



The Interim Management Industry

Interim Management Industry

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The Interim Management segment is one part of a broader universe of staff augmentation contractor roles

Universe of Staff Augmentation Contractor Roles

	Technical Specialists	Business Staff	Interim Management
<u>Descriptions:</u>			
Common positions	Design engineer IT specialist Health care provider	Clerical worker Executive assistant Sales associate	Chief Financial Officer Plant manager Sales lead
Typical postings	Middle East builder offers 2 year contract for a Curtain Wall Auditor, 10+ yrs needed	Marketing firm seeks data entry support to meet a seasonal surge	A multinational firm hiring an Interim CFO for operations in a specific country
<u>Discriminators:</u>			
Seniority	Experienced	Junior	Senior
Abilities	Niche skills reused on each project; extensive experience	Generic skills; limited experience	Generic skills; broad experience and expertise
Expat or Local?	Expat	Local	Expat in developing countries; often local otherwise
Free agent¹ or agency affiliated	Free agent	Agency	Free agent ²
Project or term based employment	Project	Term	Term ³

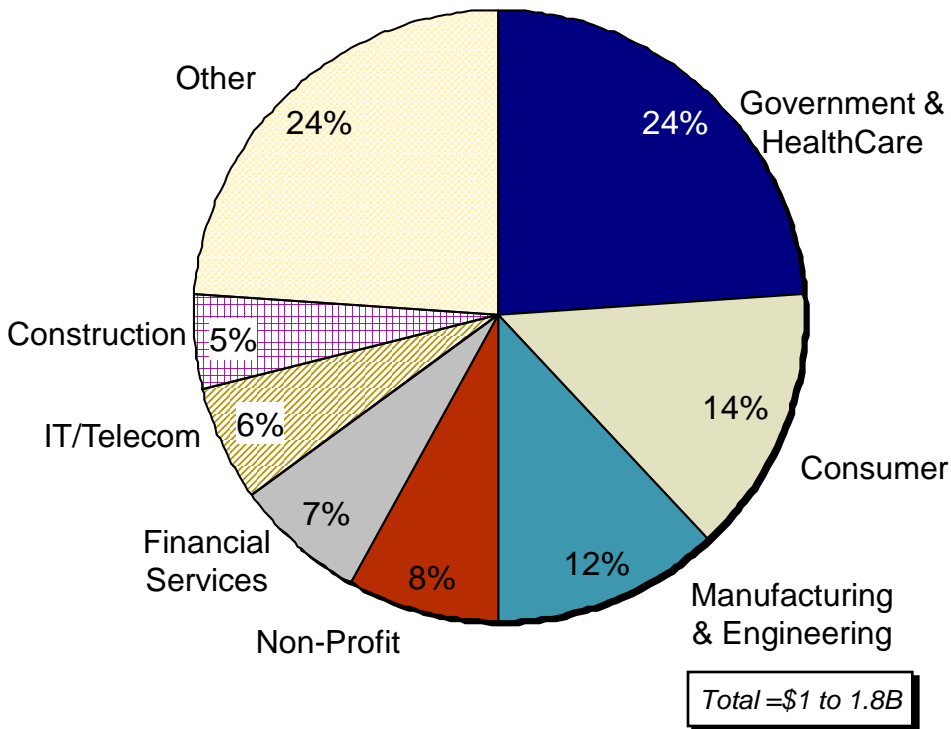
1) Free agent can be as an LLC or as an individual

2) Interims are very likely to have formed an LLC; use of agencies is growing

3) Term is more common but project-based employment is not at all unusual

The Interim Management segment works through a diverse base of clients but is relatively small (though growing at 20%)

**Interim Management By Sector
UK Market – June 2009**

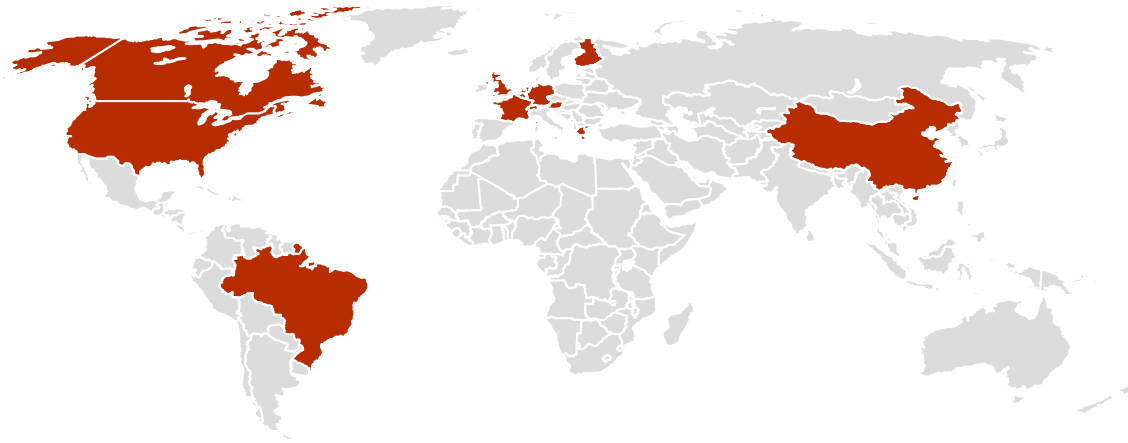


Market Size

- ▶ Worldwide, the Interim Manager segment is a small category that has been growing strongly, with governments & the healthcare industry as the largest clients
- ▶ Despite being possibly the most developed market, the UK market remains small (likely less than \$2B in 2009)
- ▶ Out of ~4 million managers in the UK, there are reportedly ~2,000 career interim managers and an additional ~8,000 doing Interim work to fill a gap in permanent employment (0.25%)
- ▶ However, the market worldwide has been growing strongly, with annual growth exceeding 20% in Europe
- ▶ American market is even smaller as a percent of total managers but has been growing strongly over the past 5 years

Reasons for utilizing Interim Managers varies by country, but they are seen throughout the world

Example of Global Reach: Interim Management Practices at Boyden (staffing vendor)



“We fill positions for Interims all over the world from the US. Cross-border placements are pretty common in the industry.”

