



## TERMS & CONDITIONS

These Terms and Conditions are made and agreed to by and between BPD Technologies, a corporation having its principal place of business at 10572 Calle Lee #122, Los Alamitos, CA 90720 ("Company") and the client ("Client") identified within an executed Company proposal, statement of work or work order (each a "Proposal") referencing these Terms and Conditions. Each executed Proposal referencing these Terms and Conditions shall fully incorporate and be subject to these Terms and Conditions therein as if fully set forth within the Proposal.

THESE TERMS AND CONDITIONS APPLY TO ALL SIGNED COMPANY PROPOSALS AFTER NOVEMBER 1, 2016.

Company and Client (each a "Party" and together the "Parties") agree that these Terms and Conditions shall be effective as of the signature date of the Proposal (the "Effective Date"). The Parties further agree as follows:

- 1) **SCOPE OF SERVICES.** Company agrees to provide Client managed IT services and any associated services and products (the "Services") as set forth within a Proposal and these Terms and Conditions (together the "Agreement"). The Parties agree that these Terms and Conditions shall govern each Proposal as if fully set forth therein. In the event of any conflict or inconsistency between these Terms and Conditions and the terms of any Proposal, these Terms and Conditions shall control except where expressly provided otherwise within such Proposal. Each Proposal shall automatically expire if it is not signed by an authorized Client representative and returned to Company within thirty (30) days of receipt by Client, unless otherwise set forth within the Proposal.
- 2) **PAYMENT.** Unless otherwise stated within a Proposal, all payment is due from Client within thirty (30) calendar days from the invoice date for Services, including any hardware, software, peripherals and accessories. For fees paid pursuant to a monthly service plan, payment must be made monthly in advance unless otherwise set forth within a Proposal. Late payments shall be subject to interest on the unpaid invoice amount(s) until the date payment is received, at the lesser of 1.5% per month or the maximum allowable rate of interest permitted by applicable law. Client shall be liable for all reasonable attorneys' fees as well as costs incurred in collection of past due balances including but not limited to collection fees, filing fees and court costs.
- 3) **ACCESS TO PREMISES.** To the extent that Services are performed on Client's premises (the "Premises"), Client hereby grants to Company the right of ingress and egress over the Premises and further grants Company a license to provide the Services described in any Proposal within the Premises. To the extent that Services are provided to Client on property other than the Premises, it shall be Client's responsibility to secure, at Client's own cost prior to the commencement of any Services, any necessary rights of entry, licenses, permits or other permission necessary for Company to provide Services at such location. Client shall provide Company with any passwords or keys (virtual or otherwise) that Company requires in order to provide the Services to Client. Company shall not be liable for delay in performance or nonperformance of any term or condition of the Agreement that directly or indirectly results from Client's denial to Company of full and free access to Client's systems and components thereof, or Client's denial to Company of full and free access to necessary Client personnel or the Premises.
- 4) **WARRANTY & LIMITATIONS.**
  - 4.1 Company represents and warrants that it will re-perform any Services not performed in accordance with the Agreement, provided Company receives written notice from Client within fifteen (15) days after the Services were performed. This will be Client's sole remedy for a breach of the warranty in this Section 4.
  - 4.2 Any third party products and services provided to Client pursuant to the Agreement, including but not limited to third party hardware, software, peripherals and accessories (collectively, "Third Party Products") shall be provided to Client "as is". Company shall use reasonable efforts to assign all warranties (if any) for the Third Party Products to Client, but will have no liability whatsoever for such Third Party Products. All Third Party Products are provided WITHOUT ANY WARRANTY WHATSOEVER as between Company and Client, and Company shall not be held liable as an insurer or guarantor of the performance or quality of Third Party Products.
  - 4.3 Company assumes no liability for failure of equipment or software or any losses resulting from such failure.
  - 4.4 Client warrants and represents that it shall not use the Services for any purposes or activities that violate the laws of any jurisdiction, including the sending of unsolicited, bulk commercial email (i.e., SPAM).
  - 4.5 EXCEPT AS EXPRESSLY SET FORTH WITHIN THIS SECTION 4, COMPANY MAKES NO WARRANTIES REGARDING THE SERVICES TO BE PROVIDED HEREUNDER, OR THE RESULTS TO BE ACHIEVED OR EXPECTED THEREFROM. COMPANY EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE FOR ANY SERVICES PROVIDED HEREUNDER.
- 5) **LIMITATION OF LIABILITY.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR FOR LOST REVENUE, LOSS OF PROFITS, SAVINGS, OR OTHER ECONOMIC LOSS ARISING OUT OF OR IN CONNECTION WITH THESE TERMS AND CONDITIONS, ANY PROPOSAL OR ANY SERVICES PERFORMED OR GOODS SUPPLIED COMPANY, ANY LOSS OR INTERRUPTION OF DATA, TECHNOLOGY OR SERVICES,



