SLIDES

WHY IS CAPITAL NEEDED?

To buy the things you need to make the product or to provide the service, and to live while you are making or doing it. Clients and customers usually do not pay before getting the services or product. For any business there must be a certain amount of capital in hand.

FACTORS INVOLVING CAPITAL

- salaries, however small, for the founders and for any other staff they may need to employ.
- rent, rates, heating, and lighting of the premises used.
- equipment and consumables.
- costs of advertising and marketing the products.
- miscellaneous expenses, ranging from company stationery to travelling.
- expenses for any trips that may be necessary.
- interest on any money borrowed.

BUSINESS PLAN DOCUMENT

1. **Company Description** (Explanation of the company's planned activities, Demonstrating technical feasibility, Highlighting founders' expertise.)

2. **Market Analysis** (Description of the target market, Estimation of market size, Evaluation of competition.)

3. **Financial Projections** (Predictions of the company's financial performance, Includes budgets, cash flow forecasts, projected balance sheets, and profit and loss accounts.)

Why are Business Plans needed?

Everyone desires to profit safely. With a business plan, you can seek financial support from potential lenders, investors, or donors.

SOURCES OF INCOME

(i) GRANTS

Typical grants focus on supporting capital investments, such as facilities and equipment. They often require the recipient to secure funding from other sources and are capped at a percentage of the verified capital investment.

(ii) LOANS

A loan is a borrowed sum of money with interest, which can have a fixed or variable rate and is typically for a specific duration. The company is obligated to repay the loan, and in the event of liquidation, the lender can recover it from the company's asset sale. Security is often needed for the loan.

(iii) EQUITY CAPITAL

Equity capital is an investment in a company in exchange for ownership shares. Business angels, who are affluent individuals, often offer equity capital to start-ups and small, fast-growing firms. The relationship between loan capital and equity capital in a company is important. It is known as gearing or leverage.

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HUMAN RESOURCES (HR)

HR ACTIVITIES

- ensuring that recruitment, selection, and promotion procedures comply with anti-discrimination legislation.
- staff training and development.
- setting up and monitoring remuneration policy.
- setting up and monitoring appraisal procedures.
- administering dismissal and redundancy procedures.
- dealing with contracts of employment.
- workforce planning.
- administering grievance procedures.
- being aware of new legislation affecting employment rights and advising
- management of what the organization must do to comply with it.
- dealing with health and safety.
- administering consultative committees.

RECRUITMENT AND SELECTION

Human resources managers often make a distinction between the two terms recruitment and selection, **using recruitment is to mean soliciting applications and selection is to mean selecting the applicants to whom offers will be made.** Selection is kept in the hands of the employer, although a member of the recruitment agency staff may sometimes be invited to advise.

SELECTION TOOLS

- One-to-one interviews with senior management and technical staff.
- Panel interviews, which can be unreliable and may favor smooth talkers.
- Assessment of references, particularly important for academic and some public sector roles.
- Psychometric tests, including ability, aptitude, and personality assessments.
- Situational assessment, used in military officer selection but expensive.
- Task assessment, where candidates perform job-related tasks, but this approach may not suit larger tasks.

STAFF TRAINING AND DEVELOPMENT

Training and development consist of three key activities: training, education, and development, focused on enhancing individual and group performance within an organization. It is also known by various names like "Human Resource Development," "Human Capital Development," and "Learning and Development." In high-tech companies, it plays a crucial role in ensuring performance, and it's unfortunate that it is often the first area to face budget cuts when financial constraints arise.

Remuneration is the compensation that one receives in exchange for the work or services performed. Typically, this consists of monetary rewards, also referred to as wage or salary. Several complementary benefits, however, are increasingly popular remuneration mechanisms.

APPRAISAL SCHEMES

Performance appraisal is a process to document and assess an employee's job performance. It typically involves regular meetings between an appraiser and an appraisee (employee) to discuss performance and career development, with the outcomes recorded in a jointly signed report. Disagreements on certain points may also be noted in the report.

DISMISSAL (Causes)

- lack of capability.
- misconduct.
- breach of the law.
- Redundancy.
- Constructive dismissal.

Dismissal of an employ without valid reasons is unfair.

A fair dismissal of an employee but violating a contract is wrongful dismissal.

CONTRACTS OF EMPLOYMENT

The written agreement between an employee and their employer can be enforced in a court of law.

A good contract of employment should be written in terms that are easily understood and should avoid legal conflicts.

- **Job rotation** involves moving employees through different tasks to prevent boredom in highly specialized roles.

- **Job enlargement** expands job responsibilities within the same level, combining various activities to increase the job's scope.

- **Job enrichment** assigns additional responsibilities, typically reserved for higher-level employees, to self-driven employees,

fostering motivation and a sense of importance in their work.

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INTELLECTUAL PROPERTY

A **contract** is simply an agreement between two or more people (the parties to the contract) that can be enforced in a court of law. The parties involved may be legal persons or natural persons.

The most important and essential concerns of a contract are that:

- All the parties must intend to make a contract.
- All the parties must be competent to make a contract, that is, they must be old enough and of sufficiently sound mind to understand what they are doing.
- There must be a 'consideration', that is, each party must be receiving something and providing something.

BESPOKE SYSTEMS

A contract for a customized system typically comprises three components:

- A **concise agreement** signed by the parties, establishing their identities, and emphasizing that prior discussions or writings are not binding.

- **Standard terms and conditions**, typically reflecting the supplier's standard business practices.

- A series of **schedules or annexes outlining the specific details of the contract**, including deliverables, timelines, payment terms, and other relevant specifics.

ISSUES IN CONTRACTS

(i) What is to be produced?

The contract must specify what will be produced, typically through a requirements specification. To avoid confusion, the reference to the requirements specification should uniquely identify it, often by including a date and issue number. However, addressing any necessary changes during the contract's duration can be a challenge.

(ii) What is to be delivered?

The list of possible deliverables includes source code, command files for building and installing executable code, design and code documentation, reference manuals, training materials, software maintenance tools, user training, client maintenance staff training, as well as test data and test results**.**

(iii) Ownership of rights

The contract should specify the legal rights transferred from the software house to the client. While physical items like books and documents typically change ownership, intangible rights, such as intellectual property rights, can be more complex to address.

(iv) Confidentiality

In the development of a significant custom software system, both parties will gain access to each other's confidential information. To protect their secrets, it's customary for both parties to commit to keeping each other's information confidential, and these terms are typically included in the contract.

(v) Payment Terms

A payment structure for a contract should include:

- An initial payment, typically around 15% of the contract value, upon contract signature.
- Intermediate stage payments at different development milestones, adding up to around 65%.
- An additional 25% upon software acceptance.
- A final 10% payment at the end of the warranty period.

(vi) Calculating Payment for delays and changes

Delays in meeting project timelines can result in losses for both parties. To address this, the contract should

outline the process for calculating additional payments related to the extra work required.

