

ARTICLE I: RECITALS AND DEFINITIONS

Standard Terms and Conditions

These Standard Terms and Conditions shall apply to any Work Order (as defined below) between 8bitstudio Design, LLC ("8bitstudio") and Customer (as defined below).

Section 1.01 – Definitions: The following definitions shall apply

- 1) Access: The term "access" and variants thereof shall mean to store data in, retrieve data from or otherwise approach or make use of (directly or indirectly) through electronic means or otherwise.
- 2) Associates: The term "Associates" shall mean employees of 8bitstudio and independent contractors hired by 8bitstudio.
- 3) Authorized Person: The term "Authorized Person" shall mean:
 - i. employees of Customer with a need to know Confidential Information basis who agree to maintain the confidentiality of such Confidential Information and;
 - ii. a person or organization who is authorized in writing by 8bitstudio to receive Confidential Information and who agrees to maintain the confidentiality of such Confidential Information.
- 4) Cancellation Notice: The term "Cancellation Notice" shall mean that written notice sent by one party to this Agreement to the other party to this Agreement seeking to cancel this Agreement because of breach by such other party.
- 5) Confidential Information: The term "Confidential Information" shall mean all information concerning the business and technical plans of 8bitstudio, the Services, Deliverables, 8bitstudio Technology and this Agreement which is disclosed by 8bitstudio to Customer or learned by Customer and which is not:
 - i. Already known to Customer from a source other than 8bitstudio; or
 - ii. Independently developed by Customer.
- 6) Customer: The term "customer" shall mean the party identified as Customer in a Work Order signed by such party and 8bitstudio.
- 7) Customer Facility: The term "Customer Facility" shall mean the facility of Customer located at the address set forth for Customer on the signature page of this Agreement.
- 8) Deliverables: The term "Deliverable" shall mean deliverables provided to Customer in connection with Services or as defined in a Work Order, including Licensed Technology (as the case may be).
- 9) Effective Date: The term "Effective Date" shall mean the date this Agreement is signed by 8bitstudio and Customer (whichever is later).
- 10) Fee: The term "Fee" shall mean an amount of money equal to the amount invoiced for performance of Services set forth in Work Order number 1.
- 11) 8bitstudio Technology: The term "8bitstudio Technology" shall mean any and all Technology developed by 8bitstudio, whether exclusively or jointly with Customer or a third-party, regardless of the source of the funding for such development, including Licensed Technology.
- 12) Licensed Technology: The term "Licensed Technology" shall mean the 8bitstudio Technology (in object code form for computer software) provided to or made available (as the case may be) to Customer for use in connection with the Deliverables, including 8bitstudio electronic commerce software applications.
- 13) Proprietary Information: The term "Proprietary Information" shall mean the Confidential Information, Deliverables, and 8bitstudio Technology.
- 14) Restatements: The term "Restatements" shall mean Section 757 of the Restatement of Torts, Section 39 of the Restatement (Third) of Unfair Competition, Section 1 of the Uniform Trade Secrets Act and Section 1839 of Title 18 of the United States Code (18 U.S.C. §1839).
- 15) Services: The term "Services" shall mean those certain technical advice, consultations, project management, system design, software development, marketing strategy, and adhoc services provided by 8bitstudio to Customer.
- 16) Technology: The term "Technology" shall mean:
 - i. evaluation, technical, scientific, engineering, marketing, financial and business reports, plans, studies, diagrams, forms, or flow charts;
 - ii. all forms and types of scientific, technical, economic, or engineering information; and;
 - iii. information, data, ideas, works of authorship, computer software, source code, object code, executable code, documentation, databases, database designs, data dictionaries, data models, fields, records, scripts, texts, interface designs, protocols, screen displays, graphics, web sites, links, patterns, compilations, formulas, methods, methodologies, processes, derivative works, machines, articles of manufacture, improvements, hardware, components, peripherals, equipment, whether tangible or intangible, and whether stored, compiled or memorialized (without limitation)

physically, electronically, graphically, photographically, or in writing.