## TERMS & CONDITIONS

FOR ANY BREACH OF THE AGREEMENT OR FOR ANY DAMAGES CAUSED BY DELAY IN FURNISHING SERVICES UNDER ANY PROPOSAL, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER FOR DAMAGES FROM ANY AND ALL CAUSES WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR NEGLIGENCE, SHALL BE LIMITED TO THE AMOUNT OF THE AGGRIEVED PARTY'S ACTUAL DIRECT DAMAGES, NOT TO EXCEED THE TOTAL FEES PAID BY CLIENT TO COMPANY FOR SERVICES (EXCLUDING THE COSTS OF ANY THIRD PARTY PRODUCTS) DURING THE THREE (3) MONTHS IMMEDIATELY PRIOR TO THE DATE ON WHICH THE CAUSE OF ACTION ACCRUED.

- 6) **INDEMNIFICATION.** Each Party (an "Indemnifying Party") hereby agrees to indemnify, defend and hold the other Party (an "Indemnified Party") harmless from and against any and all third party claims, fines, penalties, judgments, loss, damage, cost, expense or liability, including reasonable attorneys' fees, (collectively, "Damages") that arise from the Indemnifying Party's breach of this Agreement or infringement of copyrights, patent rights and/or the unauthorized or unlicensed use of any material, property or service in connection with this Agreement; provided however, that such Damages are the direct result of the Indemnifying Party's actions and not due to the Indemnified Party's fault, in whole or in part.

- 7) **COPYRIGHTS AND OTHER INTELLECTUAL PROPERTY.** Each Party (a "Creating Party") owns and retains all intellectual property rights in and to all of the Creating Party's works of authorship, including but not limited to all plans, software or software modifications developed by the Creating Party, and all modules derived or created from such materials (collectively, "Creating Party's IP"). The Creating Party's IP may not be distributed or sold in any form or manner without the express written consent of the Creating Party. During the Term of the Agreement, Client may use any intellectual property provided to Client by Company subject to the limitations set forth within the Agreement and any Third Party Product providers' limitations on use and disclosure. Each Party's limited right to use the other Party's or any third party's intellectual property as described herein shall automatically terminate upon any termination of the Agreement.

- 8) **TERM & TERMINATION.**

**8.1 Term & Renewal.** Unless otherwise provided within a Proposal, the Agreement shall commence on the Effective Date and continue in effect for a twelve (12) month term ("Term") unless and until terminated by either Party as set forth within this Section 8. Such Term shall automatically renew for successive renewal periods equal to the Term (a "Renewal Term") upon expiration of the Term or any prior Renewal Term unless either Party notifies the other Party at least ninety (90) days prior to the expiration of the Term or Renewal Term that it wishes to terminate the Agreement.

**8.2 Default.** In the event that one Party (a "Defaulting Party") commits a material breach of the Agreement, the non-Defaulting Party shall have the right, but not the obligation, to terminate the Agreement provided that (i) the non-Defaulting Party has notified the Defaulting Party of the specific details of the breach in writing, and (ii) the Defaulting Party has not cured the default within thirty (30) days following receipt of written notice from the non-Defaulting Party.

