



Terms and Conditions

Consulting and Services Agreement





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This Agreement is made this ____ day of _____, 2018, by and between BizBudding Inc. ("BizBudding") and _____ ("Client"), hereinafter referred to collectively as the Parties.

WHEREAS, Client desires that BizBudding provide advice and assistance to the Client;

WHEREAS, BizBudding desires to provide services to the Client as provided by the terms and conditions of this Agreement and any Exhibits, Attachments or Addendums thereof; and

WHEREAS, both Parties do hereby agree as follows:

1. Effective Date.

1.1 Services will be provided by Biz Budding to Client on the date agreed upon by the parties, the Effective Date. The services will continue for the defined project duration and maybe extended on a month to month basis thereafter until notice is provided.

2. Termination.

2.1 Event of Default. This Agreement may be terminated prior to its natural termination date upon the occurrence of one or more of the following "Event(s) of Default":

(a) By BizBudding, if Client fails to pay BizBudding any charges or taxes required by Client to be paid hereunder;

(b) By either party, if the other party is in default of any material provision hereof and such default is not cured within thirty (30) days after notice thereof is given to the defaulting party;

(c) By either party, upon the filing by the other party of any petition or action under any bankruptcy, reorganization, insolvency, arrangement or similar law for the relief of debtors, it being noted however that in the event Client files for bankruptcy, BizBudding shall have the option of not terminating this Agreement and having the post-petition entity assume this Agreement pursuant to I U.S.C. Section 365; or

(d) By either party, upon the filing against the other party of an involuntary petition under bankruptcy, reorganization, insolvency or similar law for the relief of debtors if not dismissed, vacated or stayed within sixty (60) days of filing.

2.2 Termination for Cause. In the event that either party breaches any material term, covenant, condition or obligation in this Agreement and fails to cure same within fifteen (15) days following written notice of such breach from the other party, the Agreement shall automatically terminate.

2.3 Termination with Notice. Either party may terminate the Agreement with 60 days advance written notice to the other.

2.4 Subject to the limitation of liability provisions set forth elsewhere in this Agreement, the foregoing rights and remedies of each party shall be cumulative and in addition to all other rights and remedies available to them in law and in equity.



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3. Limited Warranty; Limitation of Liability; Indemnity.

3.1 BizBudding warrants that the Services shall be of good quality and workmanship in accordance with the standards prevalent in the industry and with acceptable procedures applicable to Client's network, computer and communications systems.

EXCEPT TO THE EXTENT EXPRESSLY PROVIDED HEREIN, BIZBUDDING DOES NOT WARRANT THE SPECIFIC SERVICES PERFORMED HEREUNDER OR THE ACCURACY OR CORRECTNESS OF THE PRODUCT OR RESULTS OF THE SERVICES, AND THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED.

3.2 IN NO EVENT SHALL BIZBUDDING, ITS EMPLOYEES, CONTRACTORS, AGENTS OR SUPPLIERS, BE RESPONSIBLE FOR OR LIABLE TO CLIENT OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OR DAMAGE OF DATA, OR LOSS OF NETWORK, VOICE OR DATA COMMUNICATIONS, OR COMPUTER USE) ARISING OUT OF OR RELATED TO THIS AGREEMENT, OR ANY BREACH THEREOF (INCLUDING BUT NOT LIMITED TO THE PERFORMANCE OF SERVICES HEREUNDER, OR ANY SOFTWARE OR OTHER PRODUCT CREATED, PRODUCED OR MODIFIED IN CONNECTION HEREWITH), REGARDLESS OF THE FORM, OR CAUSE OF ACTION, WHETHER IN CONTRACT OR IN TORT, EVEN IF BIZBUDDING HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD THEREOF. CLIENT ASSUMES THE RISK OF ANY AND ALL DAMAGE OR LOSS ARISING FROM THE USE OR INABILITY TO USE THE RESULTS, PRODUCTS, OR SOFTWARE PRODUCED OR MODIFIED BY BIZBUDDING IN CONNECTION HEREWITH. BIZBUDDING'S LIABILITY TO CLIENT HEREUNDER, IF ANY, SHALL IN NO EVENT EXCEED THE TOTAL AMOUNT PAID TO BIZBUDDING BY CLIENT. FURTHER, BIZBUDDING IS SPECIFICALLY RELEASED OF AND FROM ANY WARRANTY OR LIABILITY ARISING FROM OR CAUSED BY OR FAILURE IN ANY HARDWARE, SOFTWARE, PROGRAM, OR SERVICE PROVIDED TO CLIENT BY A THIRD PARTY.

3.3 Each party shall and does hereby agree to indemnify, defend and hold harmless the other party from the payment of any sum or sums of money to any entity whatsoever and/or person whomsoever on account of claims, suits, liens, garnishments, attachments, costs, attorneys' fees, costs of investigation and of defense arising out of injuries to persons, including death, or damage to property caused by the intentional misconduct or gross negligence of the indemnifying party or its agents, servants or employees.

