



EXHIBIT A TERMS AND CONDITIONS

These Terms and Conditions (this “**Agreement**”), dated as of the date of acceptance by Customer (the “**Effective Date**”), govern the provision of Services (as defined below) by Blue Tent Marketing, LLC, a Colorado limited liability company, (“**Consultant**”) to the customer to whom the applicable SOW, Order Form, quotation or order confirmation is addressed (“**Customer**”). This Agreement includes and incorporates by reference each Scope of Work (“**SOW**”) and other order form approved by Consultant (“**Order Form**”) that provides the type, payment terms and additional terms and conditions for the Services offered by Consultant.

1. **Acceptance of Terms and Conditions; No Additional Terms.**

Consultant’s agreement to provide Services under this Agreement is expressly conditioned upon the acceptance of this Agreement by Customer. This Agreement governs any SOW, Order Form, quotation, order confirmation and transaction between Consultant and the Customer related to Services to be provided by Consultant to Customer and no additional or different terms and conditions will apply or be binding upon Consultant. Consultant agrees to be bound by this Agreement by ordering or using the Services. Consultant objects to any proposal or agreement provided by Customer that includes different or additional terms that vary from this Agreement, and any such proposal or agreement is disallowed and shall be of no effect. Customer specifically waives any terms or conditions additional to or different from this Agreement by ordering or accepting any Services, or by specifically agreeing to be bound by this Agreement.

2. **Provision of Services.**

(a) **Description of Services.** Subject to the terms of this Agreement, Consultant shall: (a) perform the consulting, professional and/or technical services, including any software development or design services specifically set forth in the applicable SOW or Order Form; and (b) develop certain Work Product (as defined below) as specifically described in the applicable SOW or Order Form. The services and Work Product referenced in the immediately preceding sentence shall be hereinafter collectively referred to as the “**Services**.” Each SOW and Order Form shall define and describe, as appropriate, the scope of the Services to be rendered thereunder, any Consultant Content (as defined below) that will be developed, or delivered to Customer, as part of the Services (the “**Work Product**”), and the schedule for delivery thereof. Customer and Consultant may mutually agree from time to time during the Term (as defined below) to execute a SOW or Order Form, or multiple SOWs or Order Forms, which SOW(s) and Order Form(s) shall be attached to this Agreement and



incorporated into and made a part of this Agreement. For any SOW or Order Form to be effective, it must be in writing and signed or otherwise authenticated by Customer and approved in writing by Consultant. Electronic and fax documents are considered to be in writing for this purpose and counterpart signature pages are permitted.

(b) **Customer Cooperation.** Customer acknowledges that the successful and timely rendering of the Services shall require the good faith cooperation of Customer. Accordingly, Customer shall fully cooperate with Consultant, including, without limitation, by: (a) providing Consultant with all information concerning the proposed Services as may be reasonably required by Consultant; (b) making available to Consultant (i) personnel of Customer, and (ii) appropriate development time on Customer's systems, so as to permit Consultant to render and provide the Services, provided that the foregoing shall be at such times so as to not unreasonably disrupt the conduct of Customer's business; (c) providing at least one (1) employee or consultant of Customer, reasonably acceptable to Consultant, who shall have substantial relevant experience, to act as a project manager in connection with the rendering and provision of the Services (each such person a "**Project Manager**"). The name of each party's Project Manager shall be set forth in the applicable SOW or Order Form. The Project Managers are the only persons authorized to act for the parties with respect to matters related to the applicable SOW or Order Form.

(c) **Timing, Delivery and Installation.** Provided that Customer is in compliance with this Agreement, Consultant shall provide the Services in accordance with the delivery schedule, if any, specified in the applicable SOW or Order Form (the "**Delivery Schedule**"). All dates specified in the Delivery Schedule shall be extended by delays caused by Customer, including, without limitation, Change Orders (as hereinafter defined). If Customer is not responsive to Consultant within fourteen (14) work days, the project will be taken out of the work queue and the timeline will be reset to the original total time of the project defined in the SOW or Order Form. The timeline will re-commence within two (2) weeks from the time Customer resumes contact with Consultant.