(vii) Penalty Clauses

Penalties for supplier-caused delays are often included in software supply contracts but are typically limited in severity due to several reasons:

- Suppliers are reluctant to accept harsh penalty clauses, as stronger penalties can discourage reputable suppliers from bidding.
- Including penalty clauses can raise the bid price significantly, often by at least half the maximum penalty amount.
- If software delivery is substantially delayed, and penalties near their maximum, there's little motivation for the supplier to complete the work since they've already received most of their payments in stages.

(viii) Standards and methods of working

The supplier and client often have their own standards, methods, and quality assurance procedures. The contract should clearly state whether the supplier's, clients, or a combination of both sets of procedures will be applied to the project, ensuring clarity in the project's quality control.

PROJECT MEETING

Regular progress meetings are essential to the successful completion of a fixed price contract, and it is advisable that standard terms and conditions require them to be held. The minutes of progress meetings, duly approved and signed, should have contractual significance in that they constitute evidence that milestones have been reached (so that stage payments become due) and that delay payments have been agreed.

PROJECT MANAGER

Each party in a contract must designate a project manager with clearly defined responsibilities and authority limits. These managers should have the necessary authority to fulfill their contractual obligations, including explicit financial authority limits for approving changes to the contract's cost. This information should be specified in the standard terms and conditions of the contract.

ACCEPTANCE PROCEDURES

Acceptance procedures in fixed-price contracts define the criteria for successful project completion. Clients provide predefined tests with expected outcomes, and passing these tests signifies system acceptance. These tests must be established at the outset, and any additional tests are not allowed to ensure timely completion. The contract should also specify participants and the consequences for unsuccessful tests.

WARRANTY & MAINTENANCE

After acceptance, a warranty period, usually around 90 days, is offered for free error corrections. The duration is negotiable, impacting the contract's cost. Post-warranty, maintenance is available on request, typically involving software enhancements. It's charged based on time and materials since resource needs are unpredictable, and clients may commit to annual effort days to retain the supplier's system knowledge.

INFLATION

In long or maintenance-intensive projects, a clause is often included in contracts to safeguard against inflation. This clause permits cost adjustments to align with rising expenses. The contract should specify the frequency of adjustments (e.g., annually or semi-annually) and the method for calculating the impact on the overall price.

INDEMNITY

To protect against unintentional infringement of third-party intellectual property rights due to client instructions or supplier errors, contracts should include a clause where each party indemnifies the other. This means guaranteeing to cover any costs the other party incurs due to their own faults in this regard.

TERMINATION OF CONTRACT

Contracts may need to be terminated prematurely for various reasons, such as a client being acquired by a company with a similar system or a change in client policy making the system irrelevant. Contracts should include provisions for an amicable termination, typically involving payment for work completed, compensation for staff redeployment, and addressing ownership of the work done thus far.

ARBITRATION

An arbitration clause will usually state that, if arbitration is required, it will take place in accordance with the Arbitration Act 1996. This Act of Parliament lays down a set of rules for arbitration that cover many eventualities, and reference to it avoids the need to spell these out in detail. Most of the provisions of the Act are optional, in the sense that they come into effect only if the contract contains no alternative provision.

APPLICABLE LAW

Where the supplier and the client have their registered offices in different legal jurisdictions or performance of the contract involves more than one jurisdiction, it is necessary to state under which laws the contract is to be interpreted.

CONSULTANCY

IT consultancy projects typically result in reports or documents. Fees for IT consulting are usually calculated per day, per consultant. Fixed-fee contracts are suitable for well-defined projects, while open-ended consultancy arrangements may favor consulting firms but can risk project and cost overruns due to no time constraints. The contract is usually straightforward.

CONTRACT HIRE

Supplier's responsibility is limited to providing suitably competent people and replacing them if they become unavailable. The staff work under the direction of the client. Payment is on the basis of a fixed rate for each day worked.

Ownership of intellectual property rights generated in the course of the work may be needed to be addressed.

A consultancy contract involves four critical aspects:

1. **Confidentiality**: Consultants must ensure they don't misuse sensitive client information for personal gain.

2. **Terms of Reference**: The contract should explicitly refer to the consultancy team's scope of work, as disagreements often arise when consultants need to address matters beyond their initial terms of reference.

3. **Liability**: Consultants often seek to limit their liability for any client losses resulting from their advice, which may require professional liability insurance.

4. **Control over the Final Report**: The contract typically stipulates that a draft report is presented to the client for review, allowing changes within a fixed period. The revised version submitted by the consultant becomes the final report.

----------------------CASE STUDIES----------------------

iGATE: BREACH OF AGREEMENT

iGATE expanded its operations to India through its subsidiary, Mascot Systems, later renamed iGATE Global Solutions Limited. Offered various IT services, including e-business solutions, application maintenance outsourcing, data warehousing, and ERP package implementation services.

Despite a strong start, iGATE faced difficulties after the dotcom bubble burst. In 2003, iGATE Global acquired a controlling stake in Quintant Services Ltd., a business service provider founded by Murthy and others. Murthy became the CEO and managing director of iGATE Global.

MURTHY'S JOURNEY WITH iGATE

After taking charge at iGATE Global, Murthy implemented innovative strategies to position the company competitively. He introduced the **iTOPS (Integrated Technology and Operations) framework, which billed clients based on business outcomes rather**

than billable hours, challenging the traditional outsourcing model. This change helped iGATE gain prominence in the market.

Murthy's leadership played a vital role in iGATE's growth. He **revolutionized the billing model by focusing on charging clients based on project outcomes, which appealed to cost-conscious customers**. Under his guidance, the company's financial performance improved significantly. His efforts transformed iGATE from a staffing firm into a globally recognized software services provider.

FIRING MURTHY: INFOSYS TECH REDUX

On May 20, 2013, iGATE terminated the employment of its President and CEO, Phaneesh Murthy, due to an ongoing investigation into a **relationship** he had with a subordinate employee and a **claim of sexual harassment**. iGATE's **policy required reporting such relationships**, but the investigation found that Murthy had failed to do so. Although **no violation of iGATE's harassment policy was found, the breach of reporting policy led to his dismissal**. Murthy had faced similar allegations in the past and had previously resigned from a position at Infosys Technologies in 2002 under similar circumstances.

Following Murthy's termination, Gerhard Watzinger was appointed as the interim CEO. **iGATE communicated the situation to its employees** in India via email and a video from 2 of its founders and requested that they refrain from discussing it on social media or with journalists. Many employees expressed concerns about the company's future, as Murthy had played a significant role in its growth and strategy. iGATE faced criticism and a significant drop in its share price, with shares falling around 13% on the day of the announcement.

MURTHY'S IMMEDIATE RESPONSE

Following his termination, Murthy organized a teleconference with journalists in India. He expressed his surprise at being terminated and stated that he had not been informed of it **until after office hours**. Murthy admitted to being in a personal relationship with a subordinate, Araceli Roiz, which he described as "more than a friendship" lasting a few months. However, he vehemently **denied the claims of sexual harassment made by Roiz, explaining that she had not filed a legal case but had sent a letter to the company.**

Murthy referred to the situation as a **"clear case of extortion"** and indicated his intention to fight the case if it went to court. He mentioned a previous allegation of sexual harassment made against him in 2002 and suggested that it might be a way to extract money for an alleged reason. Murthy maintained that **he had not violated company policy because he had informed the chairman, Sunil Wadhwani, about the relationship with Roiz after it had ended**, though he acknowledged that he should have informed Wadhwani earlier.