4. Excusable Delay ("force majeure").

No delay, failure or default in performance of any obligation hereunder shall constitute a breach of this Agreement, to the extent that such failure to perform, delay or default arises out of a cause beyond the control and without the negligence of the party otherwise chargeable with failure, delay or default, including without limitation: action or inaction of governmental, civil, or military authority; fire, strike, lockout or other labor dispute; flood; war; riot; earthquake; natural disaster; breakdown of public or common carrier communications facilities; computer or equipment malfunction; or act, negligence or default of the other party.

5. Confidentiality

5.1 It is contemplated that either party may disclose to the other party information concerning its inventions, confidential knowhow and trade secrets to further the performance of the Agreement. "Confidential Information" includes without limitation technical and business information relating to either party's inventions or products; research and development; production, manufacturing and engineering processes; proprietary communications or computer software; costs, profit or margin information; financial costs, expenses or operations; inventory, purchasing or merchandising practices or plans;



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Client lists; financial and/or marketing plans, strategies or forecasts; and employee lists. In addition, Confidential Information shall include without limitation any information that is identified in writing by the disclosing party to be confidential or a trade secret.

5.2 All Confidential information shall remain the sole property of the disclosing party. The receiving party shall have no rights to the Confidential Information of the disclosing party, except as provided in this Agreement, and shall use same only for the purpose of performing hereunder.

5.3 Each party shall hold the Confidential Information of the other party in strict confidence, and shall inform any relevant employee or agent of its obligations hereunder.

Neither party shall make any disclosure of the Confidential Information (including without limitation methods or concepts utilized in the Confidential Information) to any third party without the express written consent of the other, except to employees or agents to whom disclosure is necessary to the performance of this Agreement and shall take all reasonable steps to ensure the confidentiality of all Confidential Information, and except as may be required by law, regulation, court order or other legal process, provided however that if so required or compelled: the receiving party shall provide reasonably prompt notice to the disclosing party of any such requirement so that the disclosing party may, at its option and expense, seek a protective order or other appropriate remedy; the receiving party agrees to cooperate with the disclosing party in any such proceedings, and regardless of whether or not such protective order or other appropriate remedy is obtained, the receiving party will only furnish that portion of the Confidential Information that it is so required to furnish.

5.4 Each party hereby agrees that the identity of the other's employees is Confidential Information, and further expressly agrees that the during the Term

hereof, and for a period of two (2) years following the final expiration of the Term hereof, it will not directly or indirectly hire, retain, engage, or otherwise contract for consulting and/or independent contractor services with, any employee of the other party.

5.5 Notwithstanding the other provisions of this Agreement, nothing received by either party shall be considered to be Confidential Information of the other if: (a) it has been published or is otherwise readily available to the public other than by a breach of this Agreement; (b) it has been rightfully received by the party from a third party without confidential limitations; (c) it has been independently developed by the receiving party without violation of this Agreement; (d) it was known to the possessing party prior to its first receipt by such party, as shown by files existing at the time of initial disclosure; or (e) it has been intentionally disclosed by the party claiming that the information is Confidential Information to a third party without restriction on disclosure.

5.6 The obligation with respect to Confidential Information contained in this Section 5, except as set forth in Section 5.4, shall cease and be of no further force nor effect, upon the later to occur of: (a) one (1) year after the return of the respective Confidential Information to the disclosing party by the receiving party; or (b) one (1) year after the final termination of this Agreement.

6. Arbitration.

6.1 Any controversy or claim related to or arising out of this Agreement or an alleged breach thereof will be settled by mandatory, final and binding arbitration in accordance with the rules of the American Arbitration Association (AAA) then



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in effect, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction.

Any arbitration pursuant hereto shall be conducted in the city nearest Client's main U.S. office having a regional office of the AAA. The arbitrators hearing the matter will be selected from a panel of persons having experience with and knowledge of the computer industry and electronic computers and system, and at least one of the arbitrators selected will be an attorney.

6.2 In the event any arbitration is brought under or in connection with this Agreement, the prevailing party shall be entitled to recover and the other party hereby agrees to pay the prevailing party's costs of such proceeding, including but not limited to reasonable attorneys' fees and expert witness fees and other costs.

7. General Provisions.

7.1 This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey. Client and BizBudding shall abide by all federal and state laws, regulations, rules and ordinances relating to the subject matter hereof.

7.2 If any provision of the Agreement is declared to be invalid, the parties agree that such invalidity shall not affect the validity of the remaining provisions of this Agreement, and further agree to substitute for the invalid provision a valid provision which approximates the intent and economic effect of the invalid provisions as closely as possible.