- 17) Term: The term “Term” shall mean a period of time starting with the Effective Date and continuing until this Agreement is terminated or canceled under Article VII of this Agreement.
- 18) Work Order: The term “Work Order” shall mean those certain Work Orders (the form of which is attached hereto as Exhibit A and by this reference incorporated herein) as signed by 8bitstudio and Customer.

ARTICLE II: SERVICES

Section 2.01 – Consulting: Customer may request 8bitstudio to provide Services to Customer as provided in each Work Order.

Section 2.02 – Scope: The scope of this Agreement shall include each Work Order as signed by 8bitstudio and Customer, the terms of which are incorporated herein and made a part hereof. In the event of any conflict between the terms of this Agreement and the terms of any Work Order, the terms of this Agreement shall govern.

Section 2.03 – Cooperation: Customer hereby acknowledges that successful performance by 8bitstudio of the Services shall require Customer to cooperate with 8bitstudio in good faith and to provide information concerning Customer information technology, computers, computer software, business processes and products as may be requested by 8bitstudio from time to time. Customer hereby agrees to provide such good faith cooperation and information. Customer hereby authorizes 8bitstudio to access the personnel, facilities, information technology, computers, computer software and data of Customer solely for purposes of performing this Agreement.

Section 2.04 – Facilities: Unless otherwise required (as determined exclusively by 8bitstudio), the Services shall be performed at the office facilities of 8bitstudio.

Section 2.05 – Acceptance: The Services shall be deemed delivered by 8bitstudio and accepted by Customer upon performance. The personnel assigned to perform the Services shall be determined solely by 8bitstudio.

Section 2.06 – Schedule: The Services shall be performed during the hours of 8:00 a.m. through 5:00 p.m., Central Standard Time, Monday through Friday (excluding holidays), unless otherwise required (as determined exclusively by 8bitstudio).

ARTICLE III: PAYMENT

Section 3.01 – Fee: Customer shall pay the Fee by the Effective Date.

Section 3.02 – Services: Services shall be performed by 8bitstudio at the time and material rates of 8bitstudio prevailing at the time such Services are rendered.

Section 3.03 – Costs: Customer shall pay 8bitstudio all direct costs, including (without limitation) postage, shipping, travel, lodging, per diem, telephone, telecommunications, material and reproduction expenses incurred by 8bitstudio in performing Services under this Agreement. Customer shall pay any and all applicable taxes (excluding income taxes assessed against 8bitstudio).

Section 3.04 – Invoicing: 8bitstudio shall invoice Customer monthly for fees and expenses in connection with Services under this Agreement. Customer shall pay any such invoice in full on the due date thereof or within twenty days of receiving such invoice, whichever is earlier. Any amount of money which is not paid by Customer when due shall be increased by a late fee equal to 1.5% for each month or portion thereof in which such amount is due and not paid.

ARTICLE IV: LICENSE

Section 4.01 – Deliverables: Subject to Customer compliance with the obligations of Customer under this Agreement, including (without limitation) payment obligations, 8bitstudio hereby grants Customer a non-exclusive, non-transferable license to use the Deliverables (excluding the Licensed Technology) at the Customer Facility for the Term.

Section 4.02 – Licensed Technology: Customer hereby acknowledges and agrees that the execution of this Agreement or the disclosure of Confidential Information hereunder shall not be construed as the grant of a license to Customer to use the Licensed Technology. In the event Deliverables include Licensed Technology, use of the Licensed Technology shall be subject to 8bitstudio standard licensing terms for the Licensed Technology.

ARTICLE V: INTELLECTUAL PROPERTY

Customer may have or accrued in the Proprietary Information, including all ownership rights in patents, copyrights, trademarks and trade secrets in connection therewith.

Section 5.01 – Proprietary Information: Title to the Proprietary Information, including all ownership rights to patents, copyrights, trademarks and trade secrets in connection therewith, shall be the exclusive property of 8bitstudio. Customer hereby assigns and transfers to 8bitstudio any and all rights, title and interests that

Section 5.02 – Confidential Information: Customer shall not disclose Confidential Information except to Authorized Persons. Customer shall not duplicate, use or disclose Confidential Information except as permitted under this Agreement.

