



GOVERNING SERVICES AGREEMENT

1.0 SERVICES.

1.1 Scope. Blue Strategy & Creative Intl., LLC. (Blue) will provide to Customer the services and equipment as mutually agreed upon from time to time by Blue and Customer in a written purchase agreement or service request (each, an “*Order*”) (services described in each Order are collectively referred to as the “*Services*”).

1.2 Order Authorization and Modification. The Order(s) are to be signed by the Customer. Any deviation from or modification to an Order must be agreed to by the parties in writing. Other than those specifically stated, no other item or service is included in an Order. Any subsequent alteration or modification involving extra cost will become an extra charge over and above the estimate. In the event of any express conflict or inconsistency between the provisions of an Order and the provisions of this Agreement, the provisions of the Order will govern and control with respect to the interpretation of that Order; provided, however, that the provisions of the Order will be so construed as to give effect to the applicable provisions of this Agreement to the fullest extent possible. Notwithstanding the above provisions, should Blue for any reason provide additional services and/or equipment without first obtaining a written modification to the Order, Customer shall be responsible for payment for those additional services and/or equipment.

1.3 Site Access. Customer shall provide or arrange for: (a) necessary floor plans and accessible equipment locations; (b) separate electric source, circuits and power at its own expense; (c) suitable space meeting operating environment requirements; (d) heat, air conditioning, light, and security; (e) reasonable access; and (f) where not otherwise provided in an Order, raceway, conduit, holes and wireways. Customer further agrees and understands that Blue shall place hardware and/or software devices on Customer’s existing or newly installed telecommunications and/or computer network equipment that shall allow Blue remote access for the purpose of carrying out its services pursuant to the terms of each applicable Order.

2.0 NON-EXCLUSIVE ENGAGEMENT, NOTICE.

If non-Blue technicians or service providers are engaged by Customer to perform services in connection with Blue Services, Blue will be notified immediately, and Blue *shall not be liable* for any damages, claims or costs due to any services done directly or indirectly by non-Blue technicians or service providers.

3.0 FEES AND BILLING.

3.1 Charges for Services. Customer will pay to Blue the charges set forth in each Order. Payment on each Order shall be made to Blue’s offices in Sarasota, FL.

3.2 Taxes. Customer shall be solely responsible for any applicable local, state and federal taxes, including sales taxes, for all Services and/or equipment provided by Blue pursuant to an Order, excluding only taxes based on the net income of Blue. Tax exempt Customers must provide Blue with proof of their exemption to avoid being charged for sales tax.

3.3 After Hours and Holiday Rates. Work after 5 PM on a normal workday (Monday through Friday, excluding holidays) will be billed at one and one-half of the rates detailed in the Order(s). Work on weekends and holidays will be billed at two times the rates detailed in the Order(s).

3.4 Not A Fixed Fee Contract. Unless expressly set forth in an Order, charges for Services are based upon hourly billing rates and individually quoted equipment costs, and are not fixed fees.

3.5 Travel Time. Travel time for Blue technicians will be billed for one-way travel from Blue’s offices at the normal rate for such technician. A minimum of one hour of service time (including travel time) will be billed for each onsite visit by each technician, with billing to accrue at fifteen-minute intervals thereafter. Some exceptions may apply at Blue’s discretion.

3.6 Payment. Unless otherwise expressly provided in an Order with respect to the charges to be paid thereunder, Blue will invoice Customer for charges on an ongoing basis in arrears, with each invoice setting forth the charges related to the previous service or equipment provided. Unless otherwise expressly provided in an Order, any amount due to Blue under this Agreement and each Order shall be payable in full upon receipt of an invoice therefore, without withholding, deduction or offset of any amounts for any purpose. Any amount not paid within thirty (30) days of the date of each invoice shall be subject to an interest charge equal to the lesser of 1.5% monthly or the maximum interest charge permissible under applicable law, payable on demand. Any charges not disputed by Customer in good faith within ten (10) days of the receipt of an invoice therefore will be deemed approved and accepted by Customer.

