

Re: Build-It-Yourself (BIY) Confidentiality and Proprietary Rights

Condition of employment:

I agree to the terms of the BIY confidentiality and proprietary rights contract as described on the following 6 pages.

_____	_____
Name	John Galinato, Director Build-It-Yourself
Address:	269 Pearl Street
	Cambridge, MA 02139
Date _____	

This will confirm that BIY has asked you, as an employee or as an independent contractor, to perform certain services, and that you have agreed to perform such services (collectively, the "Services"), as and when requested by BIY, all as set forth in this letter (the "Agreement"). In general, the Services may consist of advice regarding the design and development of websites, content, supporting platforms, and related intellectual property matters, as agreed between you and John Galinato or his designees from time to time.

You agree to make yourself available to perform the Services as mutually scheduled. You may also be requested to prepare and provide to BIY certain Work Product (as defined below). You expressly acknowledge and agree that the Services, together with any Work Product, are intended to be used for BIY's benefit, to assist BIY in the conduct of its business. BIY will have the right to use, reproduce and adapt any such Work Product for that purpose.

By signing this Agreement, you expressly acknowledge and agree that BIY: (1) is not obligated to request any Services from you pursuant to this Agreement, (2) has not guaranteed any level of Services under this Agreement whatsoever, (3) may request you to perform any of the Services or no Services, in BIY's sole and absolute discretion. (4) may procure similar or identical Services from others, and (4) may also internally develop similar or identical Services or Work Product.

In connection with your performance of the Services, you are an independent contractor, and you have represented the same to BIY. You understand and agree that

you are not an employee of BIY, that you are ineligible for any BIY employee benefits under this Agreement, and that no employment relationship is created by this Agreement.

You will use your own discretion in performing the Services and will in all respects control the means and manner of your performance, subject to the express condition that you will at all times comply with all applicable laws and BIY policies applicable to the Services provided hereunder (such as business conduct policies). You will supply all facilities, equipment and supplies necessary for performance of the Services at no additional cost to BIY, provided that BIY in its discretion may make a temporary office and computer systems available to you at its headquarters in connection with your providing the requested Services. You will not offer or give BIY, or any BIY subsidiary or affiliate, or any of their respective employees or agents, any gratuity, payment or other personal benefit or inducement with a view toward securing business from BIY or influencing the terms, conditions or performance of any Services under this Agreement.

As material consideration for BIY's execution of this Agreement, you expressly acknowledge and agree that (1) any nonpublic information you obtain in the course of performing the Services under this Agreement, with respect to potential, past and current products and services of BIY (collectively, "Products") shall be deemed "Confidential Information" as that term is defined below, and (2) you will not at any time during the term of this Agreement, directly or indirectly, solicit, entice, request, divert, recruit or induce any current employee to leave BIY's employ or otherwise terminate that person's relationship with BIY. You further agree that during the term of this Agreement, you will not become or be employed, directly or indirectly, by, nor will you provide consulting services to any company that is working on a final product that is a key component of any competitive business, unless otherwise approved in advance by BIY in its sole discretion. You agree to provide sufficient written disclosure of the nature of the employment or consulting services you wish to render to any such entity so that BIY can evaluate your requested waiver of this provision.

The following terms and conditions will govern your performance of the Services under this Agreement:

Term. The term of this Agreement will begin on the date of this agreement and will continue for twenty four (24) months thereafter. The parties may by mutual written agreement terminate this Agreement prior to the expiration of the two-year term.

Fees and Expenses. Refer to email 'BIY Contractor' agreement between you and BIY regarding fees.

Except as set forth above, BIY will have no obligation to pay or reimburse you for any other amount with respect to your performance of the Services, and by your execution of this Agreement, below, you acknowledge that the foregoing sets forth our entire agreement with respect to compensation for your performance of the Services. You are obligated for any taxes payable by or imposed upon you with respect to any amounts paid to you under this Agreement, and BIY will have no obligation to withhold any such taxes from amounts due to you under this Agreement.

Work Product. (a) To the extent that you produce any materials in performing the Services, including (but not limited to) notes, reports, memoranda, analyses, documentation, drawings, computer programs (source code, object code and listings), derivatives of pre-existing copyrighted works which you claim, candidate, potential employee, consultant, customer or prospect lists, inventions conceived or reduced to practice during your performance of the Services or resulting from or based upon any BIY Proprietary Information (defined below), creations, designs, trademarks, works of any kind (including, by way of example only, movies and audio or visual works), devices, masks, models, work-in-process, and deliverables, all such materials shall be deemed Work Product. BIY will retain ownership of all intellectual property rights (such as copyrights and trade secrets) in or to any information and/or materials that BIY supplies to you, or that BIY develops in connection with this Agreement ("BIY's Materials").