Founder, Interim Management Practice

Global Interim Management

- ▶ Interim Managers work throughout the world with many staffing vendors filling a quarter or more of their assignments across borders
- ▶ The practice is most robust in areas with rigid labor markets – in many parts of Europe a significant portion of the management base have contract based employment
- ▶ In these cases, the ease of ‘firing’ an Interim Manager and the ability to robustly ‘test drive’ a candidate in the job before a permanent offer is made are the biggest attractions
- ▶ In the US and certain developing markets, the main selling proposition is the expertise Interim Managers can bring and their ability to handle special projects that existing staff – reduced substantially to a lean core – just can’t handle

Interim Managers are most commonly found in general management, finance, and operations functions

Share ¹	Function	Advertised Positions	Real Life Examples
31%	General Management	<ul style="list-style-type: none"> ▶ CEO ▶ Plant Manager ▶ Managing Director ▶ COO 	<ul style="list-style-type: none"> ▶ Interim CEO for a private equity-backed acquisition requiring turnaround ▶ Interim GM to appraise a business & offer up advice on modernizing their business processes.
16%	Finance	<ul style="list-style-type: none"> ▶ CFO ▶ Financial Accountants ▶ Treasury Specialists ▶ Wealth Mgmt. Specialists 	<ul style="list-style-type: none"> ▶ Financial Process Re-engineering for online travel agency to handle expansion to new products & countries ▶ Finance Director for UK start-up to direct and manage financial planning
14%	Operations / Supply Chain	<ul style="list-style-type: none"> ▶ Head of Operations ▶ Operations Specialist ▶ Logistics Director ▶ Property Manager 	<ul style="list-style-type: none"> ▶ Study and re-engineer manufacturer's supply chain ▶ Lead for the implementation of a series of cost reduction projects using tools including reverse e-auctions to leverage the supplier base for better performance
11%	Sales / Marketing	<ul style="list-style-type: none"> ▶ Business Development Manager ▶ Marketing Director ▶ Communications Lead 	<ul style="list-style-type: none"> ▶ Manager for a new product launch ▶ Interim Marketing Director for company that lost its marketing lead unexpectedly
11%	HR	<ul style="list-style-type: none"> ▶ HR Director ▶ HR Business Partner ▶ Organization Development ▶ Head of Compensation 	<ul style="list-style-type: none"> ▶ Interim HR Director to manage a change program for a major outsourcing organization

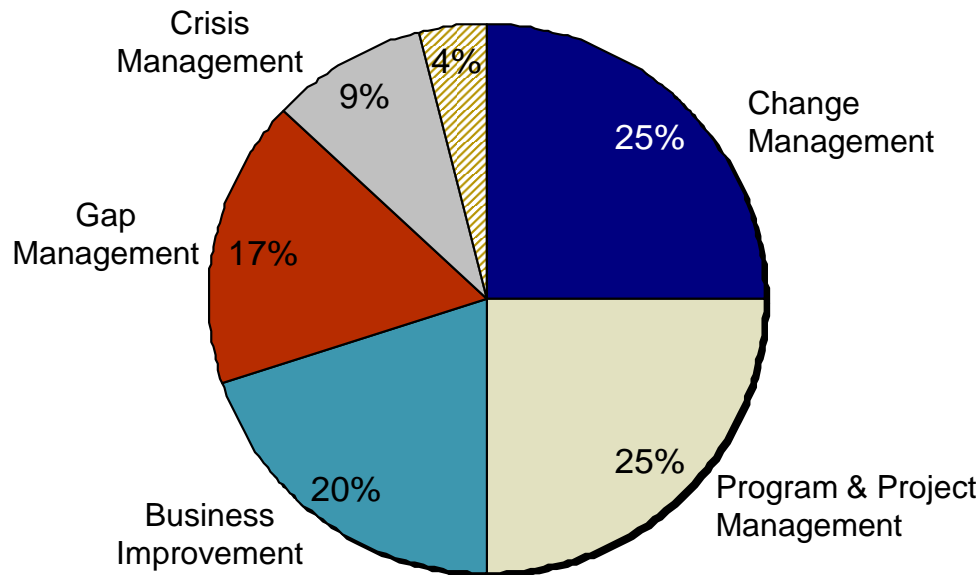
Note: IT function represents ~7% of the market but many IT related projects are included in other general functions

(1) Share is for the UK Market as of June 2009

Sources: Russam GMS June 2009 Snapshot of the Interim Management Market; Various staffing company websites; Booz Allen Analysis

Interim Managers are typically brought in to manage a project or change initiative for 3 to 36 months; extensions are common

Reasons for Using Interim Managers
UK Market – June 2009



“Given the downturn, it is highly likely that if an Interim Manager has anything to do with change management, turnaround and business recovery they are probably gainfully employed at present.”

Managing Director – Aster Interim Solutions – July '09

Interim Managers

- ▶ Interim Managers are most often brought into situations involving change initiatives or program and project management – the global downturn has temporarily shifted the balance toward business improvement as well
- ▶ Interim Managers are expected to be over qualified for the task at hand, able to bring a diverse range of experience to bear on an issue
- ▶ Minority of interims (~20%) view it as a career while most view the roles as a temporary bridge between permanent employment (or retirement)
- ▶ Typical assignments range from 3 to 36 months with 6 to 9 months being most common
- ▶ However, 60-70% of projects are extended for multiple months (successful interims sometime feel the hardest part is actually disengaging from a position)

Interim Managers are traditionally senior individuals with decades of experience in their chosen professions...



**Colin Dudley,
Interim Manager**

“I am looking to create a interim management / consultant business within the food and beverage category that will employ my experience, management training and communication skills developed through working in fast moving consumer driven businesses.”

“I enjoy the variety, flexibility and challenge of Interim Management. My corporate experience enables me to identify and concentrate on the immediate priorities of each position.”

Experience

- ▶ Over thirty years management experience with a number of high profile International blue-chip companies in Concept Innovation, Product Development and Science & Technology.
- ▶ Includes nine years experience operating throughout Asia, Australia & New Zealand with Bunge International and Cadbury Schweppes

Interim Roles

- ▶ Example project: managed a Purchasing and Facilities team where he was responsible for site and laboratory refurbishment projects with a capital spend of £1.5m in Q/407
- ▶ Typically works on 3-4 month contracts, will consider short-term contracts (1-5 days) if close to his home
- ▶ Has full personal and indemnity insurance and can provide his own “terms of contract” if required

...however, younger professionals are increasingly becoming more common in the interim management industry

“In the US, we are seeing an increasing number of young professionals becoming Interim Managers”

“Young professionals acting as Interims either see it as a business that will give them unprecedented flexibility or the best way to get a broad base of experience quickly”

Executive, Interim Association

“As the market evolves, Interim Managers will only get younger”

**Head of US Interim Management Practice
Global Interim Management Provider**

Interim Managers Under 40

- ▶ On average, Interim Managers are ~50 years old but many interims in their late 20's and 30's exist
- ▶ In the UK, the median age of Interim Managers has fallen from 60 to 53 over the past decade as more young professionals offset retirees
- ▶ These younger managers are most often found in the Finance, Media, Services and IT functions
- ▶ Interesting, Interim Managers under 40 have higher utilization rates than older managers (as seen on semi-annual surveys in the UK for the past several years); this is likely due to financial necessity (older candidates typically have larger financial cushions)
- ▶ Billing rates for managers under 40 fluctuate but are comparable to the rates of older managers
- ▶ Younger Interims are less likely to view Interim Management as a long-term career and are less likely to use providers (as providers view them as a high risk to leave mid-project)