4.0 RESPONSIBILITY FOR THIRD PARTIES, SOFTWARE, HARDWARE

4.1 Third Party Services. Services may involve the efforts of various parties: software vendors, software developers, hardware providers, local and long distance carriers, alarm installers, technicians, Customer’s company personnel, and



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possibly others. Customer acknowledges and agrees that Blue is not responsible for the software, hardware, products and services of other parties, or for delays beyond our control caused by these parties. Blue will, however, work with Customer on a daily rate basis to attempt to resolve any problems caused by incompatibilities or failures of other parties' products or services. This includes, but is not limited to, any of Blue's time required to research, test, evaluate, restore corrupted or erroneous data, or consult with outside technical support resources for problems caused by programming limitations or errors in software. Customer will be responsible for reimbursement to Blue for the costs of multiple trips to the job site to complete work delayed by outside agencies

4.2 Software. All software provided by Blue to Customer is provided subject to the license agreement that is part of the package. Customer agrees that it will be bound by the license agreement once the package is opened or its seal is broken. Blue does not warrant any software under this Agreement. Warranties, if any, for the software are contained in the license agreement that governs its purchase and use.

4.3 Hardware Title, Risk of Loss. Customer assumes the risk of loss and damage to hardware or any part from the date of its delivery to the Customer premises. So long as any part of the charges for the Order concerning the particular hardware is unpaid, Customer will maintain adequate insurance against fire, theft or other loss for the hardware's full insurable value, with Blue as additional insured. Risk of loss will not affect title to the hardware. Title passes on full payment of the invoice.

4.4 Blue Products. Blue continually upgrades and revises its products and service offerings to provide Blue customers with new products and service offerings. Hardware manufacturers with whom Blue may partner or from whom Blue may buy products continually upgrade and revise their product offerings. Blue may revise and discontinue products at any time without prior notice to customers. Blue will install products that have the functionality and performance of the products ordered, but changes between what is installed and what is described in an Order are possible.

5.0 WARRANTIES

5.1 Representations. Blue and Customer each represent and warrant that as of the Effective Date: (a) it is a corporation duly organized and validly existing and in good standing under the laws of its jurisdiction of formation and has the authority to carry on its business as now conducted; (b) it has

the power, authority and legal rights to execute, deliver and perform its obligations under this Agreement; (c) the execution, delivery and performance of its obligations under this Agreement and the transactions contemplated hereby have been duly authorized by all necessary corporate action; and (d) neither the execution and delivery of this Agreement, the performance of any of its obligations hereunder, nor the consummation of any of the transactions contemplated herein will violate, conflict with or result in a breach of or default under any terms, conditions or provisions of (i) any existing law, rule or regulation to which it or its assets is subject, (ii) any judgment, order, writ, injunction, decree or award of any governmental authority which is applicable to it or its assets, (iii) any provision of its Certificate of Incorporation, Articles of Incorporation, By-Laws or other document of formation or governance to which it is a party or by which any of its assets are bound, or (iv) any mortgage, indenture, agreement, contract, commitment, lease, plan, authorization or other instrument, document or understanding, oral or written, to which it is a party.

5.2 General Warranty. Blue warrants that its personnel shall perform the Services in a good and workmanlike manner in accordance with the applicable Order, without damage to the Premises, and will obtain necessary permits and licenses to install the Equipment. All work and materials will meet Federal Communications criteria for connection to the public telephone network. On relocation or removal of any or all of the Equipment, Blue will not be responsible for restoring the premises to their original condition.

5.3 System Integration Services Limited Warranty. Blue warrants its network integration and computer services for a period of 15 calendar days. Blue will respond to requests to perform service for any significant malfunction of the hardware or service performed, within three (3) working days of receipt of notice from Customer requesting such service. Warranties for third party brand computer hardware will be as provided by the manufacturer. Software warranties will be as provided by manufacturer.

5.5 Exclusions, Exclusive Remedy. All warranties exclude repairs made necessary by misuse, negligence, accident, theft or unexplained loss, abuse, connection to direct electric current, fire, flood, wind, act of God or public enemy, or improper installation, repair or alteration by anyone other than Blue, or Blue may elect to perform repairs necessitated by any excluded cause at Customer's request at Blue's then prevailing rates. This is Customer's sole and exclusive remedy and Blue's liability in all events will cease and terminate at the expiration of the warranty period.

5.6 Customer's Warranties. Notwithstanding any contrary terms in any Order, if Customer requests that Blue provide any



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Services with respect to any third-party software, Customer represents and warrants that it has the right to grant access to Blue to perform such Services or has otherwise obtained all necessary consents, and agrees to indemnify, defend and hold Blue harmless from and against any and all claims, damages, liabilities, losses and expenses (including reasonable attorneys' fees) asserted by a third party (including, without limitation, a licensor of that software) based on or arising out of alleged or actual infringement by Blue of that third party's rights, but only to the extent that Blue' work on that software was within the scope of an Order and this Agreement. Additionally, Customer represents and warrants that the information furnished by Customer to Blue on which Blue based the description of the Services and the charges to be paid by Customer therefore, as set forth in each Order, is accurate and complete in all material respects.