(d) **Change Orders.** During the term of this Agreement, Customer may request changes in the scope of Services to be performed pursuant to a pending SOW or Order Form. Consultant shall, promptly after receipt of such request, inform Customer in writing of the impact of the proposed changes on the terms previously agreed to in the SOW or Order Form, including, without limitation, fees and expenses for the Services and any outstanding amounts that are due and payable by Customer for Services provided to date. Following any negotiation by the parties, Consultant shall prepare a final change order (each a "**Change**



Order”) setting forth in detail the changes to be implemented, and the fees and expenses associated therewith. Consultant shall charge Customer on a T&M basis at Consultant’s then prevailing rates for the time spent in analyzing Customer’s change request and in preparing the Change Order. Upon the parties’ execution of such Change Order, the applicable SOW or Order Form shall be deemed amended thereby.

3. *Acceptance of Services.*

(a) ***Fixed Price Services.*** Services rendered on a fixed price (“***Fixed Price***”) basis shall be deemed accepted by Customer upon the first to occur of the following: (a) the first operational use of the software components of the Work Product, if any such software components are called for under the applicable SOW or Order Form; or (b) upon completion of the Acceptance Test. The “***Acceptance Test***” shall consist of the following: (i) Consultant shall notify Customer in writing that the Work Product is ready for final acceptance (a “***Ready For Testing Notice***”); (ii) upon receipt of such notice, Customer shall promptly perform functional testing of the Work Product to ensure that the Work Product is in compliance with the specifications and functions set forth in the applicable SOW or Order Form; (iii) Customer shall promptly either advise Consultant that the Work Product is accepted (an “***Acceptance Notice***”) or deliver to Consultant a written statement of the specific respects in which the Work Product does not perform the designated functions set forth in the applicable SOW or Order Form (a “***Non-Compliance Notice***”); (iv) upon receipt of a Non-Compliance Notice, Consultant shall promptly correct the Work Product so that such Work Product performs the required functions, and upon such correction, Consultant shall provide another Ready For Testing Notice to Customer; and (v) upon receipt of such notice, Customer shall again promptly perform the Acceptance Test.

(b) ***T&M Services.*** Services rendered on a time and materials (“***T&M***”) basis shall be deemed accepted unless Customer provides Consultant, within five (5) days after submission of time sheets reasonably documenting the T&M Services rendered to Customer and the time associated therewith, with a written statement of the specific respects in which the Services failed to materially comply with the specifications and requirements set forth in the applicable SOW or Order Form. Upon confirmation of such failure, Consultant shall correct the failure or re-render the Services to the extent necessary to ensure that the Services have been performed in compliance with the specifications and requirements set forth in the applicable SOW or Order Form.

(c) ***Remedies.*** The cure procedures set forth in Sections 3(a) and 3(b) above may be repeated at Consultant’s sole option up to three (3) times or until Customer accepts the Work Product or the Services, or the



applicable SOW or Order Form is terminated with respect to the affected Work Product as set forth in this Section 3(c). If after a period of thirty (30) days from receipt, the Work Product still does not materially perform designated functions set forth in the applicable SOW or Order Form, the Customer shall have the option of terminating the SOW or Order Form with respect to the non-conforming Work Product and shall be entitled to reimbursement for any fees paid to Consultant for such non-conforming Work Product, subject to Section 12. The remedies set forth in this Section 3 shall be Customer's sole and exclusive remedies with respect to Work Product or Services for which a defect or non-compliance is claimed. Such remedies shall not be available for defects or non-compliance based upon Customer Content or Third-Party Materials (as defined below), or upon any other actions, omissions or information of Customer. The failure to provide a Non-Compliance Notice within five (5) days after receipt of a Ready For Testing Notice or the submission of applicable time sheets from Consultant shall constitute acceptance of the Work Product or Services by Customer. Customer may not withhold its acceptance of the Work Product or Services based on defects that do not materially affect their performance or which are based on requirements that are not specified in the SOW or Order Form.