**8.3 Insolvency.** Notwithstanding any provision to the contrary, either Party hereto shall have the right to immediately terminate the Agreement upon notice to the other in the event such other Party (or any permitted successor organization) ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts as they become due, is insolvent or the subject of receivership, or in the event any substantial part of the other's property is or becomes subject to any levy, seizure, assignment or sale for or by any creditor or governmental agency without being released or satisfied within ten (10) days thereafter.

**8.4 Effect.** Each Proposal shall constitute a separate Agreement, and termination of one Proposal shall not act as a termination of any other Proposal.

**8.5 Equipment Removal.** Upon termination of the Agreement for any reason, Client shall provide Company with access, during normal business hours, to Client's premises (or any other locations at which Company-owned equipment is located) to enable Company to remove all Company-owned equipment (if any) from such premises.

**8.6 Transition.** In the event the Agreement is terminated for any reason whatsoever, all Client data held by Company shall be returned to the Client in a commercially reasonable manner and time frame, not to exceed fifteen (15) calendar days following the date of request of the return of such data by Client. In the event Client requests assistance from Company to transition to a new service provider, Company shall do so provided that (i) all fees due and owing to Company under the Agreement are paid to Company in full prior to Company providing its assistance to Client, and (ii) Client agrees in writing to pay Company its then-current rate for such assistance, with upfront amounts to be paid to Company as agreed upon between the Parties. **Company shall have no obligation to store or maintain any Client data in Company's possession or control beyond fifteen (15) calendar days following any termination of the Agreement.** Company shall be held harmless for and indemnified by Client against any and all claims, costs, fees, or expenses incurred by either Party that arise from, or are related to, Company's deletion of Client data beyond the time frames described in this Section.

**8.7 No Liability.** Unless expressly stated in the Agreement, neither Party shall be liable to the other Party or any third party for any compensation, reimbursement, losses or damages (collectively, "Damages") arising from or related to, directly or indirectly, the termination of the Agreement for any reason. This waiver of liability shall include, but shall not be limited to, the loss of actual or anticipated profits, anticipated or actual sales, and of expenditures, investments or



## TERMS & CONDITIONS

commitments in connection with such Party's or any third party's goodwill or business.

### 9) **CONFIDENTIALITY.**

**9.1** "Confidential Information" means any information disclosed by either Party, either directly or indirectly, in writing, orally or by inspection, review or analysis of tangible objects, including, without limitation, business plans, data, customer names and lists, pricing, designs, configurations, engineering information, financial information, forecasts, know-how, ideas, inventions, processes, specifications, software, trade secrets or any other information which is designated as "confidential," "proprietary" or some similar designation (collectively, the "Disclosed Materials") or should reasonably be understood by the receiving Party as being confidential. Confidential Information that is disclosed orally shall be Confidential Information if it is (a) designated as such at the time of disclosure or within a reasonable time after disclosure; or (b) should be reasonably understood to be Confidential Information. Confidential Information may also include information of a third party that is in the possession of one of the Parties and is disclosed to the other Party under this Agreement. Confidential Information shall not, however, include any information that (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing Party; (ii) becomes publicly known and made generally available after disclosure by the disclosing Party to the receiving party through no action or inaction of the receiving Party; (iii) is already in the possession of the receiving Party at the time of disclosure by the disclosing Party, as shown by the receiving Party's files and records immediately prior to the time of disclosure; (iv) is obtained by the receiving Party from a third party lawfully in possession of such information and without a breach of such third party's obligations of confidentiality; or (v) is independently developed by the receiving Party without use of or reference to the disclosing Party's Confidential Information, as shown by documents and other competent evidence in the receiving Party's possession.

**9.2** Each Party agrees not to use any Confidential Information of the other Party for any purpose except as reasonably necessary for its performance or enforcement of its rights under this Agreement. Each Party agrees not to disclose any Confidential Information of the other Party, except that, subject to Section 9.3 below, a receiving Party may disclose the other Party's Confidential Information to its employees and agents and its officers, managers, directors, and advisors (including, without limitation, attorneys, accountants, underwriters, lenders, and consultants), and providers or prospective providers of financing and their advisors ("Representatives") provided such Representatives are required to have such information as reasonably necessary for the Party's performance or enforcement of its rights under this Agreement.