(b) All Work Product produced by you in the course of performing the Services pursuant to this Agreement shall belong to BIY. However, you shall exclusively own any intellectual property rights (such as copyrights and trade secrets) (i) owned by you prior to the commencement of Services or (ii) developed or acquired by you independent of the Services provided under this Agreement, if such intellectual property rights are incorporated into any Work Product provided, however, that your rights to these intellectual property rights will not extend to (i) any portion of BIY's Materials

incorporated into any Work Product, or (ii) to any information specific to any Products or BIY's business operations.

(c) You agree to assign and do hereby expressly assign to BIY all right, title, and interest in and to the Work Product including any and all moral rights you may have in any part of the Work Product. You also hereby forever waive and agree never to assert any and all moral rights you may have in any part of the Work Product even after termination this Agreement.

During and after the term of this Agreement, you will assist BIY in every reasonable way, at BIY's expense, to secure, maintain and defend for BIY's benefit all copyrights, patent rights, mask work rights, trade secret rights and other proprietary rights in and to the Work Product. You will promptly notify BIY of any and all inventions conceived or reduced to practice in the performance of any Services under this Agreement.

Indemnification. You agree to be responsible for your own actions. You agree to indemnify and hold harmless BIY and its directors, officers, employees and agents from and against all claims and losses of any type, including reasonable attorneys' fees, in connection with, in whole or in part: (i) any negligent act or omission by, or any willful misconduct on the part of, you in the performance of this Agreement; or (ii) your failure to comply with any applicable Federal, state or local law.

(b) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE, SHALL EITHER PARTY HEREUNDER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES INCURRED OR SUFFERED BY THE OTHER PARTY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION LOST REVENUE, LOSS OF INCOME, OR LOSS OF BUSINESS ADVANTAGE, EVEN IF THE PARTY SUFFERING SUCH DAMAGES, OR AN AUTHORIZED REPRESENTATIVE OF SUCH PARTY, HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Assignment. You agree that you will not subcontract, delegate, assign or otherwise engage the services of any subcontractor to perform any portion of the Services under this Agreement without the express prior written consent of BIY, which

BIY may grant or withhold in its sole discretion. Subject to the foregoing sentence, the rights and obligations of BIY and you under this Agreement shall be binding upon and inure to the benefit of the parties' respective successors, executors and administrators, as the case may be.

Attorneys' Fees. If any action or proceeding, whether regulatory, administrative, at law or in equity, is commenced or instituted to enforce or interpret any of the terms and provisions of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable attorneys' fees, expert witness fees, costs of suit, and expenses, in addition to any other relief to which such prevailing party may be entitled.

Notices. Any notice required or permitted hereunder shall in writing, and shall be given to you at the address first set forth above, and to BIY at 269 Pearl Street, Cambridge, MA 02139 attention John Galinato, or at such other address as the party may hereafter specify in writing. Such notice shall be deemed given: upon personal delivery to the appropriate address; or three (3) business days after the date of mailing if sent by certified or registered mail; or one (1) business day after the date of deposit with a commercial courier service offering next business day service with confirmation of delivery.

Complete Understanding; Modification. This Agreement constitutes the full and complete understanding and agreement between you and BIY relating to your performance of the Services, and supersedes all prior understandings and agreements relating to such subject matter. Any waiver, modification or amendment of any provision of this Agreement shall be effective only if in writing and signed by you and an authorized representative of BIY. The provisions of this Agreement shall prevail over any conflicting provisions in any purchase order, acceptance notice or other document generated by either of us except as expressly provided in the preceding sentence.

Interpretation. This Agreement has been negotiated by you and BIY with advice, if desired, from our respective counsel. This Agreement will be fairly interpreted in accordance with its terms and without any strict construction in favor of or against either party. The headings and captions herein are included for reference purposes only and shall not affect the interpretation of the provisions hereof. When used herein, the word

"including" will not be construed as limiting. This Agreement shall be read with all changes of gender and number required by the context. If any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect to the maximum extent permitted by law.

Jurisdiction; Venue; Dispute Resolution. This Agreement is governed by the laws of the State of Massachusetts, without regard to its conflict of laws principles. Both BIY and you hereby consent to venue in and the exclusive jurisdiction of the state and federal courts located in Middlesex County, Massachusetts. Any controversy or claim arising out of or relating to the Services which cannot be resolved by good faith discussions between us may be submitted to voluntary non-binding mediation at the request of either of us, with each of us bearing our own costs of such mediation and one-half the costs of the mediator (who shall be acceptable to each of us). If mediation is not successful within a reasonable period of time, then either of us can pursue any remedy available or appropriate, including litigation; provided that BIY will be free to seek equitable relief for any breach by you of the confidentiality obligations of this Agreement without first seeking to resolve such matter pursuant to the provisions of this paragraph.

Survival of Terms. Those provisions of this Agreement that, by their nature, are intended to survive any expiration or termination of this Agreement shall so survive.

Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.