4. ***Payment.***

(a) ***Fees and Charges.*** As compensation for the Services, Customer shall pay to Consultant the fees and charges set forth in the applicable SOW or Order Form. The fees set forth herein, and this Agreement, shall apply to any Services rendered in anticipation of and prior to this Agreement.

(b) ***Payment Terms.*** All fees and other amounts owed under this Agreement (including, without limitation, reimbursement for reasonable travel and out-of-pocket expenses incurred by Consultant in connection with this Agreement) shall be due and payable in full in U.S. currency upon receipt of the applicable invoice unless a different payment schedule is set forth in the SOW or Order Form. All fees not paid in full within thirty (30) days of the date of the applicable invoice shall bear interest at the lesser of: (a) two percent (2%) per month; or (b) the highest rate allowed by applicable law. All payments shall be subject to Consultant's then-current billing, invoice and order acceptance policies. Customer shall have no right of offset or withholding under this Agreement.

(c) ***Taxes.*** All fees and other amounts owed under this Agreement are exclusive of all state, local, and other taxes, or other taxes or charges (other than income taxes of Consultant) directly applicable to the provision of the Services. Such taxes and charges shall be payable by Customer.



5. **Term.** The term of this Agreement (the “**Term**”) shall commence on the Effective Date and continue for the period specified in the SOW or Order Form. Thereafter the Term shall automatically renew for successive one (1) year periods unless and until either party gives the other party notice of non-renewal at least thirty (30) days prior to the next scheduled renewal date. Notwithstanding the foregoing, if a SOW or Order Form is still in effect, the Term of this Agreement shall be extended until such SOW or Order Form expires or is terminated.

6. **Intellectual Property Ownership and Licenses.**

(a) **Customer Content.** Any and all artwork, logos, graphics, video, text, data and other materials supplied by Customer to Consultant in connection with this Agreement, as well as, in the case of web site design services, the domain name or names assigned to the web site, if any, shall remain the sole and exclusive property of Customer (the “**Customer Content**”). No copyrights, patents, trademarks or other intellectual property rights shall be transferred from Customer to Consultant with respect to any of the Customer Content except that Customer shall grant, and hereby grants, to Consultant a worldwide, non-exclusive, fully paid-up license to use, copy, modify, enhance, create derivative works of and otherwise use the Customer Content in any manner reasonably necessary to perform the Services (the “**Customer Content License**”).

(b) **Consultant Content.** Any: (a) materials, creative content, tools, inventions, specifications, methodologies, discoveries, works of authorship, software, methods of operation, systems, processes, designs and other intellectual property, whether or not reduced to practice and whether or not patentable (collectively, “**Intellectual Property**”), developed by Consultant in the performance of the Services (including, without limitation, the HTML or other formatting code, source code and object code of any software and the documentation related thereto, if any) and all modifications, enhancements or derivative works thereof (the “**Newly-Developed Materials**”); and (b) all Intellectual Property provided or used by Consultant in the performance of the Services (including all such HTML or other formatting code, source code and object code of any software owned or developed by Consultant prior to the Effective Date) and all modifications, enhancements or derivative works thereof (the “**Pre-Existing Consultant Materials**”; the Newly-Developed Materials and the Pre-Existing Consultant Materials collectively, the “**Consultant Content**”), shall be the sole and exclusive property of Consultant. All rights in and related to the Consultant Content, including, without limitation, copyrights, trademarks, trade secrets, patents (including, without limitation, the right to obtain and to own all worldwide intellectual property rights in and to the subject matter embodied by or contained in the Consultant Content), and all other intellectual property rights or proprietary rights, are hereby exclusively



reserved by Consultant. It is expressly understood that, other than the Work Product License granted in Section 6(c), below, no right or title to or ownership of the Consultant Content is transferred or granted to Customer under this Agreement.

