



# THE ANATOMY OF ...

# A CONTRACT

IEEE-CNSV

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# Why Contracts Matter

- ▶ You already have one
- ▶ Love and money
- ▶ Focus and front-loading problem identification
- ▶ Make projects work better
- ▶ It's the economy, stupid. *(James Carville, 1992)*
- ▶ Proof to a stranger

# What is a Contract?





# A Contract is just a story about what is going to happen.

THIS CONTRACTOR SERVICES AGREEMENT, including all addenda referred to herein (collectively, the "Agreement"), is made and entered into as of the later of the two dates set forth in the signature blocks below (the "Effective Date") by and between BigCo Corporation, which has a place of business at Big Industrial Campus, Sillycon Valley, CA ("BigCo"), and

\_\_\_\_\_, which has a place of business at \_\_\_\_\_ ("Contractor").

In consideration of the mutual promises and covenants set forth herein, and intending to be legally bound, the parties hereto agree as follows:

## SCOPE OF SERVICES

The services to be performed by Contractor (the "Services") shall be described in one or more statements of work (each, a "Statement of Work") which shall be attached hereto and in the form of **Addendum A**. Revisions to a Statement of Work shall require written agreement of the parties, in the form of an Amended Statement of Work.

The provisions of this Agreement shall control over any conflicting provisions in a Statement of Work, except to the extent that a provision of this Agreement is expressly superseded therein.

Once upon a time there was a little girl named Goldilocks who wanted to visit her grandmother. Her father said, take the main road. Don't go through the woods because if you do bad things can happen to you. But if you take the main road you will get to your grandmother's home in time for supper.

But goldilocks thought the main road was dull and not very pretty at all. So she decided to cut across the woods. Once in the woods Goldilocks found that it got dark very very quickly, and soon she was very very lost, and very very hungry and very very tired.

# EXPECTATIONS

# MARKETING

# ART



Free  
can soda  
with orders  
over  
\$100.00

# THE BELCHING DRAGON

50 lbs.  
white rice  
with every  
order



## SOUPS

燒大蝦仁	Dropped Egg Soup	1.75
鴨大蝦仁	★ One Ton Soup	1.75
燒蝦仁	Hot & Scalding Soup	2.25
保蝦仁	Ten Ingredients Water	3.25
鼓蝦仁	Sweet and Salmonella Soup	2.95
會心仁	★ Chinese Fire Drill Soup	2.50
蘭蝦仁	★ Happy Bacteria Cup	2.50



## APPETIZERS

須蝦仁	Steam-Cleaned Dumplings	3.95
蘭大蝦仁	★ Burn Your Tongue Platter	8.95
豆大蝦仁	Barbecued Bear Ribs	6.30
香大蝦仁	★ Scallion Cow Pancakes (for two)	2.95
三鮮	MSG with Orange Flavor	4.95



## NOODLES

蕃薯餅	★ Cellophane Noodles with Styrofoam Peanuts	5.50
羊宮☆	Cold Noodles in Sesame Waste	3.50
粵餅	Some Glum Noodles	8.25
祥餅	No Fun Noodles	4.75



## PORK

菜鴨絲	New Shoe Pork	6.75
菜茄子雞	Roasted Pork in Shriner Hat	6.95
木須雞	Recently Shampooed Pork	6.95
芥蘭雞	Andrew Diced Pork	9.75
薑豆雞	★ Roast Pork Puppy Chow	7.25
蒜雞片	★ Porky Pig Cartoonese Style	7.50
豆腐	Pork and Mindy	6.75