Younger Interim Managers tend to be specialists who have had significant experience in a narrow role or industry

No picture available

Former Interim Manager Specializing in Financial Director Positions

Experience

- ▶ ~20 years of work experience
- ▶ Chartered Accountant trained in the UK
- ▶ Worked for a multinational company that sent him on a series of financial director positions across the U.S. -- essentially a series of interim roles across varied circumstances but always in the same function
- ▶ Recently accepted a permanent position from a client after a project lasting ~1yr

Interim Roles

- ▶ Initially worked with several private equity firms on a very short-term basis, providing advice to portfolio companies
- ▶ Later positions were closer to full time and involved traveling to client sites at least 3 weeks a month
- ▶ Most enjoyed roles where a company brought him in to handle the various strategic ad hoc projects that arise in a big company while local staff managed the day to day duties

“After making out pretty well in a management buyout I decided Interim Management was a good way to go since that is basically what I had done for my old company. I would get a great base of experience, be able to ‘test drive’ a company before a full time job, and would have more flexibility to spend time with my family. The financial cushion from the buyout was crucial though and would be for anyone – you need to be able to sustain yourself through the valleys between assignments”

“You are definitely not a consultant. You have ideas and you, personally, implement them, bringing the whole team behind you. Your title may be ‘interim’ but you have to make it look and feel as if you are a full member of the team”

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At least half of Interim Managers deal directly with client companies and find the positions through networking

Direct Contracts with Companies

- ▶ Most Interim Managers find their assignments through contacts or other social networks
- ▶ When sourced directly, Interim Managers sign a contract with the client themselves (or through their LLC)
- ▶ Positions found directly are almost never posted publicly – to maintain confidentiality, clients prefer to find a candidate without publicly stating their need
- ▶ Interim Managers that utilize the direct sourcing channel are more likely to operate their own LLC to limit their liability and to gain preferential tax treatment for expenses
- ▶ In addition to forming an LLC, those going direct are also very likely to need indemnity insurance (possibly liability insurance as well)

50-75% of All Engagements

“If you don’t have an LLC as an Interim you very soon will – the advantages are too stark not to [liability, taxes, expenses, etc.]”
Manager Director –
Interim Management Practice

Contracts Through Staffing Vendor

- ▶ Many Interim Managers sign up with several staffing vendors (usually a specialized interim management provider) in addition to direct networking
- ▶ When an assignment is sourced through a staffing vendor, the vendor signs the contract with the client and is responsible for the work being performed
- ▶ In these cases, the Interim Manager signs a separate contract with the agency
- ▶ Assignments are filled by managers in a vendor’s existing network and are only posted publicly as a last resort
- ▶ As industry becomes more formalized, staffing vendors believe their portion of sourcing will rise steeply

25-50% of All Engagements

Job descriptions in contracts for Interim Managers emphasize the normal duties and expectations of a full-time position

Description and Management of Work

Description of Work/Services

- ▶ Surprisingly, contracts typically are vague in terms of the actual work to be done
- ▶ Services are typically defined as **'normal duties'** for a position or are broadly stated if the Interim contractor is not moving into a set role (e.g., “help group make a successful and profitable transition from so called ‘traditional media’ to new media technologies”)

Performance Management

- ▶ Objectives are also common in contracts, though they range from the broadly stated (e.g., “increase operating income”) to the narrow (e.g., “complete spinoff by Dec. 31”)
- ▶ Contracts usually state who the managing authority will be (e.g., for an Interim CEO the client Board of Directors or the President for an Interim VP of Business Development)
- ▶ However, given that contractors are constantly being assessed and their services can be terminated at any time, most **performance management is informal but highly effective**

Authorities / Span of Control

- ▶ Contracts typically state that Interim Managers cannot make decisions **outside the normal business practices of a position**
- ▶ For Interim CEOs (or other independent authorities), contracts may include clauses stipulating that they will not fire employees, incur debt, make purchases over a certain amount, or transfer assets without written approval of their managing authority

“Your authority is the same as a permanent – that being said, you need to make sure you have buy in before you act” Interim Manager

Independent Contractor

- ▶ Almost every contract will include a clause stating that regardless of title or language, the **Interim Manager remains an Independent Contractor** (i.e., 1099) rather than an employee
- ▶ This is for tax purposes to avoid clients having to withhold taxes for the Interim Manager and to protect the client to some degree from risks such as workers compensation claims

The Statement of Work is a brief overview of a broad set of duties – not a detailed list of deliverables