When asked if he regretted the relationship, Murthy responded that, in hindsight, he regretted everything that had transpired. **In the subsequent month, he was removed from the board for cause with the majority of shareholders giving their written consent.**

MURTHY VS iGATE

In December 2013, Murthy filed a lawsuit against iGATE in a California court. He accused iGATE of various wrongdoings, including **breach of agreements (such as his employment agreement and stock option agreement and agreement of good faith & fair dealings)**, **making false promises**, **withholding wages**, and **defaming** him to justify the company's actions. Murthy disputed iGATE's claim of **not knowing about his relationship with Araceli Roiz, arguing that the company had knowledge of the relationship** and improperly used the **reporting policy** as a reason for his termination. **He claimed to have a signed letter from an independent director that confirmed the board's awareness of the relationship** since January 2012.

In the lawsuit, Murthy sought **the release of his more than 500,000 vested stocks**, valued at approximately $18.3 million, **termination benefits** of $1.6 million, and **monthly medical benefits** of $6,000, which he believed he was entitled to for 15 years. He emphasized the importance of honoring employment agreements.

Murthy also stated that, after his termination, he was **promised that he would retain his vested stocks and that the company would expedite a vesting schedule for his unvested stock options as part of his severance package**. However, he alleged that these promises were not fulfilled, and he was **unable to access his company-sponsored trading account to execute his vested stock options**. Additionally, Murthy sought **compensation for the damage to his reputation** caused by repeated

defamatory statements made by iGATE to investors and the public.

CONTINUED

iGATE VS MURTHY

Following Murthy's termination, iGATE faced several challenges that hindered its growth, including the **loss of a $200 million outsourcing agreement** due to management uncertainties and project delays.

In response, iGATE filed a **countersuit** against Murthy in March 2014, **seeking compensation for damages resulting from Murthy's actions and alleged irresponsible behavior**. The company also claimed legal fees and other costs incurred to address Araceli Roiz's claims against both Murthy and iGATE. The employment agreement included an **indemnification clause** that **required Murthy to indemnify the company for losses due to policy breaches**, reportedly added because of his history of sexual harassment.

iGATE alleged that **Murthy attempted to conceal his relationship with Roiz**, even when the Corporate Governance Committee's chair, Goran Lindahl, raised the matter in response to anonymous Internet postings in 2011. Murthy allegedly dismissed the concerns and entered secret mediation with Roiz **without informing the company**. He **only** notified Wadhwani of the consensual relationship and Roiz's intent to bring a claim after the mediation failed.

Murthy, undeterred by iGATE's countersuit, stated that it was typical to file counter-complaints, expressing his belief in the **wrongful and unfair termination** and his **entitlement to vested stocks and medical benefits**.

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WILL OUR PARTNER STEAL OUR IP?

Prime ElektroTek, a Taipei-based company that had shifted from manufacturing power supplies to developing hybrid electric power trains for vehicles, had just **secured a deal with Blue Sky Vehicles**, a state-owned Chinese automaker. The announcement was met with excitement from most employees and managers, as it represented a significant entry into the electric vehicle market.

However, one person, Wang Hsi-Guo, the engineer responsible for Prime's power train technology, was not as enthusiastic. He expressed skepticism about the new partnership with Blue Sky. **Wang believed that Blue Sky, once they obtained Prime's components for their prototype, would eventually reverse-engineer and replicate them, potentially becoming a competitor rather than a customer.**

Wang was concerned that the deal might **not lead to long-term prosperity** for Prime. In response, Lin Tung-Hsin, the VP and general manager of the automobile electronics unit, reassured Wang, **emphasizing the importance of engaging with a major customer** like Blue Sky. Wang mentioned Apex Automotive, a Taiwanese company that had been a previous customer and had a positive relationship with Prime due to its **loyalty and collaboration** on prototypes.

The situation highlighted **the tension between seizing new opportunities** in the market and the **risks associated with sharing proprietary technology** with potential competitors.

Prime ElektroTek sought a **strong second-tier partner** for its auto components business, as working with small companies **wouldn't help it become a major player**. They turned to Blue Sky Vehicles in China, a fast-growing automaker venturing into hybrids. While excited about the partnership, engineer Wang remained cautious, fearing Blue Sky might **reverse engineer their components**. Lin, the VP, disagreed, but Wang was wary of underestimating any Chinese company, highlighting the risks associated with IP protection in China.

ENTERING THE IP BADLANDS

Prime ElektroTek was **cautious** about sharing its intellectual property in China, where **companies were known for copying products**. Chinese engineers had a **history of reverse engineering products** in various industries, and **Prime had seen its power supplies**

cloned by a Chinese computer maker. They knew that once a trade secret was exposed, it could **spread** to other companies. Laws existed to protect against such actions, but legal action rarely resulted in sufficient damages.

When Prime established a partnership with Blue Sky Vehicles, a fast-growing Chinese automaker, they questioned whether Blue Sky might use Prime's **technology for its own purposes or even sell Prime's components to others**. Lin, the VP, reassured the chairman, pointing out that Blue Sky was only **buying select components**, not everything. He mentioned that Prime had embedded tacit knowledge into some components, **making it difficult for outsiders to replicate** them accurately.

Furthermore, Lin stated that **Blue Sky's engineers didn't seem proficient in systems engineering** during technical discussions. He believed **Blue Sky lacked the expertise** to copy Prime's products. Wang, who had concerns about IP risks, observed that **Blue Sky intended to develop its own vehicle control unit**. Lin saw this as another **sign that Blue Sky was not a significant IP threat**.

However, when Lin later discovered that Prime had disassembled a prototype vehicle control unit built to Blue Sky's specifications, he realized they needed to reconstruct it quickly, possibly due to a change in Blue Sky's intentions or their misunderstanding of the complexity involved. This incident further highlighted the uncertainty surrounding Blue Sky's capabilities in the automotive industry.

ONE IMPORTANT CONDITION

A month after the chairman had expressed concerns about the lack of communication from Blue Sky regarding the progress of their prototype vehicle, **Lin was still uncertain about the situation**. The chairman was **anxious about the delay**, emphasizing the importance of the deal with Blue Sky, as their competitors were already ahead in the hybrid car market in China. **Lin made efforts to get updates from his contacts at Blue Sky, but they remained noncommittal**.

Eventually, Lin was invited to see the prototype in Guangzhou. However, the meeting lacked enthusiasm, and **Lin noticed issues with the vehicle's control system**

during the test drive. The Blue Sky manager admitted that they were **still working on adjusting the vehicle control unit**. **Lin offered to provide a control unit designed to work with the other components, and Blue Sky accepted the offer.**

Expecting to share this news with the chairman to allay concerns, Lin was surprised by the chairman's agitation during their meeting. The chairman revealed that Blue Sky had a **condition** for accepting Prime's control unit: **they demanded ownership of the intellectual property (IP), including the source code and control system algorithms.** Lin was taken aback, as he had not anticipated such a condition.