6.0 WARRANTY DISCLAIMERS

6.1 General. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, BLUE MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY MATTER, INCLUDING, WITHOUT LIMITATION, THE MERCHANTABILITY, SUITABILITY, ORIGINALITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, OR RESULTS TO BE DERIVED FROM THE USE OF, ANY SERVICE, SOFTWARE, OR OTHER MATERIALS PROVIDED UNDER ANY ORDER. BLUE DOES NOT REPRESENT OR WARRANT THAT THE OPERATION OF ANY SOFTWARE OR HARDWARE WILL BE UNINTERRUPTED OR ERROR-FREE. CUSTOMER ACKNOWLEDGES THAT IT IS A SOPHISTICATED PARTY TO THIS AGREEMENT AND RECOGNIZES AND AGREES THAT THIS PROVISION IS AN INTEGRAL PART OF BLUE'S PRICING AND AN IMPORTANT FACTOR IN ITS WILLINGNESS TO PERFORM SERVICES HEREUNDER.

6.2 Web Hosting. BLUE'S INTERNET HOSTING SERVICE IS PROVIDED ON AN 'AS IS, AS AVAILABLE' BASIS. BLUE SPECIFICALLY DISCLAIMS ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BLUE DOES NOT REPRESENT OR WARRANT TO CUSTOMER THAT CUSTOMER WILL RECEIVE CONTINUAL AND UNINTERRUPTED SERVICE DURING THE TERM OF THIS AGREEMENT. IN NO EVENT SHALL BLUE BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL OR INCIDENTAL DAMAGES, EVEN IF BLUE HAS BEEN ADVISED BY CUSTOMER OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR

DAMAGE. IF BLUE'S SERVICE TO CUSTOMER IS DISRUPTED OR MALFUNCTIONS FOR ANY REASON, BLUE SHALL NOT BE RESPONSIBLE FOR LOSSES OF INCOME DUE TO DISRUPTION OF SERVICE, BEYOND THE FEES PAID BY CUSTOMER TO BLUE FOR SERVICES, DURING THE PERIOD OF DISRUPTION OR MALFUNCTION.

7.0 INDEMNITIES AND LIMITATION OF LIABILITY

7.1 Infringement Claims. Subject to the limitations set forth in Section 7.3, Blue and Customer each agree to indemnify, defend and hold the other harmless against any action to the extent that such action is based upon a claim that the software (other than, with respect to Blue, third-party software provided by Blue) or Confidential Information provided by the indemnitor, or any part thereof, infringes upon the intellectual property rights of any third party.

7.2 Third Party Indemnification of Blue. Customer acknowledges that by entering into and performing its obligations under this Agreement and each Order, Blue will not assume and should not be exposed to the business and operational risks associated with Customer's business, and Customer therefore agrees, subject to Section 7.3, to indemnify, defend and hold Blue harmless from any and all third party claims, actions, damages, liabilities, costs and expenses (including attorneys' fees and expenses) arising out of or related to the conduct of Customer's business, including, without limitation, the use by Customer of the Services.

7.3 Procedures. All indemnification obligations under this Section 7.0 shall be subject to the following requirements: (a) the indemnified party shall provide the indemnifying party with prompt written notice of any claim; (b) the indemnified party shall permit the indemnifying party to assume and control the defense of any action upon the indemnifying party's written acknowledgment of the obligation to indemnify (unless, in the opinion of counsel of the indemnified party, such assumption would result in a material conflict of interest); and (c) the indemnifying party shall not enter into any settlement or compromise of any claim without the indemnified party's prior written consent, which shall not be unreasonably withheld. In addition, the indemnified party may, at its own expense, participate in its defense of any claim. In the event that the indemnifying party assumes the defense of any such claim, the indemnifying party shall have no liability for attorney's fees and costs incurred by the indemnified party.