(c) **Licenses.** Subject to the terms and conditions of this Agreement, including, without limitation, upon payment in full of all fees and charges set forth in the applicable SOW or Order Form and any Change Orders thereunder, Consultant hereby grants to Customer a limited, non-exclusive, non-transferable, terminable, non-sublicenseable license to use the Work Product during the Term subject to the terms set forth in this Agreement (the “**Work Product License**”). If the Work Product or any component thereof is or contains software, Customer’s right to use such software shall be pursuant to the Software-as-a-Service (“SAAS”) Subscription Terms and Conditions located at <http://www.bluetent.com/appendix-a-terms-and-conditions/>, or the terms of a separate agreement between the parties relating to the license of such software. In addition to the terms set forth elsewhere in this Agreement (including any SOW or Order Form), the following terms shall apply to Customer’s use of the Work Product:

(a) Customer must use the Work Product only (a) in a manner and for the purposes for which they were designed, (b) in accordance with the terms of this Agreement, and in accordance with all applicable law, and (c) on Customer’s own data for its own internal purposes. Unless otherwise explicitly permitted in this Agreement or a SOW or Order Form, Customer shall not copy any portion of the Work Product.

(b) Customer shall not use the Work Product in any manner which is in violation of any law or governmental regulation, or is offensive, threatening, libelous, indecent, inappropriate or obscene. In addition, Customer may not post or upload any material that meets such description in connection with the Work Product.

(c) All uses not permitted under this Section 6(c) are prohibited. By way of example and without limitation, Customer may not: (i) disassemble, decompile, reverse engineer, or modify the Work Product; (ii) examine the Work Product with debugging, memory inspection, or disk inspection tools; (iii) rent or sublicense the Work Product; (iv) permit use of the Work Product by a person who is not permitted to use the Work Product under this terms of this Agreement; (v) bypass or breach any security device or protection used in the Work Product; (vi) transmit an electronic copy of the Work Product by any means; or (vii) use any Work Product offered by Consultant that it has not subscribed to pursuant to an SOW or Order Form.



(d) This Agreement is a license to use, and not a contract of sale for, the Work Product. All right, title, and interest in and to the Work Product shall remain vested in Consultant or its contractors or vendors, except that Customer shall have the license rights to the Work Product as granted by Consultant to Customer under this Agreement. Consultant shall retain complete ownership of all modifications and derivative works provided to Customer as part of any maintenance, support or otherwise. In no event shall any Services, Work Product or other intellectual property provided to Customer by Consultant pursuant to this Agreement be deemed to be based on any “work made for hire” agreement between the parties.

(e) Customer agrees not to remove, deface, or destroy any copyright, patent notice, trademark, service mark, other proprietary markings, or confidential legends placed on or within the Work Product or any copies thereof in any form. Customer receives no rights to and will not sell, assign, lease, market, transfer, encumber or otherwise suffer to exist any lien or security interest on, nor allow any third person, firm, company, or other entity to copy, reproduce or disclose the Work Product, whether in whole, in part, or in any manner whatsoever.

(f) Customer shall be responsible for compliance with the terms of this Agreement by Customer’s employees, agents and clients who have access to the Work Product.

(d) **Credit; Links; Trademarks.** If the Work Product is a web site, the web site shall bear prominently on its home page the credit “Produced by Blue Tent Marketing” or such other credit as may be reasonably acceptable to Consultant, which credit shall link to the home page of Consultant’s web site (www.bluetent.com). Except for Consultant’s use of Customer’s name on Consultant’s customer-lists, neither party shall have the right to use the name(s), logo(s) and/or trademark(s) of the other (on its web site or otherwise) without the express written consent in each instance of the party whose name and/or trademark(s) are desired to be used.