The chairman explained that **Blue Sky insisted on having the IP, or they would find another supplier who could provide the complete package**. Lin was left grappling with the dilemma of whether to accept these terms, potentially **compromising Prime's business in China**, or **risk losing the deal** with Blue Sky.

CONCLUSION

Over time, Prime ElektroTek **reassured itself that Blue Sky lacked the expertise to reverse engineer and replicate their components**, believing that Blue Sky's engineers were **not highly skilled** in systems engineering.

However, when the progress of Blue Sky's prototype vehicle was **delayed**, Prime ElektroTek **offered to provide a control unit designed to work with their components.** It seemed like a strategic move to address the delay and showcase their capabilities.

Subsequently Blue Sky **demanded ownership of Prime's IP, including the source code and control system algorithms for the control unit**. This condition put Prime in a difficult position, as it risked compromising its IP rights in exchange for a potentially significant business opportunity.

In conclusion, this scenario underscores the fine balance companies must strike between seizing business opportunities and safeguarding their IP.

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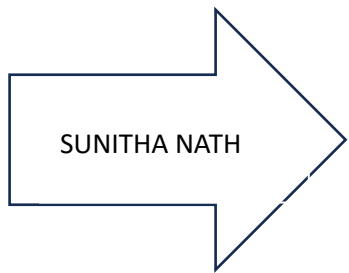
SUNITHA NATH

SUNITHA NATH: IP CASE (BOMBA??)

RAGHU & THE INCIDENT

(1) - Sunitha recognized the need to recruit individuals to manage the day-to-day operations of her growing business. Despite her concerns about hiring the right talent, she was passionate about **mentoring young fashion designer**s and **offering internships**. Sunitha engaged with interns, and by the end of 2011, there were **five interns** working with her, two from NIFT Bengaluru and three from NIFT Bhubaneswar. Among them, **Raghu** and **Samarth** stood out for their exceptional work, dedication, and entrepreneurial spirit. Impressed by their performance, Sunitha offered both jobs as trainee fashion designers at SNB, and they gladly accepted her offer **by signing a one-page appointment letter.**

(2) - Sunitha observed the progress of her trainees, Raghu and Samarth, during their first year of employment. R**aghu showed great potential, was more enterprising and hardworking, and demonstrated a willingness to take on additional responsibilities.** At the end of 2012, Sunitha **promoted** Raghu to **assistant fashion designer, providing him with an updated appointment letter and a 25% salary increase**. Raghu embraced the new role and became even more ambitious and proactive, allowing Sunitha to focus on expanding her business.

As Sunitha explored opportunities in the film industry, **Raghu took on increased responsibilities in the day-to-day operations, focusing on procurement, designing, and sales for the Sunitha Nath brand**. He became **indispensable** in SNB's operations, **initiated process improvements, and negotiated with vendors and clients**. Meanwhile, the "Make in India" campaign and the revival of traditional fabrics and designs **energized Sunitha**, prompting her to launch designer products under the Sunitha Nath brand in the global market.

To handle her extensive travel and client engagement, Sunitha **promoted Raghu to studio manager**, and he **effectively managed SNB's offices and boutiques**. Raghu's efficiency and dedication were **noted by clients and vendors, leading to several job offers with higher salaries.** However, Raghu chose to remain **independent**, recognizing the potential for substantial income, reputation, and career growth in that path.

(3) - In 2015, Raghu saw an opportunity **to break away from Sunitha and start his own venture**. It came in the form of a high-budget movie project by StoneStar Santosh Production House (SSP), a prominent player in the Kannada film industry. Sunitha was commissioned to design costumes for the movie, and the project was set in the 17th century Karnataka, requiring traditional Ilakal fabrics. With Sunitha's extensive involvement, she **appointed Raghu as the project coordinator to represent SNB and work with vendors and the movie's production team.**

During this time, Raghu met Zakir, SSP's production manager for the movie, and **put in tremendous effort to ensure the project's success**. However, he suddenly disappeared, and **Sunitha received a letter from him containing unknown information**. Concerned about his absence, Sunitha contacted her legal advisor, Rajashri, to address the situation.

Dear Sunitha Ma'am,

There's no easy way to do this, so here it goes. I've decided to leave the boutique. There's really no choice. I have wanted to start something on my own for a long time now. I have now got an opportunity to live my dream. An investor is willing to invest in the venture for setting up a new design boutique. Also given your reputation and stature, I won't be able to grow under your shadow and your brand. I need to be doing things for myself rather than doing it for you.

Zakir told me that the designs that you have submitted to the SSP have not been good and there is a very high likely chance that it would be rejected. At the same time, I have got another project, which I am interested in accepting and running it independently, with all the benefits accruing only to me for the efforts that I would be investing towards the project.

You might feel that it is hollow, but I sincerely thank you from the bottom of my heart, for all the opportunity that you gave me. Thank you for training me, and also reposing trust in me, by making me understand the entire process of running an independent boutique. I could not tell my decision to you personally, so I am writing this letter to you. I know that I am doing the right thing for my career and myself, but I still couldn't tell this to you personally.

I've organized all the documents relating to the work that I had been doing in the folder, on my desk. I have also prepared a report on everything I was doing and you'll see that nothing is missing. If you have any questions, call me. But I presume that you would not be interested to speak with me.

Thank you for all the support and guidance. Will remain indebted to you forever.

Yours truly,
Raghu

LETTER:

(4) - Sunitha and Rajashri were close friends. **Rajashri specializing in intellectual property rights** through her law degree. Rajashri initially worked in a prestigious law firm in Mumbai, but the two friends remained in touch despite Rajashri's busy schedule.

However, when Rajashri returned to Bengaluru and established her independent law practice, **she started assisting Sunitha with legal compliance matters for her fashion business**. Sunitha reached out to Rajashri in a state of panic after receiving Raghu's letter. Rajashri assured Sunitha that she would visit her office immediately to discuss the situation and advised Sunitha **not to disturb anything** until her arrival.

(5) - Raghu, **after meeting someone from SSP regarding the movie project**, began behaving unusually and **expressed a desire to start his own venture** instead of working for SNB. He claimed that designs prepared by **Sunitha were not satisfactory** for the movie project. Additionally, Raghu mentioned that **Zakir, who was involved in the film project, had suggested he go independent and was willing to invest in his venture**. Raghu discussed the idea of **replicating SNB's processes** at his new boutique, supported by Zakir's investment.

Samarth further revealed that **Zakir was the one who introduced the idea to Raghu** and was **investing in his venture.** This news shocked Sunitha, as **Zakir had previously created difficulties for SNB with the movie project**. Sunitha tried contacting Zakir and the movie director but couldn't reach them.

Sunitha then received an **email from Zakir**, which turned out to be a **contract termination letter,** confirming **Raghu's involvement with the movie project as an independent costume designer**. Realizing that Raghu had **deceived her by stealing critical business information** and her client, Sunitha became increasingly distraught, reflecting on where she might have made mistakes in managing her business.