Statement of Work Examples

MANAGEMENT SERVICES AGREEMENT	
<p>EXECUTIVE INTERIM MANAGEMENT</p> <p>The Dallas Business Group, LLC</p> <p>AGREEMENT FOR TEMPORARY EXECUTIVE SERVICES</p> <p>THIS AGREEMENT FOR TEMPORARY EXECUTIVE SERVICES (the "Agreement") is made and entered into as of the 15th day of November 2008, by and between "CLIENT" and Executive Interim Management, ("EIM").</p> <p>WITNESSETH THAT:</p> <p>WHEREAS, the parties desire to enter into the Agreement for Temporary Management Services to the Client;</p> <p>NOW, THEREFORE, in consideration of the mutual covenants herein, it is hereby agreed and agreed by the Client:</p> <p>1. Engagement Term.</p> <p>(a) This Agreement shall be effective from the 15th day of the 15th day of June 2009 (the "Commencement Date").</p> <p>(b) The engagement term may be extended by a written agreement.</p> <p>2. Provision of Services.</p> <p>(a) EIM agrees to furnish to the Client a temporary executive for the Client in the capacity of an Interim Chief Executive Officer for the period of the Agreement term (the "Executive").</p> <p>(b) EIM agrees that the Executive shall be performed by an EIM independent contractor (the "Manager") who has been provided by EIM to the Client. The Client shall retain the responsibility of the final approval of the selection of the Manager.</p>	<p>THIS AGREEMENT is made and entered into as of the 1st day of June, 2006 by and between HOSTOPIA.COM INC. (the "Company"), and John Nemanic (the "Contractor").</p> <p>WHEREAS the Company wishes to engage the Contractor for Management Services and desires to enter into an ("Agreement") embodying the terms of such engagement;</p> <p>AND WHEREAS the Contractor has accepted such engagement on the terms and conditions set forth in this Agreement;</p> <p>IN CONSIDERATION of the recitals and mutual covenants and for other good and valuable consideration, the parties agree as follows:</p> <p>1. Engagement:</p> <p>The Company hereby retains the Contractor to accept engagement with the Company for set forth in Section 2 below, to provide the services set forth in Section 3 below, and upon all other terms and conditions set forth in this Agreement set forth.</p> <p>2. Term:</p> <p>(a) The term of engagement pursuant to this Agreement shall be for a period of 2 years and 10 months, beginning on the Commencement Date and shall terminate on 10/31/2009, subject to the provisions of this Agreement regarding termination of engagement in certain circumstances.</p>
	<p>EXECUTIVE CONSULTING AGREEMENT</p> <p>THIS EXECUTIVE CONSULTING AGREEMENT (this "Agreement"), entered into this 8th day of September, 2008 by and between Probe Manufacturing, Inc., a Nevada corporation (hereinafter the "Company"), and Barrett Evans, (hereinafter "Evans").</p> <p>RECITALS</p> <p>WHEREAS, the Board of Directors of the Company believe that a change in management would help to further the progress of the Company;</p> <p>WHEREAS, the Company, wishes to retain Evans as interim-CEO upon the terms and conditions set forth in this Agreement upon the Commencement Date (the "Commencement Date");</p> <p>NOW, THEREFORE, the Company and Evans agree as follows:</p> <p>ARTICLE I TERM OF AGREEMENT</p> <p>A. Commencement Date. The terms of this Agreement shall govern Evans' employment with the Company immediately upon execution of this Agreement and this Agreement shall expire and terminate one year from the Commencement Date, unless terminated earlier pursuant to Article 6.</p> <p>B. Term. The term of this Agreement shall be for one (1) year.</p> <p>ARTICLE II EMPLOYMENT DUTIES</p> <p>A. This Agreement. Evans hereby accepts employment with the Company pursuant to the terms and conditions herein as of the Commencement Date. Evans agrees to serve the</p>

“Evans agrees to serve the Company in the position of “Interim-Chief Executive Officer”. Evans shall have the powers and duties commensurate with such position, including but not limited to, hiring personnel necessary to carry out the responsibilities for such position, allocating Company capital, etc.”

“Services to be performed by the Consultant consist of the development of strategic vision and initiatives in support of the Company’s products and services and other services as requested”

“Contributing to the development of business strategy and attending monthly strategy sessions with the President and Chief Executive Officer of the Company; establishing and maintaining capital markets relations and investor relations; identifying international and other business opportunities; and liaising with representatives of offshore human resources suppliers, including those suppliers located in Ukraine ”

“The statement of work is left deliberately broad and vague – often times the client doesn’t know enough to make it specific”

“Most times a problem is identified and an Interim Manager goes in and does whatever it takes to solve it”

Managing Director – Interim Management Provider

“I try hard to set up clear deliverables up front in the contract – this is hard though and usually means I have to educate the client on what a task may entail. I definitely feel this is a best practice, but certainly not a norm”

Veteran Interim Manager

Interim Managers typically work on short-term projects at a stated 'day rate' with the possibility for extension (renewal)

Time Related Contract Features

- ▶ **Contract Term:** contracts range from 1 day to multiple years (36 months being the longest usually seen) with 6-9 months being most common
- ▶ **Renewal Clause:** many contracts include a mechanism to extend the contract, usually on written consent of both parties some number of days before the term ends
- ▶ **Minimum Time Spent:** not all Interim Manager positions are full time, the many part-time positions often stipulate a minimum number of hours or days per month to be spent on the project
- ▶ **Termination:** all contracts include termination clauses for cause but most stipulate clients can cancel at their convenience

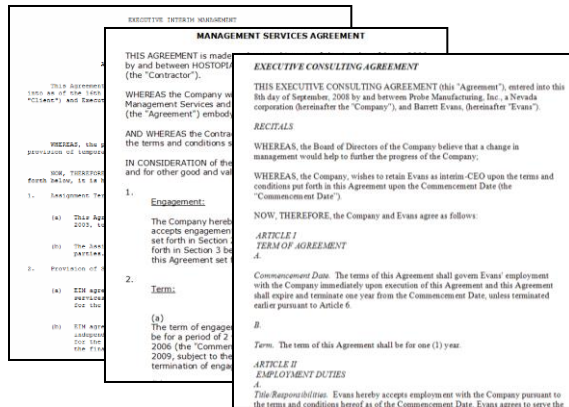
Compensation Related Contract Features

- ▶ **Type:** most commonly, Interim Managers quote a '**day rate**' (in the UK averaging ~500-600£ per day); for start ups or private equity portfolio firms Interim Managers could be paid in stock grants or options
- ▶ **Structure:** clients are typically invoiced monthly and then have 10-14 days to pay, however many other options are seen
- ▶ **Bonuses:** bonuses for reaching specific targets are not uncommon (~10% of cases) and are usually tied to specific performance objectives
- ▶ **Benefits:** benefits are not provided
- ▶ **Expenses:** Interim Manager's expenses outlaid in the normal functioning of the job are typically covered; in some situations detailed expense guidelines are provided but usually the contract refers to a firm's existing policies

Performance management is largely handled by the client ensuring they can end the contract at their convenience

Contracts typically do not include specific Performance Management clauses...

...but instead ensure the client can cancel the contract with little notice for any reason



“This agreement, either in its entirety or with regard to individual tasks issued hereunder, may be terminated by [client], **with or without reason, at any time** upon written notice to Consultant”

“At any time, the Company may terminate Evans's employment without liability other than as set forth below, for any reason not specified in Section 6.C above, by giving thirty (30) days advance written notice to Evans”

As such, contractors proactively ensure their performance meets or exceeds client expectations

“A client can call on Friday and say they don't want you showing up on Monday and that's the end of it. Performance management might not be written into the contract but it definitely occurs”

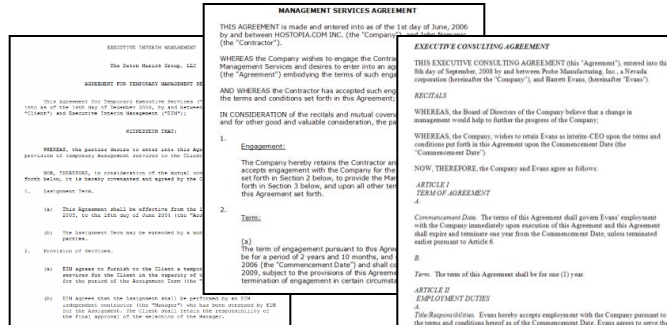
Managing Director –
Interim Management Provider