7.4 Liability. BLUE DOES NOT ACCEPT LIABILITY BEYOND THE REMEDIES SET FORTH HEREIN, INCLUDING ANY LIABILITY FOR PRODUCTS NOT BEING AVAILABLE FOR USE OR FOR LOST OR CORRUPTED DATA OR SOFTWARE, OR THE



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PROVISION OF SERVICES AND SUPPORT. BLUE WILL NOT BE LIABLE FOR LOST PROFITS, LOSS OF BUSINESS OR OTHER CONSEQUENTIAL, SPECIAL, INDIRECT, OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY EXCEPT AS EXPRESSLY PROVIDED HEREIN. CUSTOMER AGREES THAT FOR ANY LIABILITY RELATED TO THE PURCHASE OF PRODUCTS OR SERVICES, BLUE IS NOT LIABLE OR RESPONSIBLE FOR ANY AMOUNT OF DAMAGES ABOVE THE AGGREGATE DOLLAR AMOUNT PAID BY CUSTOMER FOR THE PURCHASE OF PRODUCTS OR SERVICES UNDER THIS AGREEMENT. CUSTOMER ACKNOWLEDGES THAT BLUE WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON LIABILITY.

8.0 TERM AND TERMINATION

8.1 Term. The terms of this Agreement shall be in effect upon the signing of an Order by Customer, whether or not this Agreement is specifically executed, and shall apply to and be extended by each subsequent Order stating the Services to be completed thereunder and signed by Customer and accepted by Blue.

8.2 Termination of Order. Any duly executed Order may be terminated by Blue immediately upon written notice in the event customer fails to perform any of its obligations under, or materially breaches the terms of, the Order or this Agreement. In such event, Blue shall have the right to terminate this Agreement and all other Orders forthwith.

8.3 Effect of Termination. Upon termination of an Order(s) (a) Customer shall promptly pay the greater of all amounts payable to Blue for Services rendered and out-of-pocket expenses incurred up to the date of termination, or 50% of the amount due under any duly executed Order(s); and (b) each party shall return or destroy, at the direction of the other party, all the other party's Confidential Information in its possession.

8.4 Collection Costs. Customer shall be liable for all costs of collection including reasonable attorney's fees incurred by Blue to enforce its rights under this Agreement

8.5 Repossession of Equipment. IN THE EVENT CUSTOMER FAILS TO PAY ANY SUMS WHEN DUE, BLUE IN ADDITION TO ALL OTHER REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY AND NOT IN LIMITATION THEREOF, MAY AT ITS OPTION ENTER CUSTOMER'S PREMISES WITH OR WITHOUT NOTICE AND TAKE POSSESSION OF AND REMOVE THE HARDWARE, AND EITHER (I) TERMINATE THIS AND

ANY AGREEMENTS RETAINING ALL SUMS PAID, OR (II) DISPOSE OF THE EQUIPMENT FOR CUSTOMER'S ACCOUNT AT THE BEST PRICE OBTAINABLE AT PUBLIC OR PRIVATE SALE WITH CUSTOMER TO REMAIN LIABLE FOR ANY DEFICIENCY AS WELL AS ANY LEGAL FEES INCURRED BY BLUE.

9.0 CONFIDENTIALITY

9.1 Scope of Obligation. In connection with the Services performed under this Agreement, the parties may have access to the other party's Confidential Information. "Confidential Information" means non-public information that the disclosing party designates as being confidential or which under the circumstances surrounding disclosure ought to be treated as confidential and information received from others that the disclosing party is obligated to treat as confidential. Confidential Information includes, without limitation, information relating to the disclosing party's software or hardware products which may include source code, data files, documentation, specifications, databases, networks, system design, file layouts, tool combinations and development methods, as well as, information relating to the disclosing party's business or financial affairs, which may include business methods, marketing strategies, pricing, competitor information, product development strategies and methods, customer lists and financial results. Confidential Information includes all tangible materials which contain Confidential Information whether written or printed documents, computer disks or tapes whether user or machine readable. The parties agree to maintain the confidentiality of the Confidential Information and to protect as a trade secret any portion of the other party's Confidential Information by preventing any unauthorized copying, use, distribution, installation or transfer of possession of such information. Each party agrees to maintain at least the same procedures regarding Confidential Information that it maintains with respect to its own Confidential Information, but in no event less than a reasonable standard of care. Without limiting the generality of the foregoing, neither party shall permit any of its personnel to remove any proprietary or other legend or restrictive notice contained or included in any material provided by the disclosing party and the receiving party shall not permit its personnel to reproduce or copy any such material except as expressly authorized hereunder. A party's Confidential Information may only be used by the other party in order to fulfill its obligations under this Agreement.