(6) - Sunitha informed Rajashri about the entire situation, including details provided by Samarth, and shared Raghu's resignation letter and the contract termination letter from Zakir. The two then began **reviewing the company's financial records**. Sunitha mentioned that **Raghu had authorization over the company's bank accounts and Internet banking, prompting Rajashri to suggest reviewing the bank statements and payment register for any unauthorized or suspicious transactions**. She advised Sunitha to **change the Internet banking password** immediately.

Upon reviewing the financial records, **they discovered a suspicious payment of ₹400,000 made to an interior designer called M/s Innovative Interior Design**. Sunitha contacted the CEO of M/s Innovative, Shyam Kumar, who **explained that the payment was for interior design work on a new office in Fraser Town, Bengaluru**. **Raghu had authorized the work, even though Sunitha had no plans for such an office**. Kumar also mentioned that Raghu had requested the designer to improvise on SNB's regular office design.

Rajashri concluded that this **indicated theft**, and Sunitha could potentially **have Raghu arrested and face criminal prosecution.** To proceed, Rajashri directed Sunitha to collect more information about the interior design transaction, including the authorization, property lease details, property owner, and documents related to the work.

(7) - Rajashri **reviewed SNB's contract with SSP for the movie costumes, and she believed that SNB might still be entitled to some benefits as a result of SSP's abrupt termination.** She noted that the calculation of what was owed would depend on the **timing of the termination**. Sunitha provided more context, explaining that the costume designs had been finalized during the pre-production review stage, and SNB had already delivered the costumes one week before the production start date. Some units were later rejected by Zakir, who claimed the director didn't like them. **Sunitha argued that technically, they couldn't reject the costumes since they had approved the designs, fabrics, stitching, and other details.** Despite this, they sent a rejection notice and later issued a contract termination letter.

Of the total ₹12 million (US$178,000) contract value, SSP had paid ₹6 million (US$89,000) to SNB, with the third installment due at the beginning of the production stage.

Sunitha was also concerned about her **reputation**. She was upset that **SSP had terminated the contract without allowing SNB to respond**. The contract stipulated that SNB's work should meet the satisfaction of the director, while the termination notice claimed that the work did not meet the director's requirements.

Sunitha **wondered if the rejection process was part of a plan to terminate the contract with SNB and give the work to Raghu**.

------------X----------------------X--------------------X-------------
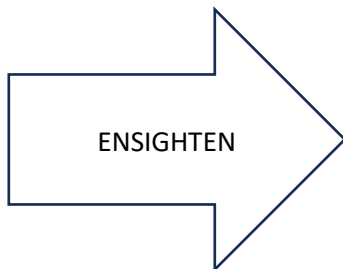
ENSIGHTEN

ENSIGHTEN CASE STUDY (AND SLA STUFF)

WEB ANALYTICS & TAG MANAGEMENT

The problem addressed in this passage concerns the **difficulty of tracking consumer behavior on websites**. Initially, web marketers and managers struggled to track user data through weblogs, which offered a detailed map of browser activity but were challenging to analyze. **Page tagging**, introduced around 2002, became the alternative approach, **involving the placement of invisible code on web pages. This code would communicate with analytical applications, collecting information on various user interactions, such as the source of website visitors, clicks on links, time spent on pages, and exit destinations**.

Numerous analytical applications adopted this method, serving different purposes:

- Advertising tools for tra**cking ad campaign effectiveness,** affiliate traffic, and retargeting efforts.

- **Analytics packages for monitoring user origins, duration of stay, clicked links, purchase behavior, and navigation patterns**.

- Testing and optimization tools that **compared different webpage** versions.

- Voice-of-customer **packages for gathering consumer feedback**.

Each page could have multiple tags, ranging from 10 to 50, for **tracking various data points and activities,** further complicating the data management process. In some cases, companies **had over 1 million tags** to manage. This complexity posed challenges in implementing and tracking the effectiveness of advertising campaigns, often requiring extensive IT resources and time to manage.

ENSIGHTEN'S SOLUTION

In response to the challenge of tracking user data on websites, Manion and a small team of coders **developed a simplified solution**, which they tested with several Stratigent customers. They believed this solution was a significant breakthrough, as it **allowed quick data tracking without compromising data quality and complexity**. In late 2009, Manion formally established **Ensighten** LLC with his wife as a separate company. **Patents were filed for the core technology**, and Manion formed a small team. He focused on Ensighten and moved to Silicon Valley in **September 2010**.

The company bootstrapped its way to building the product, keeping their efforts under wraps initially. **They aimed to complete the product, secure customers, and grow as a company**. When they began to gain traction, they moved to Silicon Valley and announced their product and **first five customers** in September 2010. The venture started with around **six developers and three salespeople, with approximately $1 million in capital investment from Manion and his wife**. Although they moved to Silicon Valley, they decided against raising venture capital, deeming it unnecessary at that point.

Ensighten's product was **cloud-based**, relying on contracts with major server capacity providers across the globe. **The service involved billions of requests each month, with pricing based on the number of client websites or domains and their traffic volume**. A typical early deal included approximately $200,000 in annual licensing fees and a $25,000 setup charge. **Ensighten developed rules** to determine which tags were placed on different pages, resulting in numerous tag permutations. **Once clients started using the application, it became integral to their operations, saving them months of work and enhancing their functionality.**

However, one of the **major challenges** Ensighten faced was **convincing large enterprises to trust them as a**

mission-critical platform in their infrastructure. Initial clients required more robust terms, including source code escrow, transition plans, and contract termination restrictions, to establish this level of trust.

DEVELOPING A TEMPLATE CONTRACT

Ensighten **initially used a template for software license agreements with its first clients, and these agreements helped the company understand which terms were negotiable and significant**. In the early stages, negotiations mainly focused **on business terms without much legal counsel involvement on either side**. Some non-negotiable terms related to Ensighten's intellectual property and indemnification clauses that could jeopardize the business.

However, when Ensighten landed a substantial deal with a major apparel company, they **encountered challenges** with the **client's contract**. This **contract was more suitable for a consultant rather than a software licensor like Ensighten, which caused complexities**. To address these legal challenges, Ensighten brought **in Jim Quinn**, an **attorney specialized in intellectual property** issues in the technology space. Jim helped resolve the issues with the apparel company's contract.

Manion learned from this experience and aimed to handle most legal aspects on his own to avoid excessive legal fees. Jim Quinn provided his expertise when needed but **had not met Manion in person**. They maintained a professional relationship where Manion sought Quinn's assistance for specific agreement sections, understanding the need to manage legal costs carefully.

Jim Quinn **explained the changing nature of software licensing in the cloud era, where customers gained the right to access software in the cloud without having a copy of it**. Customers **use a small piece of software as a connector, but the bulk of the functionality occurs in the cloud, altering traditional licensing models**. Quinn emphasized that **understanding this shift was crucial** for legal agreements in the cloud computing era.

GMI

GMI, a $70 billion company with global media properties, **sought an extensive tracking solution** to monitor customer behavior on its websites. **Ensighten**

engaged in negotiations with GMI, which began in October 2010, and had made substantial progress on the business terms by early November. **However, when GMI submitted a redline version of Ensighten's standard licensing agreement with requested changes, Manion was cautious about accepting certain modifications**.