Section 5.03 – Reverse Engineering: Customer shall not reverse engineer, decompile, disassemble or translate the Deliverables or access the Deliverable using third party software without the prior written consent of 8bitstudio. Customer shall not allow the Deliverable to be reverse engineered, decompiled, disassembled, translated, or accessed using third party software without the

prior written consent of 8bitstudio.

Section 5.04 – Modifications: The execution of this Agreement or the disclosure of Confidential Information hereunder shall not be construed as the grant of a license to Customer to use the Confidential Information to prepare or use derivative works. Customer shall not modify the Deliverables and shall not allow the Deliverables to be modified without the prior written consent of 8bitstudio. Customer shall not use the Deliverables or any materials incident thereto to prepare derivative works, including (without limitation) developing computer software, without the prior written consent of 8bitstudio. If the Deliverables are modified, such modifications shall be the sole and exclusive property of 8bitstudio and 8bitstudio shall own any and all of the rights, title and interests to such modifications and any resulting derivative works, including (without limitation) all copyrights, patents and trade secrets related thereto.

Section 5.05 – Trade Secrets: Customer hereby acknowledges and agrees that the Confidential Information derives independent economic value (actual or potential) from not being generally known to the other persons who can obtain economic value from its disclosure or use and from not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; is the subject of reasonable efforts under the circumstances to maintain its secrecy; and is a trade secret of 8bitstudio as defined under applicable State Statute and any Restatements.

Section 5.06 – No Contest: Customer shall not contest or aid in contesting the ownership or validity of the copyrights, trademarks and trade secrets of 8bitstudio.

ARTICLE VI: WARRANTY

Section 6.01 – Service Warranty: The Services shall be performed on a reasonable efforts basis by qualified personnel in accordance with standard industry practices for similar services.

SECTION 6.02 – DELIVERABLES WARRANTY: THE DELIVERABLES ARE PROVIDED UNDER THIS AGREEMENT "AS IS" WITHOUT WARRANTY OF ANY KIND. 8BITSTUDIO MAKES NO WARRANTY REGARDING THE DELIVERABLES, EXPRESS OR IMPLIED. 8BITSTUDIO DISCLAIMS AND CUSTOMER HEREBY WAIVES ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.

SECTION 6.03 – WARRANTY LIMITATION: THE WARRANTY SET FORTH IN SECTION 6.01 IS IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES OF MERCHANTABILITY. ACCEPTING THE WARRANTY SET FORTH IN SECTION 6.01, 8BITSTUDIO HEREBY DISCLAIMS AND CUSTOMER

HEREBY WAIVES ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ALL IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY.

Section 6.04 – Express Warranties: Customer hereby acknowledges and agrees that 8bitstudio (including officers, employees, agents, directors and independent contractors of 8bitstudio) has not granted to Customer or made any express warranties concerning the Proprietary Information and the Services, except the service warranty of Section 6.01.

Section 6.05 – Limitation of Damages: 8bitstudio shall not be liable to Customer or to a third party under this Agreement for any direct, indirect, lost profits, consequential, exemplary, incidental, or punitive damages, regardless of the form of action, whether in contract or in tort, including negligence, regardless of whether 8bitstudio has been advised of the possibility of such damages in advance or whether such damages are reasonably foreseeable.

Section 6.06 – Exclusive Remedy: The exclusive remedy of Customer for any reason and for any cause of action whatsoever in connection with or relating to the Agreement, or any transaction involving the Deliverables, regardless of the form of action, whether in contract or in tort, shall be limited to repair or replacement of the Deliverables or re-performance of Services, as determined by 8bitstudio.

Section 6.07 – Limitation of Liability: Notwithstanding Section 6.06, the liability of 8bitstudio for any reason and for any cause of action whatsoever in connection with this Agreement, regardless of the form of action, whether in contract or in tort, including negligence, shall be limited to the amount of money received by 8bitstudio from Customer pursuant to the Work Order from which such damages or liability arose.

Section 6.08 – Force Majeure: 8bitstudio shall be not liable to Customer for failing to perform its obligations hereunder because of circumstances beyond the control of 8bitstudio. Such circumstances shall include (without limitation) any acts or omissions of any government or governmental authority, natural disaster, act of a public enemy, acts of terrorism, riot, sabotage, labor disputes, war, laws, court orders, telecommunication failure, electronic mail failure, power failure, delays in transportation or deliveries of supplies or materials, acts of God, computer failure, failure of Customer to cooperate with the reasonable requests of 8bitstudio, breach of this Agreement or any Work Order by Customer, and any events reasonably beyond the control of 8bitstudio.

