the monthly hosting bill amount per minute for the period of the interruption of the Service. The maximum amount of compensation for an individual interruption is 100% of hosting charges during the 30 calendar days preceding the interruption.

6.1.8 Sole Remedy.

The above-mentioned payment of compensation will be the sole remedy of the Client for interruptions or other failures in the Services. In case of a disagreement over the amount of the compensation payable to the Client, F&S's decision on the issue will be binding and final.

#### 6.1.9 Exemptions from Service Guarantee.

The following situations will be exempt from F&S's service guarantee:

1. Scheduled interruptions;
2. Failures caused by errors in third-party software utilized;
3. Failures in products or services which are not included in the Agreement;
4. Failures caused by the Client's actions contrary to user instructions or resulting from the Client's operating systems or application software;
5. Violations of Cloud Vendor's acceptable use policy;
6. Failures due to hostile actions by third parties such as denial-of-service attacks;
7. Interruptions resulting from law and public authority enforced activities;
8. Payment failure; and
9. No compensation will be payable to the Client during a free-of-charge trial period or temporary usage (i.e. interim landing page).

#### 6.2 **Maintenance Package** (What's included).

F&S will provide a Platform as a Service (PaaS) that removes the need for Client to manage underlying infrastructure (hardware, telecommunications, and operating systems) required to make Client software available over the Internet.

##### 6.2.1 Maintenance Inclusions.

The maintenance package includes: resource procurement, capacity planning, operating-system level software maintenance, maintenance of F&S developed software, security/network patching, and support for infrastructure questions/concerns.

Maintenance of F&S developed software is limited to critical updates that negatively impact the usability of the underlying code, such as: bug fixes, security patches, configuration issues, or third-party integration failures. Client must notify F&S by e-mail to [hello@fsdigitalagency.com](mailto:hello@fsdigitalagency.com) or through the Client's assigned account representative. Maintenance times will vary, with most being completed within 72 hours.

##### 6.2.2 Maintenance Exclusions:

The maintenance package excludes: support for third-party software/services, support for software/services not developed by F&S, updates to third-party software, hardware/software configurations of servers/services not managed by F&S. Anything not expressly included in provision 6.2.1 is excluded from the scope of the maintenance package.

### 6.3 **Management Package** (what's included):

The management package grants Client access to F&S staffing to execute changes that directly impact the software or user experience.

#### 6.3.1 **Management Inclusions.**

The management package includes: link, text, and graphic updates (client provided), plugin updates (if stable), as well as support for software related issues, questions, and concerns.

#### 6.3.2 **Additional Options.**

Client can opt to include add-ons including but not limited to: layout changes, plugin implementation(s), additional security consulting/audits, on-demand training sessions and help-desk support. Specialized services not listed can be provided by request, and, if opted for, will be noted in the contract. If such services are not specifically noted in the contract, they can be added for an additional fee.

On-demand training sessions can be held virtually, or in-person if within 30 miles of F&S's headquarters in Ventnor, NJ at no additional cost. Client must provide at least fourteen (14) days notice for in-person training, and seven (7) days notice for virtual training.

#### 6.3.3 **Management Exclusions.**

The management package excludes: designing/developing additional functionality, changes that impact functionality, management of third-party integrations, creation of graphics/text/videos, marketing/SEO consultation. Any service not expressly included in section 6.3.1 or in the contract, for an additional fee, pursuant to section 6.3.2 is excluded.

7. **Disclaimer of All Other Warranties.** F&S DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN ITS SERVICES OR PRODUCTS PROVIDED UNDER THIS AGREEMENT WILL MEET THE CLIENT'S REQUIREMENTS OR THAT THE OPERATION WILL BE UNINTERRUPTED OR ERROR-FREE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE PRODUCT IS WITH CLIENT EXCEPT AS OTHERWISE SPECIFIED IN THIS AGREEMENT.

F&S PROVIDES ITS SERVICES AND PRODUCTS "AS IS" AND WITHOUT WARRANTY OF ANY KIND. THE PARTIES AGREE THAT (A) THE LIMITED WARRANTIES SET FORTH IN THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES PROVIDED BY F&S, AND (B) F&S DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. F&S MAKES NO WARRANTY OF ANY KIND,

WHETHER EXPRESS OR IMPLIED, WITH REGARD TO ANY THIRD- PARTY PRODUCTS/SERVICES, THIRD-PARTY CONTENT OR ANY SOFTWARE, EQUIPMENT, OR HARDWARE OBTAINED FROM THIRD-PARTIES.