Recognizing the **significance** of the deal, Manion decided to **involve Jim Quinn**, the attorney who had previously assisted Ensighten in legal matters. GMI was using outside counsel for negotiations since, **for a company of its size, a $200,000 deal did not justify diverting its general counsel and legal staff from core legal issues**. Quinn's involvement was **seen as an essential step** to navigate the negotiations effectively. Manion wanted to **ensure that potential compromises**

1. Preamble. Ensighten provides an online tag management service that a customer can access through Ensighten's web page located at www.ensighten.com/login/ (the "Service"). The Customer wishes to subscribe for the Service. Ensighten is willing to provide the Service to the Customer on the terms and conditions set forth in this Agreement.

2. Accounts, Access, Modules and Support.

2.1 Customer Account. Upon payment of any required amounts and the performance of any other preliminary obligations of the Customer described in this Agreement or Exhibit A, attached hereto and incorporated herein by reference, Ensighten shall create an online password-protected account for the Customer (the "Account"). An Account is required to access the Service and the Service may only be used with respect to that number of domains specified in Exhibit A. The Customer's use of the Service other than as specified in Exhibit A, or with more domains than specified in Exhibit A, will result in additional fees and charges.

2.2 Right to Use Service. Subject to the provisions of this Agreement, during the term of this Agreement, the Customer shall have a non-exclusive, non-transferable (except as otherwise provided for herein), limited right to access and internally use the Service solely for the collection, management, and use of marketing and analytics data collected from websites owned and operated by the Customer, and for no other purposes. The Customer will only have access to the modules within the Service that it elects to subscribe for as specified on Exhibit A. After the creation of the Account, Ensighten shall provide the Customer with a reference code that can be used by the Customer to activate and use the Service with respect to the websites specified in Exhibit A. The Customer is required to insert the reference code supplied by the Company into each domain to be accessed by the Service.

align with Ensighten's objectives and that both parties could reach an agreement beneficial to both sides.

2.3 Modules and Support. The Service will only include the modules the Customer elects to subscribe for as set forth on Exhibit A. The modules will have the functionality described on Exhibit A. Ensighten will provide telephone support to Customer during normal business hours, which are Monday through Friday, 8:30 a.m. through 5:30 p.m. CST, excluding national holidays. The Customer shall have the right to designate up to three (3) persons who shall be the only Customer representatives authorized to interact with Ensighten with respect to support matters (the "Support Contacts"); —and Ensighten shall only be obligated to work with such Support Contacts or other Customer personnel who Customer may designate from time to time. As of the Effective Date, the Support Contacts are as indicated in Exhibit A. The Customer shall have the right to change the Support Contacts from time to time upon at least five (5) days prior written notice to Ensighten.

Customer will not transfer or sell to any third party such user names, passwords, or the Customer access to the Service. Ensighten shall have the right to require the Customer to change the Customer user names or passwords at any time. The Customer agrees to immediately notify Ensighten of any unauthorized use of the Customer usernames or passwords or any other breach of security. Ensighten has no obligation to inquire about the authority of anyone using the Customer user name and password or other information that can be used to identify the Customer account, including a use to request Service. THE CUSTOMER IS SOLELY RESPONSIBLE FOR ANY USE OF THE CUSTOMER USER NAME AND PASSWORD, EVEN IF THE CUSTOMER ISN'T THE ONE USING IT, AND EVEN IF THE CUSTOMER LATER CLAIMS THE USE WASN'T AUTHORIZED. THE CUSTOMER IS SOLELY RESPONSIBLE FOR THE SERVICES REQUESTED BY THE CUSTOMER, OR BY ANYONE USING THE CUSTOMER USER NAME AND PASSWORD AND ALL ACTIVITIES THAT OCCUR IN THE CUSTOMER ACCOUNT. THE CUSTOMER AGREES THAT THE CUSTOMER, AND NOT ENSIGHTEN, IS RESPONSIBLE FOR ANY LOSS OR DAMAGES RESULTING FROM ALL USES OF THE CUSTOMER ACCOUNT, USER NAME, AND PASSWORD. Notwithstanding the foregoing, (i) Ensighten shall maintain and store the Customer Data (as defined below) in secure and segregated files and accounts that are separate from the materials, items, data, information, and content provided by other customers of Ensighten, and (ii) Ensighten shall not be relieved of any of its data security obligations under this Agreement. Ensighten shall not permit its other customers to gain access to the Account or any Customer Data through the use of any services or technology provided by Ensighten.

5.~~5~~4 Availability Credits. To be eligible to receive an Availability Credit, the Customer shall submit a written request to Ensighten that includes the dates and times of the claimed Downtime incident. The Customer's request for an Availability Credit must be received by Ensighten within ten (10) days after the claimed Downtime incident occurred. Ensighten may reasonably require the Customer to provide additional information to assist Ensighten in its determination of whether Downtime occurred. The Customer's failure to provide such additional information shall disqualify The Customer from receiving an Availability Credit. Upon timely receipt of the Customer's request for an Availability Credit and Ensighten's determination that Downtime has occurred, Ensighten shall determine the Availability Percentage for the applicable month. If such Availability Percentage is less than the Availability Commitment, Ensighten will issue an Availability Credit to the Customer.

5.~~6~~5 Multiple~~Remedies for~~ Failures. ~~The issuance of the Availability Credits and the Performance Credits as set forth in this Section are the Customer's sole and exclusive remedies for any failure to achieve the Availability Commitment or the Performance Commitment. Availability Credits and Performance Credits may only be used against future amounts the Customer may owe to Ensighten for Services, and may not be transferred to a third party, used against a different product or service, or be paid to the Customer or anyone in cash or other form of payment. If the Customer retains a credit balance on termination of this Agreement, the Customer will forfeit such credit.~~ In the event the Customer is entitled to Availability Credits more than twice during any four (4) consecutive month period, the Customer may terminate this Agreement and receive an immediate refund of all amounts paid to Ensighten in connection with this Agreement.

5.2~~1~~ Service Availability. The Service will be available to the Customer at least 99.99% of the time during each calendar month, based on the number of minutes in the subject calendar month (the "Availability Commitment").

5.3~~2~~ Availability Failure. In the event the actual percentage of time the Service is available for a calendar month (the "Availability Percentage," as calculated below) is less than the Availability Commitment, the Customer shall be eligible to receive an immediate refund of~~credit~~ Five~~One~~ Thousand Dollars ($5~~1~~,000) (the "Availability Credit") as described below.

5.4~~3~~ Calculation. Availability Percentage will be measured over a calendar month and calculated using the following formula:

$$\text{Availability Percentage} = \frac{\text{Base Minutes} - \text{Downtime}}{\text{Base Minutes}} \times 100$$

any server or wireless or Internet-based device, or (iii) use the Service in connection with a service bureau or to provide services to any third party. The Customer shall be the exclusive owner of all right, title, and interest in and to (i) the Customer Data, including without limitation any and all data and information developed through the use of the Services by the Customer, and (ii) any and all materials, items, information, and technology provided by the Customer (clauses (i) and (ii) collectively, the "Customer Materials"), and (iii) any and all materials, items, information, and technology developed by Ensighten for the Customer for the specific or unique needs or requirements of the Customer, all of which, including all Intellectual Property Rights, Ensighten hereby transfers, sells, and assigns to the Customer.