## VEGETABLES

蘭蝦仁	★ Broccoli in Human Sauce	5.95
鴨大蝦仁	Shredded Documents with Peking Sauce	5.25
須蝦仁	★ Bean Crud with Special Rotting Fungus	6.25
燒大蝦仁	★ Snow Shovel with Peas	7.75
菜蝦仁	Egg Neil Young	4.95
燒蝦仁	Green Beans with Black Bean Sauce	4.95
鼓蝦仁	Black Beans with Green Bean Sauce	5.95
蘭蝦仁	Eggplant Prepared Under Mysterious Circumstances	5.95
鴨蝦仁	★ Baby Corn with Adoption Papers	4.95
菜蝦仁	Vegetables with Tingling Horse Flavor	5.50



## POULTRY

燒大蝦仁	San Diego Chicken with Pine Tar	6.25
燒菜鴨仁	Battering Ram Chicken	6.25
燒鴨仁	Peeking Daffy Duck	7.50
保蝦仁	★ Lemon Pledge Chicken	6.25
鼓蝦仁	Amazing Talking Chicken	8.75
鴨蝦仁	★ Tongue Licked Duck	7.50
蘭蝦仁	Chicken & Grief	6.25
會大蝦仁	Duck Edwing Prepared in Questionable Taste	6.25
須蝦仁	★ Chicken Escaping With Wings	7.75
蘭大蝦仁	Mocked Duck	7.25
豆大蝦仁	★ General Schwarzkopf Chicken	6.75
香大蝦仁	Gooly Grinning Chicken	6.75
香燕餅	Innocent Bystander Chicken	6.25



## BEEF

菜雞絲	Air-Dropped Beef	6.85
菜茄子雞	Double Chin Beef	6.85
木須雞	★ Beef with More Beef	7.75
芥蘭雞	★ Carriage of Beef	6.85
蒜雞片	Sizzling Wanton Beef	6.85
菜雞片	Beef and Dried Pepper Spilled on Lap	9.25
大菜雞	Beef with Bad News	8.85
大宮千雞	★ Great Barrier Beef	6.85
雙保雞	★ What's Your Beef	7.25



## SEAFOOD

豆雞片	Squished Eel Delight	8.50
蒜雞片	★ Shrimp with Alibi	8.25
豆腐雞	Young Dead Fish	9.25
魚蝦雞	Crispy Fish with Discarded Needle	9.95
菜蝦雞	★ Prawns in L.L. Bean Sauce	7.50
蒜蝦雞	Aromatic Octopus On Wheels	10.50
辣蝦雞	Force Fed Shrimp	7.75
大菜雞	★ Flounder with Water Pistol	8.95



## DESSERTS

木須雞	Unfortunate Cookies	2.50
芥蘭雞	Sweet Fried Roloids	3.95
菜雞片	Ice Cream with Garlic Sauce	2.75
蒜雞片	★ Boneless Pudding	3.50
豆腐	Chicken Almond Ring Ding	3.95

Waiter will  
change shirt  
at your request.



## CHEF'S SPECIALS

豐大蝦仁	★ Sesame Street Duck	11.75
菜蝦仁	Choice chunks of undernourished foal pelted with waterchestnuts and stirred in a sizzling wok by popular Muppets.	



菜蝦仁	Overpriced Happy Family	84.95
	Scallops, crabmeat and psychotic mushrooms sauteed with fresh chef's thumbs and served on a Sealy Posturpedic.	



保蝦仁	★ Tienanmen Square Beef	17.75
	Oppressed young beef, severely battered, crushed with bamboo shoots and brutally smothered as you watch from your table on a big screen.	



蘭蝦仁	Health Inspector's Seafood Delight	FREE!
	Fresh lobster, shrimp and prawns expertly prepared in the clean Mexican restaurant down the block, brought in through our back door and served with a crisp fifty dollar bill rolled in a napkin. (Must be ordered in advance.)	

★ May Not be Edible

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A MAD POSTER

A Menu of Contract terms

# Seriously... the real menu

- ▶ Who's involved?
- ▶ What is each party is going to do?
- ▶ When are they doing it?
- ▶ How do you know if they did it?
- ▶ What happens if they don't do it?