7. **Entire Agreement.** This Agreement and all SOWs and Order Forms completed and approved pursuant to this Agreement, constitute the complete and exclusive terms of the agreement between the parties regarding the subject matter and supersedes all other prior and contemporaneous agreements or communications with respect to the subject matter hereof. If there is any conflict between the terms of an SOW or Order Form and the terms of this Agreement, then the terms of the SOW or Order Form shall control. The provisions of this Agreement shall inure to the benefit of, and be binding on, the parties and their successors, assigns, employees, legal representatives, heirs, distributees, and transferees.



8. **No Other Rights.** Except as otherwise specifically set forth herein, nothing in this Agreement grants any right, title or interest in or to (including any license under) any intellectual property rights in or relating to, the Services, whether expressly, by implication, estoppel or otherwise. All right, title and interest in and to the Services are and will remain with Consultant and/or its licensors. Consultant shall have no maintenance or support obligations in connection with the Services unless specifically provided in an SOW or Order Form.

9. **Representations and Warranties**

(a) **Representations and Warranties of Consultant.** Consultant represents and warrants that: (i) it has all necessary rights and authority to execute and deliver this Agreement and perform its obligations hereunder; (ii) neither this Agreement nor its performance of its obligations hereunder shall place Customer in breach of any other contract or obligation; and (iii) the Services and Work Product shall be in compliance with the specifications, functions and requirements set forth in the applicable SOW or Order Form, as further described in Section 3.

(b) **Representations and Warranties of Customer.** Customer represents and warrants that: (i) it has all necessary rights and authority to execute and deliver this Agreement and perform its obligations hereunder; (ii) neither this Agreement nor its performance of its obligations hereunder shall place Customer in breach of any other contract or obligation; and (iii) the provision by Customer of the Customer Content and Consultant's use of it in accordance with this Agreement shall not in any way constitute an infringement or other violation of any copyright, trademark, trade secret or patent of any third party.

10. **Termination.** In addition to any other termination right set forth herein or in any SOW or Order Form, either party may terminate this Agreement (except for provisions which are intended to survive termination) upon written notice to the other party as follows:

(a) If Customer fails to make any payment within five (5) days of when due, Consultant may terminate this Agreement; or

(b) If the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent



jurisdiction to take charge of or sell any material portion of its property or business, the solvent party may terminate this Agreement.

11. ***Obligations Upon Termination.*** In the event that this Agreement or any SOW or Order Form is terminated by either party for any reason: (a) Customer shall pay for all accrued and unpaid charges for Services provided through the effective date of such termination; and (b) the Licenses (as defined below) shall be terminated and neither party shall have any right to use or exploit in any manner, the Licensed Materials (as defined below) under this Agreement or, if termination is with respect to SOW(s) and/or Order Form(s), only, the Licensed Materials related to the terminated SOW and/or Order Form. In addition, upon any termination of the Licenses in accordance with the foregoing, the non-terminating party shall promptly deliver all copies and embodiments of the Licensed Materials licensed to the licensing party hereunder that are in its possession or under its control. Wherever used throughout this Agreement the term “***Licenses***” shall mean, collectively, the Customer Content License and the Work Product License; and the term “***Licensed Materials***” shall mean, collectively, all the creative content, software and materials licensed to each party, respectively, under the Licenses.

12. ***Limitations of Liability; Disclaimer of Warranties.*** Unless otherwise specifically stated in an SOW or Order Form with respect to Services described in such SOW or Order Form, the following limitations of liability and disclaimers of warranties shall apply to the Agreement:

(a) IF CONSULTANT SHALL BE LIABLE TO THE CUSTOMER FOR ANY MATTER RELATING TO OR ARISING FROM THE AGREEMENT, WHETHER BASED UPON AN ACTION OR CLAIM IN CONTRACT, WARRANTY, EQUITY, NEGLIGENCE, INTENDED CONDUCT OR OTHERWISE, THE AGGREGATE AMOUNT OF DAMAGES RECOVERABLE AGAINST CONSULTANT WITH RESPECT TO ANY AND ALL BREACHES, PERFORMANCE, NONPERFORMANCE, ACTS OR OMISSIONS HEREUNDER, DATA BREACHES, FAILURE TO COMPLY WITH PRIVACY AND DATA SECURITY LAWS, OR ANY REASON WHATSOEVER WILL NOT EXCEED THE LESSER OF \$50,000 OR THE AGGREGATE AMOUNT OF FEES ACTUALLY PAID FOR THE SERVICES OR WORK PRODUCT THAT LED TO THE CLAIM OR ACTION IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM OR ACTION.

(b) IN NO EVENT SHALL EITHER PARTY OR ITS PERSONNEL BE LIABLE FOR CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES,



COSTS, EXPENSES, OR LOSSES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND OPPORTUNITY COSTS) NOR SHALL THEY BE LIABLE FOR ANY CLAIM OR DEMAND AGAINST THE OTHER PARTY BY ANY THIRD PARTY EXCEPT AS OTHERWISE SPECIFICALLY STATED HEREIN. THE PROVISIONS OF THIS SECTION SHALL APPLY REGARDLESS OF THE FORM OF ACTION, DAMAGE, CLAIM, LIABILITY, COST, EXPENSE, OR LOSS, INCLUDING WITHOUT LIMITATION LOSS OF DATA, LOSS OF PRIVACY OR LOSS OF SECURITY, WHETHER IN CONTRACT, STATUTE, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), OR OTHERWISE.

(c) EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THE AGREEMENT, CONSULTANT MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND CONSULTANT CANNOT AND DOES NOT GUARANTY ANY RESULT OR THE EFFECTIVENESS OR PERFORMANCE OF THE SERVICES OR THE WORK PRODUCT. ANY SERVICES AND WORK PRODUCT ARE PROVIDED “AS IS,” AND ANY IMPLIED WARRANTY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT IS EXPRESSLY DISCLAIMED.

(d) Notwithstanding any other provision herein, Consultant makes no warranties and shall have no responsibility whatsoever, including indemnity, as to any third-party hardware or software components contained in the Work Product or used in support of the Services (the “*Third-Party Materials*”). All Third-Party Materials are provided pursuant to the terms and conditions of the applicable third-party license agreement. Customer shall comply with all such third-party license agreements and any breach by Customer thereof will be deemed a breach of this Agreement.

13. *Confidentiality.*

(a) For purposes of this Agreement, “*Confidential Information*” shall mean proprietary information or data, trade secrets (including, without limitation, various computer systems and programs, techniques, developments, improvements, inventions, and processes that are, or may be, produced in the course of the party’s operations, including any other information not generally known concerning the party’s or its operations, which, if used or disclosed, could adversely affect the party's business or give competitors an advantage) and any other information designated as confidential by either party. With respect to the Consultant,



Confidential Information shall include, without limitation, any Consultant Content developed, owned or licensed by Consultant.

(b) Except for Personal Data, Confidential Information does not include information which (i) has become publicly known and made generally available through no act of the receiving party; (ii) is developed by the receiving party without use of the Confidential Information of the other party as evidenced by the receiving party's written records; or (iii) is disclosed to the receiving party by a third party who is not under an obligation to preserve its confidentiality. "Personal Data" means any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

(c) Each party to this Agreement must keep the other party's Confidential Information confidential and use it only as necessary to perform the receiving party's obligations under this Agreement. Neither party acquires any rights in the other party's Confidential Information except as specifically set forth in this Agreement. The receiving party must destroy or return to the disclosing party (at the disclosing party's direction) all tangible materials that are the disclosing party's Confidential Information upon the disclosing party's request or upon termination of this Agreement.

(d) If Confidential Information of a party is required to be disclosed pursuant to any applicable laws, the receiving party shall give the disclosing party reasonable prior written notice of any such anticipated disclosure and shall cooperate with the disclosing party's efforts to obtain a protective order.