5. Service Standards, Availability, and Performance.

5.1 Manner of Providing Services Ensighten personnel shall be knowledgeable about the products and services of Ensighten, the business of the Customer, the systems and technology used by the Customer, and the means by which the Ensighten products and services can be best integrated and used by the Customer in connection with Customer's business, systems, and technology. Ensighten's engagement of subcontractors shall not in any respect whatsoever relieve Ensighten of any of its obligations under this Agreement. All Ensighten personnel shall conduct themselves in a professional and courteous manner. To the extent they are provided to Ensighten in advance in writing, or are posted at the facilities of Customer, when on the premises of the Customer, Ensighten's employees and permitted subcontractors shall be subject to all the rules, regulations, policies, and programs that the Customer may have in effect from time to time regarding vendor, visitor, employee, and contractor conduct. Ensighten shall be responsible for performing civil and criminal background checks on all of its employees and subcontractors. Ensighten shall be responsible for any and all acts or omissions of its employees and subcontractors. As may be reasonably requested by Customer, Ensighten shall consult and cooperate with, and assist Customer and Customer's agents, suppliers, vendors, contractors, and providers who are providing products or services to Customer that may be used with or affected by any products or services provided by Ensighten.

8.3 Interoperability. The Customer and contractors engaged by the Customer have the right to review, access, modify, configure, and reconfigure materials, items, information, content, and technology provided by Ensighten under this Agreement to enable the Customer to integrate and use them with other systems or technology the Company uses in the internal operation of its business.

9. Confidentiality. Each party may disclose (the "Discloser") confidential and proprietary information ("Confidential Information") to the other party (the "Recipient"). In each such case, the Recipient shall hold such Confidential Information in confidence and shall protect such information by all reasonable security measures, including but not limited to taking those steps the Recipient would take to protect the confidentiality of its own most highly confidential and Confidential Information. Confidential Information shall only be used to enable the parties to perform their obligations under this Agreement. The Confidential Information shall not be disclosed except to a party's employees or subcontractors who have a need to know such Confidential Information in order to perform such party's obligations under this Agreement and only to the extent necessary for such purposes; provided, that such Recipient shall be responsible for any breach of these confidentiality provisions by its employees and subcontractors. Ensighten's Confidential Information shall include without limitation, financial information; information relating to the trade secrets or business affairs of Ensighten, its affiliates, employees, suppliers or agents; customer lists; marketing and promotion plans and methods; and the systems software, and documentation, development tools, and know-how used by Ensighten to provide the Service. The Customer's Confidential Information shall include without limitation, the Customer Data (as defined below) financial information; information relating to the trade secrets or business affairs of the Customer, its affiliates, employees, suppliers or agents; customer lists; marketing plans, strategic plans, and plans for new products or services . Neither party shall have any rights in the other party's Confidential Information and shall return or destroy all such Confidential Information at the other party's request. Confidential Information shall not include information that: (i) was already in the lawful possession of the Recipient prior to receipt thereof, directly or indirectly, from the Discloser; (ii) lawfully becomes available to Recipient on a non-confidential basis from a source other than Discloser that is not under an obligation to keep such information confidential; (iii) is generally available to the public other than as a result of a breach of this Agreement by Recipient; or (iv) is subsequently and independently developed by Recipient without reference to the Confidential Information of the Discloser. In addition, a party shall not be considered to have breached its obligations by disclosing Confidential Information

10. Data and Data Security. The Customer shall be the exclusive owner of all right, title, and interest in and to any and all data and information provided or used by the Customer, including without limitation, credit card, transactional, customer, and personal information (the "Customer Data"). Ensighten shall at all times provide industry standard security measures to ensure that all Customer Data that is input, processed, transmitted, stored, retrieved, or managed in connection with the Service is maintained and used in compliance with applicable law, and in a manner that prevents the unauthorized disclosure of, unauthorized use of, unauthorized access to, misappropriation of, loss of, or alteration of any Customer Data while it is directly or indirectly in the possession or control of Ensighten. Any failure or a breach by Ensighten to perform or meet its obligations under this Section shall be referred to as a "Data Security Default." Ensighten shall provide immediate notification to the Customer in the event a Data Security Default occurs, or in the event Ensighten has a reasonable basis for believing that a Data Security Default may have occurred. Upon the occurrence of a Data Security Default, the Customer shall have the right to immediately terminate this Agreement. In the event of a Data Security Default, regardless of whether any cure has been made, Ensighten shall be responsible for all expenses and damages incurred or sustained by the Customer which are caused by such Data Security Default (including reasonable attorneys' fees). With respect to third party claims arising from a Data Security Default, Ensighten shall indemnify, defend, and hold the Customer harmless from and against any and all losses, claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees) arising out of such Data Security Default. Ensighten's liability under this Section shall not be subject to any limitation of liability contained in this Agreement.

11. Backup and Disaster Recovery. Ensighten shall provide an initial full backup of Customer Data, and then provide daily backups of the Customer Data. Ensighten will store these data files online for Customer for a period of sixty (60) days. Upon the request of Customer, Ensighten will locate and transfer these data files to Customer's computer. Ensighten shall maintain commercially reasonable business continuity plans providing for continued operation in the event of an occurrence affecting, disrupting, or adversely impacting Ensighten's business operations. Ensighten shall test its business continuity plans at least annually. Ensighten will furnish a copy of its business continuity planning policies and procedures to Customer upon request. Upon the occurrence of an event that triggers Ensighten's business continuity planning procedures, Ensighten shall use reasonable efforts to restore its operations within forty-eight (48) hours or such other time frame as the parties may agree in writing. In the event that a part of Ensighten's business operations remain operable, Ensighten shall provide to Customer no less favorable service than that given to Ensighten's other customers. Ensighten shall maintain commercially reasonable disaster recovery plans providing for continued operation in the event of a catastrophic occurrence affecting Ensighten or Ensighten's ability to provide Services to Customer. Ensighten shall test its disaster recovery plan at least annually, notifying Customer at least thirty (30) days in advance of such test and, if Customer requests, allowing Customer to observe or take part in such annual disaster recovery test. Ensighten shall furnish a copy of, or at least an executive summary of, its disaster recovery plan to Customer.

15.3   Termination by the Customer.   In addition to its termination rights specified elsewhere in this Agreement, the Customer shall have the right to immediately terminate this Agreement in the event Ensighten fails to perform any of its obligations, or is in violation of any of the terms and conditions of this Agreement, and Ensighten does not cure such failure within thirty (30) days after Customer has provided notice of such failure.

15~~2~~.3   Suspension.   After providing the Customer with at least five (5) days prior written notice, t~~T~~he ability of the Customer to access and use the Service may be restricted or suspended by Ensighten ~~without notice~~ in the event Ensighten determines~~,~~ in good faith~~its sole discretion,~~ that the Customer has repeatedly failed to substantially perform any of its material obligations under this Agreement~~, or is in violation of any of the terms and conditions of this Agreement, or is engaging in conduct or activities that may otherwise be harmful to Ensighten~~. No refunds will be provided as a result of any such restriction or suspension.