“As an Interim you best be proactively ensuring your client is happy – relationship and expectation management are essential.”
Veteran Interim Manager

“Every day its like you are at a new job you want to keep for a long time – you need to constantly be demonstrating your value because frankly you're expensive and the client will quickly pull the trigger if they don't see that value”
Interim Manager

Compensation structure varies widely; most commonly rates are quoted by day and payments are made monthly

Compensation Clause Examples



“The Client shall pay EIM at the rate of **\$2,000 per working day** for the first three month period (December 18th 2003 through March 18th 2004) and **\$2,500 per working day** for the second three month period (March 19th 2004 through June 18th 2004) in which services are provided under this Agreement. The Client shall pay all sums due to EIM under this Agreement **monthly, in advance, within ten days from the date of invoice.**”

“The compensation for services performed under this Agreement is **\$1000 per day worked by Consultant, payable quarterly in arrears.**”

“For services provided by the Contractor during the term of this Agreement, the Contractor shall be paid a **base fee payable monthly**, at the annual rate of CAD\$66,522 during the term, **and for subsequent years, if any, such fee shall be reviewed annually and may be increased at the sole discretion of the Company**, taking into account, among other things, individual performance and general business conditions. The base fee shall be payable in U.S. dollars, converted at the U.S. dollar exchange rate A) of 0.86 until March 31, 2007; and B) posted by the Bank of Canada on April 1st of each subsequent year, for each period of time during the term that commences on April 1st and ends on March 31st.

“Payment terms vary broadly but we try to get our clients into bi-weekly payment set-ups”
Managing Director – Interim Management Provider

“I insist on a weekly rate at a minimum – I hate billing hourly – and I actually like best to have a fee for the entire project tied to specific deliverables (with monthly progress payments if it is a longer term). You need to have good relationships with your clients but I find they like this setup”
Veteran Interim Manager

“My compensation arrangements varied by assignment – usually a weekly or monthly rate”
Interim Manager

Contracts with Interim Managers almost always include IP & confidentiality protections; exclusivity is not always necessary

Confidentiality

- ▶ **It is normal for contracts to ensure that Interim Managers protect client confidentiality**
- ▶ Confidentiality clauses will generally cover both non-disclosure agreements (for both during and after the contract term) and agreements not to use or take company trade secrets or documents after the engagement ends

Conflict of Interest

- ▶ For full-time positions, contracts often have a 'non-competition' clause stating that during the contract term and for some period afterwards (typically 12-18 months) the manager is not allowed to accept a position with a competing firm
- ▶ For part-time positions, a 'conflict of interest' clause is used instead, which states that a contractor will not accept work "inconsistent or incompatible" with their obligations to the client during the contract

Intellectual Property (IP)

- ▶ **It is normal for contracts to assign ownership of all work product, inventions, or other intellectual property developed through the engagement to the client**

Interim Managers worry about career advancement across assignments, not training or advancement within engagements

Career Advancement Norms

Within Assignments

▶ Advancement:

- Within assignments, Interim Managers do not expect any career advancement
- As with all independent contractor relationships, the contract is for a specific piece of work or to a specific role
- To expand a relationship, both parties would have to agree & sign a new contract

▶ Training:

- Training is not provided as part of Interim Manager assignments (nor almost any Independent Contractor relationship)
- Interim Managers are expected to be overqualified for a position (to justify premium fees and to lend credibility), not in need of training

Across Assignments

▶ Advancement:

- Interim Managers typically either see themselves as entrepreneurs or awaiting a better permanent role
- Either way, all want to increase their marketability through increasingly high profile assignments and by staying current with (or expanding on) certifications relevant to their areas of specialty

▶ Training:

- Many Interim Managers utilize time in between assignments for continuing education (training)
- They pay for this training themselves, viewing it as an investment

“One of the biggest advantages of an Interim Manager to the client is that they hit the ground running – the last thing they expect is to have to pay for training”
Founder – Interim Management Practice

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Contracts with Interim Managers include a large amount of standard language common to many contracts (page 1 of 2)

Standard Clauses in an English Common Law Contract

Standard Clauses	Description or Example Language
▶ Amendments	▶ “No amendment to this Agreement will have any effect unless it is made in writing and signed by a duly authorized representative of each of the parties”
▶ Arbitration	▶ Clause describing agreement on arbitration methods and place of arbitration
▶ Assignment	▶ “Neither party shall assign or otherwise transfer any of its rights, interests or obligations under this Agreement to a third party [without the prior written consent of the other party] [which shall not be unreasonably withheld]”
▶ Counterparts	▶ “This Agreement may be executed in any number of counterparts or copies, each of which, if executed by all the parties, shall be deemed an original”
▶ Entire Agreements	▶ “This Agreement represents the entire understanding and agreement between the parties and supersedes all previous negotiations and understandings between them with respect to its subject matter. Further, this Agreement supersedes all previous agreements between the parties with regard to its subject matter and those agreements are now terminated and of no further effect”
▶ Applicable Law and Jurisdiction	▶ “This Agreement shall be governed by and construed in accordance with the laws of [insert name of country/jurisdiction] and the parties submit to the [exclusive/non-exclusive] jurisdiction of the courts of [name of country/jurisdiction]”
▶ Force Majeure	▶ “Act of God” clause that allows for suspension of agreement during disruption from events outside of the control of either party
▶ Provisions Surviving Termination	▶ Clause describing that regardless of termination of agreement sections of the contract such as on confidentiality, the ownership of intellectual property, and the limits of the agreement remain in force

Note: These clauses are not intended to be comprehensive of all clauses in a contract. Attorneys noted that each contract includes its own particular clauses

Source: International Association for Contracts and Commercial Management; www.thecontractstore.com

Contracts with Interim Managers include a large amount of standard language common to many contracts (page 2 of 2)