# Appetizers

## RECITALS

- WHO'S INVOLVED

- BACKGROUND

# Main Course

- ❑ SERVICES
- ❑ ACCEPTANCE
- ❑ PAYMENT
- ❑ INTELLECTUAL PROPERTY RIGHTS



# SERVICES

- ❑ REFERENCE TO STATEMENT OF WORK
- ❑ ASSUMPTIONS
- ❑ CONTINGENCIES
- ❑ CHANGE ORDERS

# ACCEPTANCE

- TIME LIMITS
- DELIVERY OF ACCEPTANCE
- STANDARDS FOR REJECTION
- RIGHT TO CURE
- FAILURE TO ACCEPT OR REJECT
- USE

# COMPENSATION, PAYMENT TERMS

- ❑ TIMING
- ❑ LATE CHARGES
- ❑ DISPUTES
  - WITHHOLDING PAYMENT
  - WITHHOLDING SERVICES
- ❑ EXPENSES

# INTELLECTUAL PROPERTY RIGHTS

- ❑ WHEN THEY GET RIGHTS
  - WORKS IN PROGRESS
- ❑ CALIFORNIA'S POSSIBLE MAGIC BULLET \*
- ❑ EXCLUDING YOUR TOOLS AND PRIOR WORKS
  - Limit what they can do TO pre-existing IP
  - Limit what they can do WITH pre-existing IP
- ❑ ASSIGNMENT OF INCLUDED PRIOR WORKS
- ❑ SECURITY INTEREST



# Side Dishes Pt. 1

- ❑ **PROJECT MANAGEMENT & PERSONNEL**
- ❑ **DISCLAIMERS AND LIMITATIONS OF LIABILITY**
- ❑ **INDEMNIFICATION**
  - Make it mutual
  - Exclude their acts and incorporated IP
  - Watch out who or what signed the contract
- ❑ **CONFLICTS OF INTEREST**

# Side Dishes Pt. 2

- ❑ **REPRESENTATIONS AND WARRANTIES**
- ❑ **CONFIDENTIALITY**
  - Duration
  - Mutual
- ❑ **TERM AND TERMINATION**
  - Why it matters
  - Grounds for termination
  - Notice
  - Payment

# Side Dishes Pt. 3

## ▣ MISCELLANEOUS CLAUSES

- Compliance with laws
- Export Control
- Insurance
- Notices
- Dispute resolution
- Assignment
- Attorneys' fees

# Signatures

Nina Yablok  
Nina Yablok

ABC, Inc.

Nina Yablok  
By: Nina Yablok, President



# Some practical issues

- ▶ When in wonder, when in doubt, run in circles then send an email.
- ▶ Read your emails.
- ▶ The cost of prevention vs. the cost of a cure.
- ▶ Expectations, marketing and art.

# Case Studies

1. Case of the difficult website,  
Carol Mattsson
2. Case of the disorganized client,  
Kim Parnell

# 1. Case of the difficult website from Carol Mattsson

## The Situation

- Negotiated fixed-price website
- Project complete, client satisfied
- Last payment never arrived
- After repeated requests and warnings, disabled website
- Client paid but was angry and threatening

## Warning Signs

- Client had a ½ finished website
- Difficulty in coming to terms on price
- Client kept asking for more features after price was set

# 1. Website (cont)

## Lessons learned:

- If payment is late, simply do no more work
- Fixed price means fixed scope
- Be clear on what is covered after the project is done
- It's probably not a good idea to disable a client's website

## 2. Case of the Disorganized Client from Kim Parnell

- The Client was pressing forward on a tight deadline.
- The Client updated the design during the project.
- Now the analysis needs to be repeated with the new parameters
- This pushes the cost past the initial estimate and contract \$\$\$s.

## 2. Disorganized client (cont)

### What should the Consultant do?

- Scope change is obvious, so push on trying to keep the schedule?
- Stop – write a message indicating the additional work needed, estimated cost, and request new PO?



*The end*