**9.3** If a receiving Party or its Representative is required by law to make any disclosure that is prohibited or otherwise constrained by this Agreement, the receiving Party will provide the disclosing Party with prompt written notice of such requirement (to the extent permitted by applicable law)

so that the disclosing Party may seek a protective order or other appropriate relief. Subject to the foregoing sentence, such receiving Party may furnish that portion (and only that portion) of the Confidential Information that the receiving Party is legally compelled or is otherwise legally required to disclose; provided, however, that the receiving Party (a) provides such assistance as the disclosing party may reasonably request in obtaining such order or other relief, (b) uses reasonable efforts to ensure that all Confidential Information that is so disclosed will be accorded confidential treatment, and (c) furnishes only that portion of the Confidential Information that is legally required. Each party acknowledges and agrees the disclosing Party's Confidential Information is valuable both in whole and in its individual parts.

**9.4** Each Party agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the other Party. Without limiting the foregoing, each Party shall take at least those measures that it takes to protect its own confidential information of a similar nature, but in no case less than reasonable care. Each Party shall ensure that its Representatives who have access to the other party's Confidential Information have signed a non-use and non-disclosure agreement with provisions no less restrictive than the provisions of these Terms and Conditions or are otherwise legally obligated not to disclose such Confidential Information, prior to any disclosure of Confidential Information to such Representative. Each Party shall reproduce the other Party's proprietary rights notices on any copies, in the same manner in which such notices were set forth in or on the original. A Party receiving Confidential Information shall promptly notify the party disclosing such Confidential Information of any use or disclosure of such Confidential Information in violation of this Agreement of which the receiving party becomes aware. Each Party shall be directly responsible for any breaches of this Agreement by its Representatives.

**9.5** All documents and other tangible objects containing or representing Confidential Information that have been disclosed by either Party to the other Party, and all copies or extracts thereof that are in the possession or control of the other Party of its Representatives, shall be and remain the property of the disclosing Party and shall promptly be destroyed or returned to the disclosing Party upon the disclosing Party's written request.

**9.6** Each Party's obligations of confidentiality with respect to the other Party's Confidential Information will continue for a period of five (5) years following the expiration or termination of this Agreement; provided, however, all obligations with respect to Confidential Information that constitutes a trade secret shall remain in effect until such time as the information is no longer a trade secret under applicable law.

### 10) **MISCELLANEOUS.**

**10.1 Assignment.** Neither Party may assign (by operation of law or otherwise) the Agreement or any Proposal without the prior written consent of the other Party, which shall not be unreasonably withheld, and any attempted assignment



## TERMS & CONDITIONS

without written consent shall be void. Notwithstanding the foregoing, either Party may assign its rights and obligations hereunder to a successor in ownership in connection with any merger, consolidation, or sale of substantially all of the assets of such Party, or any other transaction in which ownership of more than fifty percent (50%) of either Party's voting securities is transferred; provided such assignee expressly assumes the assignor's obligations hereunder.

**10.2 Time Limitations.** The Parties mutually agree that any action for breach of, or any matter arising out of, the Agreement or any Proposal must be commenced within one (1) year after the cause of action accrues or the action is forever barred.

**10.3 Severability.** If any provision of the Agreement is declared invalid by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such invalidity, illegibility or unenforceability so that the remainder of that provision and all remaining provisions of the Agreement shall be valid and enforceable to the fullest extent permitted by applicable law.

**10.4 No Waiver.** Neither Party shall, by lapse of time or inaction, be deemed to waive any breach by the other Party of the Agreement. No waiver shall be effective unless in writing and signed by the Party against which enforcement of such waiver is sought. The waiver by either Party of a particular breach of the Agreement by the other Party shall not be a continuing waiver of such breach, or of other breaches of the Agreement. No usage of trade or other regular practice or method of dealing between the Parties to the Agreement shall be used to modify, interpret, supplement or alter any terms of the Agreement.