19. Transition Services. In the event of the termination of this Agreement for any reason other than the Customer's failure to perform any of its obligations under this Agreement, at the request of the Customer, Ensighten shall consult and cooperate with, and provide assistance to, Customer and its consultants in connection with the orderly and efficient transition of the Service to another provider of services (which may be the Customer) that are comparable to, or in substitution of, the Service. As compensation for Ensighten's performance of the aforementioned transition services, the Customer shall pay Ensighten on a time and materials basis at Ensighten's then current rates. In addition, in the event of a termination of this Agreement for any reason other than Customer's failure to perform any of its obligations under this Agreement, at the request of the Customer, Ensighten shall, for a period of up to one hundred eighty (180) days after the termination date, continue to provide Customer with the Service at the same rates, and upon the same terms and conditions, as are in effect as of the termination date (the "Transition Period"). During the Transition Period, the Customer shall not be obligated to achieve any minimum volume or usage requirements with respect to the Service.

20. Non-Solicitation. To the extent permitted by applicable law, during the term of this Agreement and for a period of one (1) year after the termination of this Agreement, each party agrees that it shall not knowingly solicit or attempt to solicit any of the other party's executive employees or employees who are key to such party's performance of its obligations under this Agreement. Notwithstanding the foregoing, nothing herein shall prevent either party from hiring or engaging any person who responds to an advertisement for employment placed in the ordinary course of business by that party and/or who initiates contact with that party without any direct solicitation of that person by that party or any agent of that party.

~~24~~28.   Governing Law.   This Agreement shall be governed by the laws of the State of Michigan~~California~~ (without regard to its choice of law principles or rules) in the United States and the applicable laws of the United States. For the purpose of resolving conflicts related to or arising out of this Agreement, the parties expressly agree that venue shall be in the federal and state courts in the State of Michigan~~California~~, and, in addition, the parties hereby expressly consent to the exclusive jurisdiction of the federal and state courts in Wayne~~San Francisco~~ County in the State of Michigan~~California~~. The parties specifically disclaim application of the United Nations Convention on the International Sale of Goods, 1980.

~~25~~29.   Invalidity.   In the event any portion of this Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this Agreement, and the portion of this Agreement held to be invalid shall be construed and given lawful effect in a manner that will best achieve the intent and objective of such portion of this Agreement.

~~26~~30.   Entire Agreement.   This Agreement sets forth the entire understanding between the parties with respect to the subject matter hereof, there being no terms, conditions, warranties, or representations other than those contained in this Agreement, and no amendments shall be valid unless made in writing and accepted or signed by the parties to this Agreement~~; provided, however, Ensighten shall have the right to modify the terms and conditions of this Agreement at any time by posting them in the user section of the Ensighten.com website and providing notice on the website that they have been changed~~.

~~27~~31.   Counterparts.   This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and to constitute one and the same instrument. Electronic copies of this Agreement, including without limitation, those transmitted by facsimile or scanned to an image file, shall be considered originals.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on the Effective Date.

ENSIGHTEN LLC

BY:_____

TITLE:_____

Date:_____

GMI, INC.

BY:_____

TITLE:_____

~~22~~26.   Assignment.   Neither party~~The Customer~~ shall ~~not~~, without the prior written consent of the other party~~Ensighten~~, assign its rights or delegate its duties under this Agreement; provided, however, after providing the other party~~Ensighten~~ with at least ten (10) days ~~advance~~ prior written notice, either party~~Customer~~ may assign its rights and delegate its duties under this Agreement to a person or organization that acquires all or substantially all of the business or assets of the transferring party, whether by means of an asset sale, stock sale, merger, reorganization, or otherwise~~Customer and agrees in advance in writing to be bound by all the terms and conditions of this Agreement. Ensighten may assign its rights and delegate its duties under this Agreement without the consent of the Customer~~.

NDA TEMPLATE

This NDA outlines an agreement between a "Company" (the disclosing party) and a "Recipient" (the receiving party) to protect the confidentiality of a business plan and related information. It includes the following key sections:

Article I: Recitals

-This section provides **background information** about **the purpose of the agreement**. The Company wishes to share its business plan while maintaining confidentiality. Confidential Information is defined as all information, strategies, plans, trade secrets, objectives, and materials.

Article II: Recipient Obligations

- **A. Non-Disclosure**: The Recipient agrees **not to use** or disclose the Business Plan or Confidential Information for personal benefit or **to any third party**. The Recipient must take steps to protect this information from disclosure.

- **B. Disclosure:** The Recipient can only disclose the Business Plan and Confidential Information to **individuals within their organization on a need-to-know basis**. All individuals privy to this information must also be bound by the **terms of this Agreement**.

- **C. Exceptions**: The Recipient is **not prohibited from disclosing information that is publicly known**, was already in their possession before the agreement, is required by law, or has written approval from the Company.

- **D. Legal Obligation:** If compelled by **legal processes, the Recipient can disclose Confidential Information**, provided they promptly notify the Company and take legally available steps to resist or narrow such requests.

Article III: Term

- This section **allows the Parties to select whether the Recipient's obligations will remain in effect indefinitely or for a specified number of years (or in perpetuity)** from the Effective Date.

Article IV: Return or Destruction of Confidential Information

- The Recipient must **return or destroy** all materials related to the Confidential Information upon termination of the Agreement or as per the Company's request.

Article V: No Additional Agreements

- This section clarifies that **discussions and information exchange don't create any obligation** for the Company to enter into further agreements with the Recipient or prohibit them from providing similar information to others.

Article VI: Indemnify

- The Recipient agrees to indemnify (compensate) the Company against any damages or losses resulting from a breach of the Agreement. Recipient understands and acknowledges that any use or disclosure regarding the Business Plan or Confidential Information could cause the Company irreparable harm, **the amount of which may be difficult to ascertain, and therefore agrees that the Company shall have the right to apply to a court of competent jurisdiction for specific performance or order restraining and enjoining any such further disclosure or breach and for such other relief as Company deems appropriate**, in addition to the remedies otherwise available at law or in equity.

Article VII: Successors and Assigns

- The obligations of this Agreement are binding on the representatives, assigns, and successors of the Parties. However, the Recipient's rights and obligations are not assignable.

Article VIII: Governing Law

- The Agreement is governed by the laws of a specified state.

Article IX: Prevailing Party

- In case of a dispute, the **prevailing party has the right to collect attorney fees, costs, and other legal expenses** from the other party**.**

Article X: Entire Agreement

- This Agreement supersedes all prior agreements and must be altered, amended, or modified in writing by both Parties.

Article XI: Validity

- If any provision is **deemed unenforceable by a court, it will be interpreted to preserve** its intent.

Article XII: Notices

- The section outlines how notices should be provided and includes spaces for the Parties' addresses.

The Agreement ends with a **signature section** for both the Company and the Recipient, **including signature, date, printed name, and title** for each party.