9.2 Exceptions. Confidential Information shall not include any information that: (a) is already known to the receiving party or its affiliates, free of any obligation to keep it confidential; (b) is or becomes publicly known through no wrongful act of the receiving party or its affiliates; (c) is



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received by the receiving party from a third party without any restriction on confidentiality; (d) is independently developed by the receiving party or its affiliates; (e) is disclosed to third parties by the disclosing party without any obligation of confidentiality; or (f) is approved for release by prior written authorization of the disclosing party.

9.3 Residual Rights. Each party acknowledges that the other may, as a result of its receipt of or exposure to the other party's Confidential Information, increase or enhance the knowledge and experience retained in the unaided memories of its directors, employees, agents or contractors. Notwithstanding anything to the contrary in this Agreement, each party and its directors, employees, agents or contractors may use and disclose such knowledge and experience in such party's business, so long as such use or disclosure does not involve specific Confidential Information received from the other party. The disclosing party will not have rights in such knowledge and experience acquired by the recipient party, nor rights in any business endeavors of the recipient party which may use such knowledge and experience, nor rights to compensation related to the recipient party's use of such knowledge and experience.

9.4 Irreparable Harm. Both parties acknowledge that any use or disclosure of the other party's Confidential Information in a manner inconsistent with the provisions of this Agreement may cause the non-disclosing party irreparable damage for which remedies other than injunctive relief may be inadequate, and both parties agree that the non-disclosing party may request injunctive or other equitable relief seeking to restrain such use or disclosure without the necessity of proving actual harm or posting bond.

9.5 Survival of Obligation. The terms and provisions of this Section 9.0 shall survive any expiration or termination of this Agreement.

10.0 OWNERSHIP OF WORK PRODUCT

10.1 General. All worldwide intellectual property rights associated with any ideas, concepts, techniques, processes or other work product created by Blue during the course of performing the Services shall belong exclusively to Blue, and Customer shall have no right or interest therein. Unless this Agreement is terminated by Blue for Customer's material breach or failure to make payments to Blue, Blue hereby grants to Customer a perpetual, royalty-free, nontransferable, nonexclusive license to use, solely for Customer's internal business purposes, the object code form of any application software programs or other work product created by Blue in performing the Services.

10.2 Development Tools. Notwithstanding anything to the contrary in this Agreement, Blue will retain all right, title and interest in and to all software development tools, know-how, methodologies, processes, technologies or algorithms used in providing the Services which are based on trade secrets or proprietary information of Blue or are otherwise owned or licensed by Blue. No licenses will be deemed to have been granted by either party to any of its patents, trade secrets, trademarks or copyrights except as otherwise expressly provided in this Agreement. Nothing in this Agreement will require Blue or Customer to violate the proprietary rights of any third party in any software or otherwise.

10.3 Website Design Retained Rights. Customer expressly recognizes that any website created by Blue pursuant to an Order is not a "work made for hire," and that Blue is an independent contractor (not an employee, partner, joint author or joint venturer) of customer. Blue shall be deemed the sole author and owner of CGI, HTML Code, graphics and data, and their attendant Intellectual Property Rights, that are created or acquired by Blue and incorporated into the Web Site, or incorporated into any work embodying or derived from any portion of the Web site. Customer shall retain a non-exclusive license to Blue's CGI, HTML Code, graphics and data for a perpetual term, upon fulfillment of the payment terms set forth in the applicable Order. Customer shall be deemed the author or owner of Customer's Domain name and its attendant Intellectual Property Rights, and any graphics or data provided by Customer and incorporated into the Web site, or incorporated into any work embodying or derived from any portion of the Web site.

10.4 Further Assurances. Blue and Customer agree to execute and deliver such other instruments and documents as either party reasonably requests to evidence or effect the transactions contemplated by this Section 10.0. The provisions of this Section 10.0 will survive the expiration or termination of this Agreement and each Order for any reason.

11.0 RIGHT TO ENGAGE IN OTHER ACTIVITIES.

Customer acknowledges and agrees that nothing in this Agreement or any Order will impair Blue's right to perform services or acquire, license, market, distribute, develop for itself or others or have others develop for Blue similar technology performing the same or similar functions as the technology and Services contemplated by this Agreement or any Order.