**10.5 Entire Agreement.** The Agreement constitutes the entire Agreement between the Parties and supersedes all previous agreements, promises, proposals, representations, understandings, and negotiations, whether written or oral, between the Parties respecting the subject matter hereof. Neither Party shall be bound by any agent or employee representations, promises or inducements not explicitly set forth within the Agreement. No purchase order terms shall be binding upon either Party. Electronic signatures and electronic or other facsimile copies of a Proposal or any modification or amendment to the Agreement shall legally bind the Parties to the same extent as original signed documents.

**10.6 Independent Contractor.** Company is an independent contractor of Client, and neither Party is an employee, partner or joint venture of the other Party.

**10.7 Subcontractors.** Company may subcontract Services to one or more third party, provided that Company shall be responsible for all work performed by any Company subcontractor as if Company performed such work itself.

**10.8 Force Majeure.** Neither Party shall be in default if a delay or failure to perform any obligation hereunder is caused by conditions beyond that Party's control, including acts of God, civil commotion, strikes, labor disputes, and governmental demands or requirements, provided that, in every case, the delay or failure to perform is beyond the control and without the fault or negligence of the Party

claiming excusable delay and that such Party cures the breach as soon as possible after the occurrence of the event.

**10.9 Mutual Contribution.** The Agreement was drafted and negotiated by both of the Parties and the Agreement shall not be construed against any Party because that Party initially drafted any particular provision.

**10.10 Non-Solicitation.** The Parties hereby agree that each Party, including any of their respective parent, subsidiary, or otherwise affiliated entities, is prohibited from directly or indirectly soliciting for employment, employing or otherwise retaining any employee, agent or subcontractor of the other Party for a period of two (2) years after termination of the Agreement. Each Party acknowledges and agrees that in the event of any breach of this Section that damages to the other Party would be difficult or impracticable to determine, and agrees that in such event, the breaching Party shall pay the other Party as liquidated damages and not as a penalty an amount equal to two hundred percent (200%) of the individual's annual compensation at the time of the breach. Any Party's subcontractor affected by a breach of this Section may directly enforce this provision against the breaching Party.

**10.11 Insurance.** Company and Client shall each maintain, at their own expense, insurance reasonably required in connection with the Agreement. Company shall maintain statutorily required workers' compensation insurance for its employees.

**10.12 Governing Law; Venue.** The Agreement shall be governed by and construed in accordance with the laws of the state of California (excluding its choice of law rules.) The exclusive jurisdiction for any legal proceeding regarding the Agreement shall be in the state or federal courts located in the state of California and each Party hereto expressly submits to the jurisdiction of said courts and hereby waives any objection to the venue in such courts. THE PARTIES AGREE THAT THEY WAIVE ANY RIGHT TO A TRIAL BY JURY FOR ANY AND ALL CLAIMS AND CAUSES OF ACTION ARISING FROM OR RELATED TO THE AGREEMENT.

**10.13 No Third Party Beneficiaries.** Nothing in the Agreement shall confer any rights upon any person or entity who is not a direct Party to the Agreement, nor shall anything in the Agreement be construed as creating an obligation by either Party to any non-party to the Agreement.

**10.14 Survival.** Any provision of the Agreement which contemplates performance or observance subsequent to termination of the Agreement (including, without limitation, the confidentiality and intellectual property provisions set forth herein) shall survive termination of the Agreement and continue in full force and effect.

**10.15 Notices** Any notices or other communications required or permitted to be given, made or delivered under the Agreement shall be in writing (unless otherwise specifically provided within the Agreement) and shall be sufficiently given or made if delivered personally or sent by overnight courier service, or if sent by certified mail, return receipt requested, to the other Party at the address set forth within the Proposal or to such other address as either Party may from time to time designate to the other by written notice.



## TERMS & CONDITIONS

REVISED: 11/1/2016