7.3 Any notice or other communication required or permitted to be sent under this Agreement shall be in writing and shall be personally delivered or sent by

U.S. certified mail, return receipt requested, postage prepaid, to the address of the other party as set forth herein or to such other address as such party shall have last furnished to the other in writing, and shall be deemed to have been received upon the earlier of actual receipt or five (5) days after deposit in the mail.

7.4 Either party may assign this Agreement and convey its interest, or assign the right to receive payments, in whole or in part, to any entity whatsoever, upon 30 days' notice and with the other party's consent, which consent shall not be unreasonably withheld. In such event, the non-assigning party's rights and/or obligations hereunder shall not in any manner be modified, altered or diminished. An assignment by either party to any subsidiary or affiliate of Client, or pursuant to an internal reorganization or sale or transfer of all or substantially all of Client's assets, shall not require consent but shall require no less than 30 days' notice.

Any purported assignment or transfer not in accordance with this section shall be void and not merely voidable. Subject to the above restriction on assignment, this Agreement shall inure to the benefit of and bind the successors and assigns of the parties.

7.5 A waiver of a breach or default under this Agreement shall not be a waiver of any other breach or default. Failure or delay by either party to enforce compliance with any term or condition of this Agreement shall not constitute a waiver of such term or condition.

7.6 This Agreement (which includes these Standard Terms and Conditions and the Schedules and addenda hereto) represents, constitutes and expresses the entire agreement between the parties with respect to the subject matter contained herein and supersedes any previous or simultaneous oral or written



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communications, representations, understandings or agreements with respect thereto. Without limiting the generality of the foregoing, the terms and provisions of this Agreement are intended by the parties hereto as a final expression of their agreement with respect to said terms and provisions and the subject matter hereof, and may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement.

7.7 The terms of this Agreement may be modified only in a writing signed by authorized representatives of both parties.

7.8 It is understood and agreed that each party shall be acting as an independent contractor and not as an agent, employee or partner of the other and that each shall bear its entire cost and expense of performing under this Agreement. The employees assigned by each party pursuant to this Agreement shall at all times be the employees, agents and servants of such party and nothing contained herein shall create an employer-employee or master-servant relationship between Client and any of BizBudding's employees or between BizBudding and any of Client's employees. Each party shall be solely responsible for, and hereby releases and agrees to indemnify the other from and against (a) any and all claims of their respective employees for wages, salaries, employee benefits (including but not necessarily limited to health and medical insurance, retirement and social welfare benefits, federal, state and local withholding taxes, workers compensation benefits and the like) and (b) any and all claims of their respective employees for personal injuries or property damage suffered or incurred, other than such claims arising from the gross negligence or willful misconduct of the other party or of the agents and employees of such other party. The employees assigned by each party to perform services on or at the site of the other party's buildings and facilities shall be instructed by the assigning party to observe and comply with the other's safety and security precautions and rules and the assigning party shall be solely responsible for and

agrees to indemnify, defend and hold the other harmless from any claim, action, causes of action or suits and any expenses (including reasonable attorney fees and costs) relating thereto arising from any failure to observe such safety and security precautions and any negligent or willful misconduct of the assigned party's employees.

7.9 Each party acknowledges and agrees that the obligations and promises of the other party under this Agreement are of a unique character with particular value. Each party acknowledges and agrees that a breach of any promise or covenant regarding Confidential Information or proprietary rights contained in this Agreement may result in irreparable and continuing damage to the other party for which there may be no adequate remedy at law and, in the event of such breach, such party shall be entitled to seek injunctive relief and/or a decree for specific performance, and such other further relief as may be proper.

7.10 The boldfaced titles of various sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

7.11 Ambiguities, if any, in this Agreement shall be reasonably construed in accordance with all relevant circumstances including, without limitation, prevailing practices in the industry of the parties in the place where the contract is to be performed and shall not be construed against either party, irrespective of which party may be deemed to have authored the ambiguous provision.

7.12 Each of the parties acknowledges and agrees that it has read, understands and has actively negotiated the terms of this Agreement, participated in its drafting and has been represented (or had the opportunity to be so represented) by independent counsel, and is not entering into this Agreement on the basis of any representations not expressly set forth herein.



Authorizations and Effective Date

Client

On behalf of my company, by my signature below, I am authorizing BizBudding to proceed with the project as specified in this proposal and am representing that I have the authority to do so.

Signature: _____

Name and Title: _____

Effective Date: _____

This agreement includes, by reference, the BizBudding Privacy Policy and BizBudding Terms and Conditions.

Please initial to confirm acceptance:

_____ <https://bizbudding.com/privacy-policy/>

_____ <https://bizbudding.com/terms-of-use/>

Billing Contact

Name: _____

Phone: _____

Email: _____

Project Contact

Name: _____

Phone: _____

Email: _____

Additional Notes

BizBudding

On behalf of my company, by my signature below, I am authorizing BizBudding to proceed with the project as specified in this proposal and am representing that I have the authority to do so.

Signature: _____

David Schmeltzle, President

Effective Date: _____