14. ***Indemnification.***

(a) Consultant shall indemnify, defend and hold Customer harmless from and against any loss, cost, damage, liability, or expense (including reasonable legal fees) suffered or incurred by Customer in connection with any U.S. patent, or any copyright or other intellectual property infringement claim by any third party with respect to the Work Product. This indemnity obligation shall apply only to the extent that Customer promptly notifies Consultant after Customer becomes aware of such claim, grants to Consultant the authority to defend, compromise or settle the claim of infringement, and provides Consultant any Customer information relevant to such claim. Consultant shall have no liability for any claims of infringement that are based on or caused by (i) a modification to the Work Product not made by Consultant; (ii) the use of a prior or modified



version of the Work Product if the infringement claim could have been avoided by the use of a current unmodified version; (iii) a use of the Work Product in a manner not contemplated by this Agreement; (iv) Customer's use of the Work Product in combination with any hardware, software or information not owned or developed by Consultant; or (v) information, specifications, software or materials provided by the Customer or a third party.

(b) Consultant further agrees that if Customer is prevented from using the Work Product due to an actual or claimed infringement under subsection (a) of this Section 14, then at Consultant's option, Consultant shall promptly either: (i) procure for Customer the right to continue to use the Work Product; (ii) replace or modify the Work Product so that the Work Product becomes non-infringing; or (iii) terminate the Agreement as it relates to the infringing Work Product and return the fees that Customer paid for the infringing Work Product less a reasonable amount for Customer's use of such Work Product up to the date Customer was prevented from using such Work Product.

(c) Subsections (a) and (b) of this Section 14 shall constitute Consultant's entire obligation to Customer with respect to any claim of infringement.

(d) Customer shall be solely responsible for, and shall indemnify, defend, and hold Consultant free and harmless from all damages, liabilities, charges, and expenses (including reasonable attorneys' fees) from all claims, lawsuits, or other proceedings arising out of or relating to (i) Customer's use of the Services in a manner not permitted by this Agreement, not permitted by Consultant, or not in conformance with this Agreement; (ii) any data, information or other material provided by Customer or on Customer's behalf to Consultant in connection with the Services including, without limitation, the Customer Content and including, without limitation, claims that the Customer Content infringes the patent, copyright or other intellectual property rights of any third party; (iii) the actions or omissions of, or claims by, Customer or Customer's customers, employees or agents; (iv) your failure to comply with applicable privacy and data security laws, (v) your instructions regarding Personal Data and (vi) an infringement of any right resulting in any way from the use of the Services with other intellectual property, equipment or materials not licensed to Customer by, or not approved by, Consultant.



15. ***Privacy.***

(a) When GDPR applies to your use of Service Provider Software or Services to process Customer Data (such as data from the European Union), you agree to notify us and execute a Bluetent Data Processing Addendum.

(b) Service Provider will handle any Personal Data relating to the personnel of Customer and third parties acting on behalf of Customer (the “Personnel”) that is provided to Service Provider or third parties acting on the behalf of Service Provider for the purposes of this Agreement in accordance with the handling practices described in the Bluetent Privacy Policy (available at <http://www.bluetent.com/bluetent-privacy-policy/>). Customer consents, and will ensure that the Personnel to whom such Personal Data relates, understand the collection, storage, use, disclosure and processing of Personal Data of the Personnel by Service Provider and third parties acting on Service Provider’s behalf in accordance with the Bluetent Privacy Policy for the purposes of this Agreement, including without limitation to provide the Services or to communicate with Customer and its Personnel. Customer represents and warrants that it is entitled in accordance with applicable laws to provide such Personal Data to Service Provider and third parties acting on Service Provider’s behalf for the purposes of this Agreement. Customer acknowledges, and will ensure that the Personnel to whom such Personal Data relates are aware, that their Personal Data may be transferred to other countries outside the domicile of Customer or those Personnel, and that the protections afforded Personal Data under applicable laws and regulations may not be comparable or as protective as such data is protected in their domicile.