8. Termination of Agreement. In the event of a material breach of this Agreement during the engagement period, the party shall provide written notice to the other of the material breach and shall give the other thirty (30) days to cure the material breach from the date of receipt of such notice. If such breach is not cured within thirty (30) days, the contract may be terminated.

Notwithstanding the preceding, this Agreement may be terminated by F&S, without having to give Client an opportunity to cure, and immediately if: (i) Client fails to pay any fees hereunder, or (ii) if Client fails to cooperate with F&S or hinders F&S's ability to perform the services hereunder.

After the engagement period, either party may cancel this Agreement with thirty (30) days written notice to the other, for any or no reason at all. Client shall pay fees for all services rendered.

After Client is sixty (60) days late on any payment owed to F&S, Client understands and agrees that F&S will take down Client's site, and, after Client is late ninety (90) days on any payment, F&S will delete all client data, with no chance of recovering it. Client agrees to hold F&S harmless for any deleted, lost, or unrecoverable data which is inaccessible after ninety (90) days of non-payment, and agrees to assume all losses associated with same. Any suspension or termination of services will not relieve Client from paying past due fees plus late fees, interest, or any other costs or fees available under the terms of this Agreement.

9. Limitation of Liability. Neither party shall have any liability to the other with respect to its obligations under this Agreement or otherwise for special, incidental, consequential, punitive or exemplary damages, even if that party has been advised of the possibility of such damages. In no event shall F&S's liability for any reason and upon any cause of action arising from this Agreement, or otherwise, exceed the amounts paid to F&S by the Client under this Agreement.
10. Third-Party Issues. Client understands and agrees that third-party issues, including (but not limited to): outages, security breaches, Client cancellations from third party hosts, and other third-party services are beyond the control of F&S. Client agrees that F&S is not responsible or liable for any such third-party issues, and agrees not to bring any action against F&S for any issues that arise due to third parties that are beyond the control of F&S.
11. Client Representations. Client represents and warrants that client has permission, authority, or license to use all information, pictures, photographs, illustrations, audio

clips, video clips, text, data, content, copies, components, writings, graphics, code, or anything else whatsoever which Client requests or provides to F&S to utilize on behalf of Client (hereafter “Client Materials”). If Client provides or requests F&S use any Client Materials, Client warrants that it has the right and/or authorization to utilize such materials, that such materials do not infringe upon anyone else’s intellectual property rights, and Client agrees to indemnify and hold F&S harmless for utilizing any materials for which it does not have rights to use. Client shall indemnify, defend, protect, and hold harmless F&S from and against any and all damages, costs, and liabilities, including but not limited to, all attorneys’ fees and costs, that may be incurred by F&S in connection with its performance of services with respect to this Agreement, including, but not limited, to any claims arising from the Client’s violations of this provision.

12. Relationship Between the Parties. This Agreement does not constitute and shall not be construed as constituting a partnership or joint venture among or between F&S and the Client, or any of the signatories hereto. F&S is an independent contractor.

13. Dispute Resolution, Jurisdiction, Venue, and Remedies.

13.1 Mediation. Except where equitable remedies are available or for matters that may be asserted in a New Jersey small claims court, the parties agree to attempt to resolve any disputes under this Agreement in good faith through mediation with a mutually acceptable mediator and shall equally divide the costs of such mediation. Mediation may be initiated by either party by making a written demand for mediation on the other party. Mediation must be held within fifteen (15) days of the non-initiating party’s receipt of such demand at a time mutually acceptable to the parties.