12.0 HIRING OF OTHER PARTY PERSONNEL

For a period of one (1) year from the expiration or termination of each applicable Order, Customer and Blue agree not to



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directly solicit the employment of any personnel or agent of the other party who has been directly involved with the delivery of Services under an Order unless Customer or Blue, whichever the case may be, grants its consent in writing. Direct solicitation will not include general solicitations by the parties through the use of advertisements in newspapers, trade publications, or other solicitations not directed at particular individuals. If this condition is breached, the breaching party agrees to compensate the other party with a sum equal to four (4) times the average monthly salary received by such individual during the last six (6) months which the individual was employed by the former party employer.

13.0 INDEPENDENT CONTRACTOR

Blue is an independent contractor. Neither Blue nor Customer are, or shall be deemed for any purpose to be, employees or agents of the other and neither party shall have the power or authority to bind the other party to any contract or obligation.

14.0 ARBITRATION

Except for collection actions for payment of charges and for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm, any controversy or claim arising out of or relating to this Agreement or to its breach shall be settled by arbitration by a single arbitrator in accordance with Commercial Arbitration Rules of the American Arbitration Association, pursuant to an arbitration held in Dallas County, Texas, and judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The prevailing party shall be entitled to receive from the other party its attorney's fees and costs incurred in connection with any action, proceeding or arbitration hereunder.

15.0 ASSIGNMENT

Neither party shall assign its rights or obligations under this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld or delayed.

Notwithstanding the foregoing, either party may assign this Agreement to an entity who acquires substantially all of the stock or assets of such party; provided that consent will be required in the event that the non-assigning party reasonably determines that the assignee will not have sufficient capital or assets to perform its obligations hereunder. All terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted transferees, successors and assigns.

16.0 GOVERNING LAW

This Agreement and each Order shall be governed by and construed in accordance with the laws of the State of Florida, without reference to conflict of laws principles. Customer hereby irrevocably consents to the jurisdiction of the state courts of the State of Florida and U.S. District Court for the Middle District of Florida.

17.0 NOTICE OF SERVICE

Service of all notices under this Agreement shall be sufficient if made by registered mail to the specific party involved herein at its respective address noted in the preamble to this Agreement.

18.0 ENTIRE AGREEMENT AND MODIFICATIONS

Each party acknowledges that it has read this Agreement and the Orders attached thereto, and further agrees that the Agreement, and the Orders thereto are the complete and exclusive statement of the parties and supersedes and merges all prior proposals, understandings, and agreements, oral or written, between the parties relating to the subject matter hereof, including without limitation, the terms of any customer request for proposal or the standard printed terms on any Customer purchase order. No modification, amendment, supplement to or waiver of this Agreement shall be binding upon the parties hereto unless made in writing and duly signed by both parties. No modification, amendment, supplement to or waiver of an Order shall be binding upon the parties hereto unless such is made in accordance with the provisions of Section 1.0.

19.0 SEVERABILITY

In the event any one or more of the provisions of this Agreement or of any exhibit is held to be invalid or otherwise unenforceable, the enforceability of the remaining provisions shall be unimpaired.

20.0 FORCE MAJEURE

Blue shall not be responsible for failure to perform under this Agreement when its failure results from any of the following causes: Acts of God or public enemies, civil war, insurrection or riot, fire, flood, explosion, earthquake or serious accident, strike, labor trouble or work interruption or any cause beyond its reasonable control.

21.0 SPECIAL TERMS CONCERNING INTERNET SERVICES



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Customer agrees to receive Internet access and/or website hosting services, and/or website design services according to the following terms and conditions:

21.1 Website Design.

21.1.1 Schedule. Blue shall have an initial design meeting with Customer at which Customer shall provide all the materials necessary to complete the web site design. Should Customer fail to provide all necessary materials, Blue may at its option wait to begin the project until all the materials are provided. When Blue has the materials, it will create a partial Alpha version of the site for Customer to review specifically for “look and feel” creative input and changes. Customer shall have five (5) days from notification to make any changes to the Alpha version. Blue shall then incorporate any changes and complete a Beta version of the complete site. Customer shall have five (5) days from notification to review the Beta version and make any changes.

21.1.2 Project management. Parties recognize that Customer participation in all phases of development is essential. As such, Customer shall in good faith work with Blue to complete the project on schedule.

21.1.3 Material Modifications. Material Modifications to the original proposal specifications or made after the initial design meeting shall be in writing and shall constitute a change order; project time shall be modified accordingly; and additional charges will be assessed as necessary.