Section 6.09 – 8bitstudio Indemnification: Customer shall release, indemnify, defend and hold harmless 8bitstudio (including parents, subsidiaries, affiliates, officers, employees, agents, directors, and independent contractors of 8bitstudio) from and against any claims, liability, damages, costs or losses (including reasonable attorney fees) arising from or in connection with use of the Deliverables by Customer, use by 8bitstudio of any third party intellectual property made available to 8bitstudio

by Customer, including (without limitation) third party technology, breach of this Agreement or a Work Order by Customer, and any negligent or willful act by Customer causing damages to 8bitstudio.

Section 6.10 – Customer Indemnification: If a final judgment from a court of competent jurisdiction is entered against 8bitstudio upholding claims that the Deliverables violate a United States patent, copyright, trade secret, trademark, or other proprietary rights of a third party in the United States, provided that Customer gives 8bitstudio prompt written notice upon Customer’s knowledge of any such claim, permits 8bitstudio to answer and defend or settle (at Abbreviated Name of Corporation] option) such claim or action, and provides 8bitstudio with information, assistance, and authority to assist 8bitstudio in the defense or settlement of such claim or action, 8bitstudio shall perform one or more of the following actions (as determined by 8bitstudio) within one year of the date judgment in favor of such third party’s claim is rendered by a court of competent jurisdiction:

- 1) Replacement: Replace the Deliverables with a non-infringing product of substantially equivalent functional and performance capability;
- 2) Modification: Modify the Deliverables to avoid the infringement without substantially eliminating the functional and performance capabilities of the Deliverables;
- 3) Obtain License: Obtain a license for use of the Deliverables from the third party claiming infringement for use of the Deliverables.

The remedies set forth herein shall be the sole and exclusive remedies of Customer under this Agreement for any and all such claims of infringement.

Section 6.11 – Reliance: Unless advised to the contrary in writing at the time of disclosure, 8bitstudio shall be entitled to rely on any information provided by Customer as true and correct.

ARTICLE VII: TERMINATION

Section 7.01 – Termination Limitations: This Agreement and each Work Order shall only be terminated or canceled as provided under this Article VII. This Agreement shall be valid for the Term.

Section 7.02 – Termination: Either party may terminate this Agreement or a Work Order for convenience upon providing thirty (30) days written notice of termination to the other party. Termination of this Agreement shall terminate this Agreement and each Work Order. Termination of a Work Order shall terminate such Work Order only.

Section 7.03 – Cancellation: If a party violates its obligations under this Agreement or a Work Order, the other party may cancel this Agreement or such Work Order by sending Cancellation Notice describing the noncompliance to the party in non-compliance. Upon receiving Cancellation Notice, the non-complying party shall have twenty (20) days from the date of such notice to cure any such noncompliance. If such noncompliance is not cured within the required twenty (20) day period, the party providing Cancellation Notice shall have the right to cancel this Agreement and such Work Order as of the twenty-first (21st) day after the date of the Cancellation Notice. Cancellation of this Agreement shall cancel this Agreement and each Work Order. Cancellation of a Work Order shall cancel such Work Order only. Notwithstanding Sections 3.03, 7.02 and 7.03, Customer failure to pay an invoice shall be sufficient cause for cancellation of this Agreement by 8bitstudio.

Section 7.04 – Return of Materials: Upon termination or cancellation of this Agreement, Customer shall return to 8bitstudio all Deliverables and all property of 8bitstudio and shall provide 8bitstudio with a certificate of compliance with this Section 7.04 signed by an authorized representative of Customer. Upon termination or cancellation of a Work Order, Customer shall return to 8bitstudio all Deliverables developed pursuant to such Work Order.