Standard Clauses in an English Common Law Contract

Standard Clauses	Description or Example Language
▶ Indemnity	▶ Clause indicating that the company is not responsible for any costs or damages arising from negligence or breach of any covenant by the Contractor – this is what leads Contractors to get Indemnity Insurance
▶ Interpretation	▶ “In this Agreement use of the singular includes the plural (and vice versa) and reference to any gender includes all genders. Any reference to a person shall include a firm or limited company. Any reference to a clause, schedule or appendix is a reference to that clause, schedule or appendix to this Agreement. The annexed schedules form part of this Agreement and a reference to "this Agreement" includes a reference to the schedules.”
▶ Interpretation - Legislation	▶ “Reference to any law or statute includes a reference to that law or statute as from time to time amended and to any orders, statutory instruments or regulations made under that law or statute”
▶ Legal Fees	▶ “In the event of any dispute or legal proceeding arising out of or in connection with this Agreement, the party succeeding in such action, whether by judicial decision or settlement, shall be reimbursed by the other party for all legal fees and expenses incurred by the successful party with respect to such dispute or proceeding”
▶ Notices	▶ “Every notice to be given under this Agreement shall be in writing and either delivered by hand or sent by facsimile or by registered [post/airmail]. The address of each party for the service of notices shall be as set out in this Agreement (unless or until that address is changed by notice given under this clause). Notice sent by registered [post/airmail] shall be treated as being received [2/5] working days after the date of posting. Notice delivered by hand or by facsimile shall be treated as being received on the day it is delivered unless delivery occurs after the normal working hours of the recipient, in which case delivery shall be treated as having occurred on the next working day.”
▶ Severability	▶ “In the event that any provision or portion of this Agreement shall be determined to be invalid or unenforceable for any reason, the remaining provisions and portions of this Agreement shall be unaffected thereby and shall remain in full force and effect to the fullest extent permitted by law”
▶ Waiver	▶ “The failure by a party to enforce any provision of this Agreement shall not be treated as a waiver of that provision, nor shall it affect the right of that party subsequently to enforce that provision.”

Note: These clauses are not intended to be comprehensive of all clauses in a contract. Attorneys noted that each contract includes its own particular clauses

Source: International Association for Contracts and Commercial Management; www.contractstore.com

Sample Contract (page 1 of 12)

MANAGEMENT SERVICES AGREEMENT

THIS AGREEMENT is made and entered into as of the 1st day of June, 2006 by and between HOSTOPIA.COM INC. (the "Company"), and John Nemanic (the "Contractor").

WHEREAS the Company wishes to engage the Contractor to provide the Management Services and desires to enter into an agreement (the "Agreement") embodying the terms of such engagement;

AND WHEREAS the Contractor has accepted such engagement on the basis of the terms and conditions set forth in this Agreement;

IN CONSIDERATION of the recitals and mutual covenants contained herein and for other good and valuable consideration, the parties agree as follows:

1.

Engagement:

The Company hereby retains the Contractor and the Contractor hereby accepts engagement with the Company for the term of this Agreement set forth in Section 2 below, to provide the Management Services set forth in Section 3 below, and upon all other terms and conditions in this Agreement set forth.

2.

Term:

(a)

The term of engagement pursuant to this Agreement (the "term") shall be for a period of 2 years and 10 months, and shall begin on June 1, 2006 (the "Commencement Date") and shall continue until March 31, 2009, subject to the provisions of this Agreement providing for earlier termination of engagement in certain circumstances.

(b)

The term shall automatically be extended for an additional period of 12 months from and after April 1, 2009 ("Renewal Date") and on each subsequent anniversary of the Renewal Date, unless terminated by either the Company or the Contractor by written notice to the other given at least 180 days prior to the applicable anniversary of the Renewal Date. In the event that such notice is given by the Company and not by the Contractor, Section 6(d) shall not apply and the provisions of Section 6(c) shall thereupon be applicable.

Statement of Contract Term

Renewal Clause

Sample Contract (page 2 of 12)

Management Services:

(a)
The services that the Contractor is engaged to provide (the "Management Services"), and that the Contractor agrees to provide, to the Company shall include, without limitation:

(i)
contributing to the development of business strategy and attending monthly strategy sessions with the President and Chief Executive Officer of the Company;

(ii)
establishing and maintaining capital markets relations and investor relations;

(iii)
identifying international and other business opportunities; and

(iv)
liaising with representatives of offshore human resources suppliers, including those suppliers located in Ukraine.

(b)
At all times during the term of this Agreement, Contractor may be designated as the Vice President, Business Development of the Company and its subsidiaries. The Contractor in performing the Management Services shall report periodically to the President of the Company as to his results.

(c)
Throughout the term of this Agreement, the Contractor shall devote no less than 33% of his time and attention during normal business hours to providing the Management Services, except for vacations and except for illness or incapacity, but, subject to Section 7.

(d)
Nothing in this Agreement shall preclude the Contractor from providing services (which may be substantially similar to the Management Services), serving as an officer or as a director of other corporations, from engaging in charitable and public service activities, and from managing his personal investments, provided such activities do not materially interfere with the performance by the Contractor of the Management Services under this Agreement.

Statement of Work

Title

Minimum Hours to Work

Minimum Hours to Work

4.

Basic Fee for Services:

Sample Contract (page 3 of 12)

For services provided by the Contractor during the term of this Agreement, the Contractor shall be paid a base fee payable monthly, at the annual rate of CAD\$66,522 during the term, and for subsequent years, if any, such fee shall be reviewed annually and may be increased at the sole discretion of the Company, taking into account, among other things, individual performance and general business conditions. The base fee shall be payable in U.S. dollars, converted at the U.S. dollar exchange rate A) of 0.86 until March 31, 2007; and B) posted by the Bank of Canada on April 1st of each subsequent year, for each period of time during the term that commences on April 1st and ends on March 31st.

Compensation Clause

5. Reimbursement of Business Expenses:

The Contractor will be reimbursed for all reasonable out-of-pocket expenses incurred for and on behalf of the Company in connection with the conduct of the Company's business upon presentation of sufficient evidence of such expenditures provided such expenditures are deductible to the Company for tax purposes and are authorized expenditures pursuant to policies adopted by the board of directors of the Company from time to time.

Expenses Clause

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6. Termination of Engagement:

(a) Death of Contractor. In the event of the death of the Contractor during the term of this Agreement, the fee will be paid to the Contractor's estate, through the end of the month in which death occurs.

(b) Disability of Contractor. The engagement shall terminate automatically upon written notice from the Company in the event of the Contractor's absence or inability to render the Management Services due to disability, illness, incapacity or otherwise for an aggregate 90 days during any one year period. In the event of any such absence or inability, the Contractor shall be entitled to receive the fees provided for herein for the first 30 days thereof.

(c) Termination by the Company. In the event of termination by the Company of the engagement of the Contractor hereunder other than

Termination Clause

Sample Contract (page 4 of 12)

for the reasons stated in Section 6(d), the Contractor shall be entitled to continued base fee payments, payable monthly, for a period of 4 months following such termination (notwithstanding that the balance of the term of this Agreement may exceed four months) at the rate in effect immediately prior to such termination.

(d)

Termination by the Company. In the event of a termination of the engagement of the Contractor for any of the reasons in paragraphs 6(d)(i) to (iv), there will be no continued fee payments by the Company to the Contractor.

(i)

Contractor has been convicted of a criminal offence which would, in the opinion of the Company, reflect negatively on the Company, or has improperly enriched himself at the expense of the Company or has committed an act evidencing dishonesty including without limitation an act of theft.