21.1.4 Acceptance. Client shall indicate acceptance in writing at such time as the site is complete. Upon receipt of acceptance, the site will be published live on the Web within 48 hours. **Client expressly waives any right to revoke acceptance.**

21.2 Privacy Limitation/Disclaimer. Blue is not liable for protection or privacy of electronic mail or other information transferred through the Internet or any other network provider Customer may utilize.

21.3 Domain Name Registration/Disclaimer. Blue does not guarantee the availability of the domain name that you want, even if the domain name appears to be available at the time of your registration request. Blue reserves the right to reject any domain name application for any reason. As we rely on a Domain Name Vendor (“DN Vendor”) to fulfill these registrations, Blue cannot be held responsible for this process. The domain name that you register is not finalized until you receive a bill from an authorized DN Vendor telling you the domain name is registered. Blue assumes no responsibility or liability for the successful acceptance and/or registration of your proposed domain name. Customer gives Blue authorization to act in its behalf in registering and modifying

information concerning domain names through an authorized DN Vendor. Customer further agrees that it shall be bound by all the registration terms and conditions of the applicable DN Vendor, as well as applicable laws and/or policies governing domain name registration and usage. Customer represents and warrants that (1) neither the registration of the domain name nor the manner in which it is directly or indirectly used shall infringe the legal rights of any third party; (2) all information provided in connection with any domain name registration is and shall remain accurate; and (3) that Customer’s registration and use of domain names will at all times be consistent with all applicable laws. Customer also agrees that as part of the registration process, Customer will be required to provide certain information including company name, address, phone, fax and e-mail address. Company agrees to update this information as necessary to keep it accurate and current. Customer may update this information by contacting Blue. Customer’s failure to provide accurate information or willful failure to provide updated information within 15 days of written inquiry shall constitute a material breach justifying cancellation of the registration.

21.4 Accuracy Of Information, Caching. Where Customer has enlisted the services of Blue to create or modify its website, Customer is solely responsible for reviewing the content of its website, whether newly created or amended from time to time, ensuring that all information contained therein is accurate. Upon written notice from the Customer, Blue will use its best efforts to correct any errors or omissions. However, Customer agrees that Blue, its employees and agents are not responsible for any errors or omissions or the failure to timely correct any errors and omissions upon notice by the Customer.

Customer expressly recognizes that some ISPs may continue to cache unmodified versions of Customer’s web site after modifications or improvements are made, and Customer expressly agrees to indemnify and hold Blue harmless from any damages caused by such caching.

21.5 Compliance with Law. Customer will use the hosting and website design services offered by Blue in a manner consistent with all applicable local, state and federal laws and regulations. Transmission of any material in violation of any foreign, municipal, state, county or federal statute or regulation is prohibited. This includes, but is not limited to: copyrighted material, material legally judged to be threatening or obscene, or material protected by trade secret.

21.6 Indemnity. Customer agrees to defend, indemnify and hold Blue harmless from and against any and all claims, losses, liabilities and expenses (including attorneys' fees) related to or arising out of the web design and hosting services provided by Blue to Customer, including without limitation claims made by third parties (including customers of



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Customer) related to any false advertising claims, liability claims for products or services sold by Customer, claims for patent, copyright or trademark infringement, claims due to disruption or malfunction of services provided hereunder, or for any content submitted by Customer for publication by Blue, but excluding those related to the negligence of Blue.

21.7 Termination. Blue may, at its sole discretion and with notice in writing (via e-mail or post), immediately terminate website hosting services to Customer at any time. Upon termination, Blue will refund unearned prepaid service fees to Customer, unless service has been terminated because Customer has breached this agreement, in which case Blue will not refund unearned prepaid service fees. Fees for setup are not refundable. Customer may cancel service at any time, with notice in writing (via e-mail or post), but Blue will not refund any unearned prepaid service fees unless Blue is in breach of this agreement.

21.8 Taxes. If any federal, state or local governmental entity with taxing authority over Internet services provided under this Agreement, including but not limited to e-commerce and e-mail, imposes a tax directly on the services provided by Blue to Customer under this Agreement (excluding any income, business and occupation, capital gain, death or inheritance, or other indirect taxes), then Blue may pass the direct amount of such cost on to Customer, and Customer shall promptly pay such cost.