Section 7.05 – Refund: Upon termination or cancellation of this Agreement or a Work Order, 8bitstudio shall be entitled to retain all payments rendered to 8bitstudio under this Agreement or such Work Order, including (without limitation) all fees and expenses rendered to 8bitstudio by Customer in anticipation of services hereunder. Termination or cancellation of this Agreement or a Work Order shall not terminate or cancel any payment obligation of Customer under this Agreement or any Work Order.

ARTICLE VIII: MISCELLANEOUS

Section 8.01 – Assignments: All assignments of rights under this Agreement by Customer, without the prior written consent of 8bitstudio shall be void.

Section 8.02 – Public Announcements: All public announcements of the relationship of 8bitstudio and Customer under this Agreement shall be subject to the prior written approval of 8bitstudio. 8bitstudio shall have the right to use the name of Customer as a reference for marketing purposes in connection with the Services.

Section 8.03 – Entire Agreement: This Agreement contains the entire understanding of the parties and supersedes previous verbal and written agreements between the parties concerning the subject matter herein. The Work Orders, together with any schedules, appendices and other attachments thereto or other agreements (including this Agreement) which are specifically incorporated therein as part of this Agreement, shall constitute the entire agreement between Customer and 8bitstudio with respect to the matters referred to therein, and shall supersede all proposals, oral or written, and all other communications between the parties in relation to the subject matter of the Work Orders

which have not otherwise been incorporated in writing as a part of the Work Orders.

Section 8.04 – Employee Pirating: During the Term and continuing two years thereafter, Customer shall not (1) induce or solicit (directly or indirectly) any Associate of 8bitstudio to leave the employ or hire of 8bitstudio or (2) Engage (directly or indirectly) the services of an Associate (as an employee, consultant, independent contractor, or otherwise) without the advance written consent of 8bitstudio.

Section 8.05 – Amendments and Modifications and Severability: Alterations, modifications or amendments of provisions of this Agreement shall not be binding unless such alterations, modifications or amendments are in writing and signed by authorized representatives of 8bitstudio and Customer. If a provision of this Agreement is rendered invalid, the remaining provisions shall remain in full force and effect.

Section 8.06 – General: The headings and captions of this Agreement are inserted for reference convenience and do not define, limit or describe the scope or intent of this Agreement or any particular section, paragraph or provision. Pronouns and nouns shall refer to the masculine, feminine, neuter, singular or plural as the context shall require.

Section 8.07 – Governing Law: This Agreement shall be governed by the laws of the state of Minnesota and venue shall be Hennepin County Minneapolis, Minnesota.

Section 8.08 – Notice: Notices shall be in writing and shall be deemed delivered when delivered by commercial next business day delivery service, Certified or Registered Mail – Return Receipt Requested or by hand to the address set forth in this Agreement for 8bitstudio and for Customer on the signature page of this Agreement. Notices shall be deemed given on the date of receipt -as evidenced in the case of Certified or Registered Mail by Return Receipt.

Section 8.09 – Waiver: Waiver of breach of this Agreement shall not constitute waiver of another breach. Failing to enforce a provision of this Agreement shall not constitute a waiver or create an estoppel from enforcing such provision. Any waiver of a provision of this Agreement shall not be binding unless such waiver is in writing and signed by the party waiving such provision.

Section 8.10 – Relationship of the Parties: Nothing herein shall be construed as creating a partnership, an employment relationship, or an agency relationship between the parties, or as authorizing either party to act as agent for the other. Each party shall maintain its separate identity.

Section 8.11 – Arbitration: Any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by arbitration in accordance with Arbitration Rules of the American Arbitration Association in St. Paul, Minnesota. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Three qualified

Arbitrators shall be selected by the parties in accordance with the Arbitration Rules of the American Arbitration Association. Each party shall have the right of discovery as set forth in the Federal Rules of Civil Procedure. The Arbitration shall be administered by the American Arbitration Association in St. Paul, Minnesota.

Section 8.12 – Equitable Remedies: The parties hereby acknowledge that damages at law may be an inadequate remedy for 8bitstudio. Therefore, 8bitstudio shall have the right of specific performance, injunction or other equitable remedy in the event of a breach of this Agreement by Customer.

Section 8.13 – Continuation: The terms and provisions of Article I, III, V, VI and VIII shall survive termination and cancellation of this Agreement.