16. ***Miscellaneous Terms.***

(a) Customer may not assign or delegate any of its rights or obligations under this Agreement (including, without limitation, any licenses granted under this Agreement) without Consultant’s prior written consent. Consultant may assign this Agreement, or any part thereof, upon written notice to Customer.

(b) This Agreement shall be governed by and construed in accordance with the laws of the state of Colorado applicable to contracts to be performed solely within such state. The District Court of the City and County of Denver, State of Colorado, shall have exclusive jurisdiction, including *in personam* jurisdiction, and shall be the exclusive venue for any and all controversies and claims arising out of or relating to this Agreement.



(c) Except as otherwise set forth herein, this Agreement may not be amended, modified or supplemented except by written instrument signed by the parties. No waiver of any default or breach of any agreement or provision herein contained shall be deemed a waiver of any other default or breach thereof or of any other agreement or provision herein contained. If any provision or portion of a provision of this Agreement is declared void and/or unenforceable, such provision or portion shall be deemed severed from this Agreement, which shall otherwise remain in full force and effect.

(d) This Agreement covers only the Services. To the extent that the Customer desires for Consultant to provide Software-as-a-Service or any other services or goods, it shall be subject to a separate agreement.

(e) Except for payment of money, neither party shall be liable for any delays or other non-performance resulting from circumstances or causes beyond its reasonable control, including, without limitation, acts or omissions of the other party or third parties, fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any government agency or authority.

(f) All notices, demands and other communications to be sent by Customer to Consultant under this Agreement shall be in writing and shall be sent via Consultant's online support form located at support.bluetent.com. Such notice shall be deemed to have been validly made, given, served and received once Customer receives an acknowledgement of its notice from Consultant. All notices, demands and other communications to be sent by Consultant to Customer under this Agreement shall be in writing and shall be deemed to have been validly made, given, served and received if given or served by delivery in person to the addressee, or if sent by facsimile or electronic transmission, or three (3) days after deposit in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as set forth in the SOW or Order Form.

(g) During the Term of Service and for a period of one (1) year thereafter, Customer shall not, and shall not assist any other person or entity to, directly or indirectly, recruit or solicit for employment or engagement as an independent contractor any person or entity then or within the prior six (6) months employed or engaged by Consultant.

(h) Consultant shall provide Services to Customer as an independent contractor and nothing contained herein shall be construed to create a relationship of employer-employee or principal-agent between



Consultant and Customer. Neither party is, nor shall represent itself to be, an agent, partner, fiduciary, joint venture, co-owner or representative of the other.

(i) The Work Product may be subject to US export control laws, including, without limitation, the US Export Administration Act and its associated regulations. Customer will not directly or indirectly, export, re-export or release the Work Product to, or make the Work Product accessible from, any jurisdiction or country, any country, jurisdiction or person to which export, re-export, or release is prohibited by applicable law and regulation. Customer will comply with all applicable laws and regulations and complete all required undertakings (including, without limitation, obtaining any necessary export license or other governmental approval) prior to exporting, re-exporting, releasing, or otherwise making the Work Product available outside the US.

(i) In the event any suit or other action is commenced to construe or enforce any provision of this Agreement, the prevailing party shall be awarded reasonable attorneys' fees and court costs, in addition to all other relief to which such party shall be entitled.

(j) All terms and provisions of this Agreement which should by their nature survive the termination of this Agreement shall so survive, including, without limitation, Sections 1,4, 6-9, and 11-15.

(k) The parties acknowledge that this Agreement was prepared by counsel for Consultant. The parties have had the opportunity to retain their own independent legal and financial counsel with respect to the negotiation of this Agreement. They have independently, separately, and freely negotiated each and every provision of this Agreement as if all parties drafted it, and therefore, waive any statutory or common-law presumption that would serve to have this document construed in favor of, or against, any party.