21.9 File Back-up. Customer is solely responsible for independent backup of data stored on Blue's servers. While Blue may make back-up copies of data in the normal course of its operations, and will work to the best of its ability to restore lost data in the event of a hardware failure or some similar event that results in data being lost, Blue specifically disclaims any liability for making backup copies of any websites, e-mail communications and transactions or any other information that may be stored on its systems as a result of offering its services to Customer.

21.10 IP Addresses. Blue maintains control and any ownership of any and all IP numbers and addresses that may be assigned to Customer and reserves in its sole discretion the right to change or remove any and all IP numbers and addresses.

21.11 Principles Governing Acceptable use of the Internet by the Customer. The Internet is a voluntary association of users interested in and willing to exchange information and data with other Internet users. At present there is no oversight group providing governance over the principles, policies or procedures for use of the Internet or the information and data accessed via the Internet. The parties agree that the Internet is a network intended for use by mature, adult users. The Customer recognizes this principle and will undertake at all

times to act with respect, courtesy and responsibility, giving due regard to the interests and rights of other Internet user groups. This general guideline carries with it the following specific responsibilities:

Knowledge of the Internet - The Customer agrees to obtain a basic knowledge of the Internet and its operating principles and procedures.

Improper Uses - The Customer will avoid violation of certain generally accepted guidelines on Internet usage such as restrictions on mass mailings, mass advertisements, pirating or copying of software, mail bombing or other methods of attempting to deny service or access to other users, and attempts to violate security. **A zero tolerance policy will be in effect. Abusers will be suspended without warning, pending review.**

Compliance with Laws - The Customer will ensure that its use of the Internet complies with all applicable federal, state and local law and regulation, including but not limited to those principles of law which protect against compromise of copyrights, trade secrets, proprietary information and other intellectual property rights, libel or defamation of character, invasion of privacy, tortious interference, and export of technical or military data to prohibited countries.

Validation of Information - The Customer is responsible for validating the integrity of the information and data it receives or transmits over the Internet.

Security - The Customer is required to protect the security of its Internet account and usage. The Customer(s) password will be treated as private and confidential and not be disclosed to or shared with any third parties.

Discretion and Judgment - The Customer is expected to use discretion in the treatment and handling of Internet information and data and to take particular care to insure that adult information is not transmitted to juvenile users of the Internet.

Pornography - Due to legal and social issues, we will not accept any Customers who publish pornographic images.

Excessive CPU usages - Customers will not be allowed to use excessive amounts of CPU processing or resell CPU usage on any Provider servers. Such usage will result in immediate suspension of service.

E-Mail usage - Customer will not permit the use of mail services, mail forwarding capabilities, POP accounts, or auto responders for other than Customer's own account(s).



Domain pointers are to be used for the purpose of having more than one way to find the same site, not for the purposes of sharing an account among multiple sites. A domain pointer may not be set up to reference a subdirectory within an existing Web hosting account served Provider or any other provider. Domain pointers are not to be used as a substitute for purchasing separate accounts.

Customer will not abuse account privileges including but not limited to:

Use of any program/script/command, or sending messages of any kind, designed to interfere with a users terminal session, via any means, locally or by the Internet;

Attempts to circumvent the idle daemon or time charges accounting, or attempts to run programs while not logged in by any method;

Repeated running of CPU-intensive user-compiled programs which negatively impact other system users; and

Running eggdrop or any other IRC bot which is connected to a remote IRC server.

Customer shall ensure that its use of Blue's network services shall not disrupt Blue, its associated networks or equipment forming any part of the systems. Customers shall not transmit any communication where the meaning of the message, or its transmission or distribution, would violate any applicable law or regulation or would likely be offensive to the recipient thereof. No message may be mass distributed, "broadcast", or otherwise sent on an intrusive basis to any Blue user or to any directly or indirectly attached network. Use of Blue's connection in a manner that is disruptive, damaging, unlawful, offensive, or intrusive as determined by Blue shall be considered a breach of this Policy and may result in cancellation of service.

22.0 AGREEMENT HEADINGS AND NUMBERING

Paragraph headings and numbers used in this Agreement are included for convenience of reference only, and, if there is any conflict between any such numbers and headings, and the text of the Agreement, the text shall control.

By signing and authorizing Order(s) and/or accepting the services of Blue, I agree to the terms of the Blue Governing Services Agreement set forth above. I understand and acknowledge that this Governing Services Agreement is a blanket services agreement whose terms are applicable to each duly executed Order for Services, whether or not an executed copy is attached to the Order, this Agreement is Bound.

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