(ii)

Contractor has been willfully and grossly negligent, has committed willful and gross misconduct or has failed to comply with an instruction or directive from the board of directors of the Company.

(iii)

Contractor has breached a material term of this Agreement, including the failure of Contractor to perform any of the Management Services for any reason.

(iv)

Contractor becomes bankrupt or in the event a receiving order (or any analogous order under any applicable law) is made against Contractor or in the event Contractor makes any general disposition or assignment for the benefit of its creditors.

Prior to any termination for cause due to any occurrence described in subparagraphs 6(d)(ii), (iii) and (v) above, the Company shall notify the Contractor in writing of the particulars of the occurrence upon which termination would be based and shall in such notice advise the Contractor as to whether in the Company's sole discretion the default of the Contractor occasioned by such occurrence is capable of being cured or rectified in full without loss or damage to the Company, in which case the Company shall afford the Contractor a reasonable period of not less than 5 business days in which to cure or rectify such default. In such event and provided the Contractor cures or rectifies such default in full without loss or damage to the Company, the

Termination Clause Continued

Sample Contract (page 5 of 12)

engagement of the Contractor shall not be terminated on the basis of such occurrence.

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7.

Non-Competition:

The Contractor agrees that during the period of engagement with the Company and for a period of 18 months from the last payment of fees to the Contractor by the Company, the Contractor shall not engage in or participate in any business activity that competes, directly or indirectly, with the businesses of the Company, or its subsidiaries or affiliates; provided, however, that the Contractor shall not be precluded from competing with the business of the Company in the event of a termination of engagement as a result of a material breach by the Company of the provisions of this Agreement or in the event that engagement is terminated by the Company other than for cause.

For purposes of this Section 7, the Contractor shall be deemed to "compete, directly or indirectly" with the businesses of the Company, or its subsidiaries or affiliates if the Contractor is or becomes engaged, otherwise than at the request of the Company, as a principal, director or employee of, or is or becomes associated in a management or ownership, consultant or agent, capacity with, any corporation, partnership or other enterprise or venture whose business includes wholesale, private label web hosting and email services in Canada or the United States, during the 18 month period immediately preceding termination. Contractor shall not be deemed to "compete, directly or indirectly" with the businesses of the Company, or its subsidiaries or affiliates if he becomes associated in a management or ownership, consultant or agent, capacity with, any corporation, partnership or other enterprise or venture, the business of which is competitive to the Company, prior to the date that the businesses of the Company becomes competitive with the business of such corporation, partnership or other enterprise or venture.

Notwithstanding anything to the contrary contained herein the Contractor may, without being deemed to compete, directly or indirectly, with the businesses of the Company or its subsidiaries or affiliates own not more than 5 percent of any class of the outstanding securities of any such corporation listed on a national securities exchange or traded in the over-the-counter market.

It is the desire and the intent of the parties that the provisions of this Section 7 shall be enforceable to the fullest extent permissible under

Non-Competition Clause (e.g., don't take the exact same job with a competitor)

Sample Contract (page 6 of 12)

the laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any particular portion of this Section 7 is adjudicated unenforceable in any jurisdiction, such adjudication shall apply only in that particular jurisdiction in which such adjudication is made.

The parties recognize that the Company will have no adequate remedy at law for the breach by the Contractor of the covenants provided in this Section 7, and, in the event of such breach, the Company and the Contractor hereby agree that the Company will be entitled to an injunction, a decree of specific performance, mandamus or other appropriate remedy to enforce such covenants.

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8.

Non-Solicitation:

The Contractor agrees that for a period of 24 months following the termination of engagement with the Company for any reason whatsoever, the Contractor will not, whether as principal, agent, employee, employer, director, shareholder or in any other individual or representative capacity, solicit or attempt to retain in any way whatsoever any of the employees of the Company or its subsidiaries or affiliates.

9.

Confidential Information:

(a)

The Contractor agrees not to disclose either while engaged by the Company or at any time thereafter to any person not employed by the Company or not engaged to render services to the Company, any trade secrets or confidential information of or relating to the Company or its subsidiaries and affiliates or its business obtained by the Contractor while engaged by the Company; provided, however, that this provision shall not preclude the Contractor from the use or disclosure of information known generally to the public (other than that which the Contractor may have disclosed in breach of this Agreement) or of information not generally considered confidential or from disclosure required by law or court order in the proper conduct of the Company's business.

(b)

The Contractor also agrees that upon ceasing to be engaged by the Company, the Contractor will not take, without the prior written

Protection of Confidential Information

Sample Contract (page 7 of 12)

consent of the board of directors of the Company, any technical report or other document of the Company or its subsidiaries, affiliates and divisions, which is of a confidential nature relating to the Company or its subsidiaries, affiliates and divisions.

(c)

The parties recognize that the Company will have no adequate remedy at law for breach by the Contractor of the covenants provided in this Section 9, and in the event of such breach, the Company and the Contractor hereby agree that the Company shall be entitled to an injunction, a decree of specific performance, mandamus or other appropriate remedy to enforce such covenants.

10.

Ownership of Ideas and Inventions:

All results of services performed by the Contractor hereunder including without limitation all inventions, ideas, copyrights, trade secrets or otherwise, shall be owned by and be the sole and exclusive property of the Company. The Contractor hereby transfers and assigns all right, title and interest of every nature and kind whatsoever therein to the Company and agrees to execute and deliver such further documents and instruments as may be necessary to fully and effectually give effect thereto.

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Ownership of Intellectual Property

11.

Indemnity:

The Contractor shall indemnify and save the Company harmless from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever which the Company, or its principals, employees or agents (for whom in this regard the Company is acting as trustee and agent) may suffer as a result of the negligence or breach of any covenant herein of the Contractor in the performance or non-performance of this Agreement or as a result of any claims, charges, taxes or penalties the Company may be required to pay in respect of income tax, pension, unemployment insurance, workers' compensation or health care assessment relating to the payment of fees or expenses to the Contractor hereunder.

12.

Notices:

Any notices, requests, demands or other communications provided for by this Agreement shall be in writing and shall be sufficiently given

Sample Contract (page 8 of 12)

when and if sent by personal delivery, overnight courier or by facsimile to the party entitled thereto at the address stated below or at such other address as the addresses may have given by similar notice:

To the Company:

Hostopia.com Inc.
5915 Airport Road, 11th Floor
Mississauga, Ontario L4V 1T1

Attention: Secretary

Fax No.: 1 800 979-9587

To Contractor:

John Nemanic
ADPO 0832-1665
World Trade Center,
Panama City, Republic of Panama

Fax No.: 1 800 979-9587

Any such notice shall be deemed delivered if given by means of personal delivery on the day of delivery thereof or if given by means of overnight courier or facsimile transmission on the first business day following the dispatch thereof.

d

13.