13.2 Arbitration. Except where equitable remedies are available or for matters that may be asserted in a New Jersey small claims court, any controversy or claim (“Controversy”) arising out of or relating to this Agreement or the breach thereof which cannot be resolved or concluded within thirty (30) days of the non-initiating party’s receipt of such demand for mediation, shall be settled by arbitration in Atlantic County (“Applicable County”) in accordance with the rules of the American Arbitration Association (“AAA”). Client can obtain the AAA Rules from the AAA by visiting its website ([www.adr.org](http://www.adr.org)) or calling its toll-free number (1-800-778-7879). If there is a conflict between this Arbitration Provision and the rest of this Agreement, this Arbitration Provision shall govern. If there is a conflict between this Arbitration Provision and the AAA Rules, this Arbitration Provision shall govern. If the AAA will not administer a proceeding under this Arbitration Provision as written, Client and F&S shall agree on a substitute arbitration organization. If Client and F&S cannot agree, we shall mutually petition a court of appropriate jurisdiction to appoint an arbitration organization that will administer a proceeding under this Arbitration Provision, as written, applying the AAA Rules. A single arbitrator will resolve the Controversy. Judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Such Arbitration may



be initiated by either party by making a written demand for arbitration on the other party within ten (10) days of the expiration of the foregoing thirty (30) day period. The parties agree that either party must assert any Controversy within six (6) months of the date which such Controversy occurred, and in the event that either party fails to assert such Controversy within such period, they shall be barred from raising such Controversy, and shall waive all of their rights relating thereto, notwithstanding the applicable statute of limitations.

13.3 Small Claims. Notwithstanding the preceding, the parties agree that any claims that may be brought in small claims court in New Jersey, may be so brought in small claims without proceeding to mediation or arbitration first, and such claims may be brought in small claims at any time within the applicable statute of limitations and are not limited to the six-month rule for Controversies subject to Arbitration in the preceding provisions.

13.4 Jurisdiction and Governing Law. For any matters not subject to Arbitration under the preceding provisions, the parties consent to the jurisdiction of the courts of the State of New Jersey. The parties consent to venue in Atlantic County, New Jersey. Such claims may only be brought in New Jersey courts.

13.5 Remedies. If any action is brought for the enforcement of this Agreement whether through Arbitration, Small Claims, or otherwise, or because of an alleged dispute, breach, or default in connection with any of the provisions of this Agreement, the successful or prevailing party will be entitled to recover its attorneys' fees and costs, as well as all other costs that it incurred in connection with the action, in addition to any other relief which the prevailing party may be entitled, subject to the limitations of liability identified in paragraph 9 of this Agreement.

13.6 Waiver of Jury Trial. WHETHER ANY DISPUTE OR CONTROVERSY IS RESOLVED IN SMALL CLAIMS COURT OR IN ARBITRATION, BOTH CLIENT AND F&S UNDERSTAND THAT THEY ARE AND CONSENT TO WAIVING THE RIGHT TO A TRIAL BY JURY IN RELATION TO THE DISPUTE OR CONTROVERSY.

14. Entire Agreement and Governing Law. This Agreement comprises the entire Agreement between the parties. This Agreement can be executed in counterparts delivered by email, electronic means, or fax and all such email, electronic, and faxed counterparts, collectively, shall be deemed, for all purposes, to constitute one original executed Agreement. This Agreement shall be governed by, interpreted under, construed and enforced in accordance with the laws of New Jersey, excluding conflict of laws principles that might cause application of laws of any other jurisdiction.

15. Force Majeure. Neither party will be liable for or will be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required

by this Agreement as a result of any causes or conditions that are beyond such party's reasonable control and that such Party is unable to overcome through the exercise of commercially reasonable diligence. If any force majeure event occurs, the affected Party will give prompt written notice to the other Party and will use commercially reasonable efforts to minimize the impact of the event. Such events include, but are not limited to, delays in the provision of services or products caused by pandemics, natural disasters, acts of god, or declarations of war.

16. Execution. Each party to this Agreement represents and warrants to the other party that the execution of this Agreement and the performance of such party's obligations hereunder have been duly authorized and that this Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.
17. Assignment and Binding Effect. The provisions of the Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, administrators, successors and assigns. However, Client may not assign this Agreement or the rights and obligations thereunder to any third party without the prior express written approval of F&S. F&S reserves the right to assign subcontractors as needed to ensure on-time completion of the promised services to Client.
18. Waiver. No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same or other provisions of this Agreement.
19. Severability. If any term, clause, or provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement.
20. Notices. All notices under this Agreement shall be sent to the addresses contained in this Agreement, or by email to the Client or the Client's assigned account representative's email address. F&S and Client agree to promptly notify each other in the event of a change of address or email address.