Entire Agreement:

This Agreement contains the entire agreement between the parties hereto with respect to matters herein and supersedes all prior agreements and understandings, oral or written, between the parties hereto relating to such matters.

14.

Assignment:

Except as herein expressly provided, the respective rights and obligations of the Contractor and the Company under this Agreement shall not be assignable by either party without the written consent of the other party and shall ~~enure~~ to the benefit of and be binding upon the Contractor and the Company and their permitted successors or

Sample Contract (page 9 of 12)

assigns, including, in the case of the Company, any other corporation or entity with which the Company may be merged or otherwise combined or which may acquire the Company or its assets in whole or in substantial part, and, in the case of the Contractor, its legal representatives. Nothing herein expressed or implied is intended to confer on any person other than the parties hereto any rights, remedies, obligations or liabilities under or by reason of this Agreement.

15.

Legal Fees:

In the event of any dispute or legal proceeding arising out of or in connection with this Agreement, the party succeeding in such action, whether by judicial decision or settlement, shall be reimbursed by the other party for all legal fees and expenses incurred by the successful party with respect to such dispute or proceeding.

16.

Applicable Law:

This Agreement shall be deemed a contract under, and for all purposes shall be governed by and construed in accordance with, the laws of the Province of Ontario without regard to the conflict of laws rules thereof. The Company and the Contractor hereby each irrevocably consent and ~~attorn~~ to the jurisdiction of the courts of the Province of Ontario with respect to any dispute or proceeding arising in connection with this Agreement.

17.

Amendment or Modification; Waiver:

No provision of this Agreement may be amended or waived unless such amendment or waiver is authorized by the Company (including any committee by the board of directors) and is in a writing signed by the Contractor and by a duly authorized officer of the Company. Except as otherwise specifically provided in this Agreement, no waiver by either party hereto of any breach by the other party of any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of a similar or dissimilar breach, condition or provision at the same time or at any prior or subsequent time.

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18.

Damages:

Sample Contract (page 10 of 12)

In the event that the Contractor is awarded any damages as compensation for any breach of this Agreement, a breach of any covenant contained in this Agreement (whether express or implied by either law or fact), or any other cause of action based in whole or in part on a breach of any provision of this Agreement or related in any way to the Contractor's engagement hereunder, such damages shall be limited to contractual damages.

19.

Provisions Surviving Termination:

It is expressly agreed that notwithstanding termination of engagement of the Contractor with and by the Company for any reason or cause or in any circumstances whatsoever, such termination shall be without prejudice to the rights and obligations of the Contractor and the Company, respectively, in relation to or arising up to the time of and including the date of termination, and the provisions of Sections 8, 9, 10, 11, 12, 16, 17, 19, 20 and 22 of this Agreement, all of which shall remain and continue in full force and effect unless and until the board of directors of the Company at its absolute discretion resolves otherwise and so notifies the Contractor in writing.

20.

Force Majeure:

If, during the term of this Agreement, the conduct or operation of the Company or any entity for which the Contractor is assigned to provide services under this Agreement is in any way hampered, interrupted or interfered with in any manner whatsoever by reason of any present or future statute, law, ordinance, regulation, order, judgment or decree, act of God, earthquake, flood, fire, epidemic, accident, explosion, casualty, lock-out, boycott, strike, labor controversy (including, but not limited to, threat of lock-out, boycott or strike), riot, civil disturbance or armed conflict, act of a public enemy, embargo, delay of common carrier, inability without fault of the Company (or any entity for which the Contractor is assigned to provide services under this Agreement) to obtain sufficient material, labor, transportation, power or other essential commodity required in the conduct of its business or by reason of the death, illness, incapacity or disability of any principal employee of any such entity or by reason of any cause, thing or occurrence not within such entity's control, then the Company may, at its option, suspend the Contractor services for any period during which such event or events of force majeure shall continue and no fees shall accrue or be payable to the Contractor for or during the period of such suspension period. In the event any such suspension shall continue for a period or periods of four (4) weeks in the aggregate, then the Company may elect within ten (10) business days of such suspension to cancel and terminate this Agreement by written

Sample Contract (page 11 of 12)

notice to the Contractor of such election. In the event of a termination of this Agreement under the provisions of this paragraph, the Company and the Contractor shall be released and discharged from any further obligations hereunder, including any further obligations of the Company for the payment of fees to the Contractor.

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21.

Errors and Omissions Insurance:

The Company shall obtain, directly or through its affiliates, a standard form policy of director's and principal's errors and omissions insurance covering the Contractor if and to the extent available on commercially reasonable terms as reasonably considered and assessed by the board of directors of the Company. Said policy, if obtained, will be subject to such exclusions, deductibles and policy limits as deemed reasonable by the board of directors of the Company. In any event, the Company hereby indemnifies the Contractor and agrees to hold the Contractor safe, harmless, defended and indemnified (to the maximum extent permissible under applicable law, as now exists or as may be hereafter amended) against all claims and liabilities incurred by the Contractor relative to his lawful and authorized performance of the services under this Agreement, except where such claims and liabilities arise because of the Contractor's intentional default or malfeasance, gross negligence, habitual neglect, unlawful conduct or breach of the terms, covenants or conditions of this Agreement.

22.

Severability:

In the event that any provision or portion of this Agreement shall be determined to be invalid or unenforceable for any reason, the remaining provisions and portions of this Agreement shall be unaffected thereby and shall remain in full force and effect to the fullest extent permitted by law.

23.

Counterparts:

This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

24.

References:

Sample Contract (page 12 of 12)

In the event of Contractor's death or a judicial determination of his incompetence, reference in this Agreement to Contractor shall be deemed, where appropriate, to refer to his legal representatives, or, where appropriate, to refer to his beneficiary or beneficiaries.

25.

Captions:

Captions to the Sections of this Agreement are solely for convenience and no provision of this Agreement is to be construed by reference to the captions of that Section.

26.

Contractor not an Employee:

The Contractor is not an employee of the Company and shall not be entitled to receive from the Company any salary, wages or other remuneration or employment benefits whatsoever in respect of Management Services provided by Contractor under this Agreement and the Company shall not withhold or deduct taxes, pension, unemployment insurance, workers' compensation, health care assessment and other similar levies in respect of the fee for services to be paid to the Contractor hereunder.

Clause stating individual is not an employee but is an independent contractor

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IN WITNESS WHEREOF this Agreement has been executed by a duly authorized officer of the Company and by the Contractor as of the day and year first above written.

	HOSTOPIA.COM INC.
	Per: /s/ MICHAEL MUGAN
	/s/ JOHN NEMANIC
	John Nemanic