

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT (“**Agreement**”) is entered into, by and between **BCC Software, LLC** (“**BCC**”) having a place of business at 75 Josons Drive, Rochester, New York 14623, and **customer** (“**Customer**”), having a place of business at address.

BCC and Customer expect that from time to time Customer will wish to purchase certain professional services (“**Services**”) from BCC. To facilitate such purchases, the parties have agreed to this Agreement to establish the general terms and conditions that, together with a Statement of Work (“**SOW**”) for an individual order and the other documents described therein, will constitute the entire agreement for such order. Each SOW shall be subject to the provisions of this Agreement as though fully set forth in such SOW.

In consideration of the mutual promises and upon the terms and conditions set forth below, the parties agree as follows:

1. SERVICES

- 1.1 **SERVICES TO CLIENT.** BCC shall provide the services (“**Services**”) to the Customer described in the SOW. Services will be scheduled to begin at a mutually agreeable time. Commencement dates will be scheduled no sooner than five (5) business days after this Agreement is signed.
- 1.2 **PERFORMANCE OF SERVICES.** BCC shall perform the Services in a timely and professional manner. Customer shall provide in a timely and professional manner, and at no cost to BCC assistance, cooperation, complete and accurate information and data, equipment, computer and telecommunications facilities, programs, files, documentation, a suitable work environment, and other resources specified in the SOW to enable it to perform the Services (collectively, “**Assistance**”). BCC shall not be liable for any deficiency in performing the Services if such deficiency results from Customer’s failure to provide full Assistance as required hereunder. Assistance includes, but is not limited to, designating a project manager to interface with BCC during the period in which the Services are performed.
- 1.3 **CHANGES IN SCOPE.** Occasionally, after a project is underway, it may be necessary for the scope of the project to be altered. BCC and Customer may add to, amend, or change the scope, nature and amount of Services in writing, signed by both parties. Any such additional services shall be deemed an amendment to this Professional Services Agreement and the related SOW.
- 1.4 **DELAY IN SERVICES.** In the event that Services are delayed, either prior to commencement or during the period in which the Services are being performed, for a total of thirty (30) days or more, and the cause of such delay is outside of the control of BCC, the provisions of this Professional Services Agreement shall be subject to re-negotiation between the parties. In the event Customer or any party performing services on behalf of Customer shall be the cause of such delay, the event shall constitute a termination pursuant to the terms of section 3.2.

2. FEES AND EXPENSES

- 2.1 **FEES FOR SERVICES.** Customer shall pay BCC the fees for Services.
- 2.2 **REIMBURSABLE COSTS.** Customer shall reimburse BCC for reasonable costs and expenses, including, but not limited to, travel, mileage, lodging and applicable material and shipping fees (“**Reimbursable Expenses**”). Customer will be provided with an invoice for Reimbursable Expenses with payment required thirty (30) days after the invoice date.

3. **TERMINATION**

- 3.1 **TERM.** The term of this Agreement shall commence on the date that both parties have signed and shall continue through and including completion of the Services.
- 3.2 **TERMINATION.** BCC and Customer shall have the right to terminate this Agreement, with or without cause, upon thirty (30) days prior written notice to the other party. Except as otherwise expressly provided herein, each party shall have the right to terminate this Agreement for cause upon a material breach of the other party's obligations hereunder and its failure to cure such breach within ten (10) days after receipt of written notice thereof from the non-breaching party. Notwithstanding the foregoing, failure to make any payment when due which is not cured in five (5) days after receipt of written notice shall constitute termination for cause. BCC will stop all work and Services being provided upon receipt of written notice of termination from Customer. Customer will pay to BCC all Reimbursable Expenses incurred up to receipt of notice of termination, the cost of all materials and services obtained for the project which cannot be cancelled or returned plus an amount equal to the profit earned for the prorated portion of the project completed to the date of termination.
4. **LIMITATIONS OF LIABILITY.** Neither party shall, under any circumstances, have any liability to the other for any indirect, special, incidental or consequential damages (including, without limitation, loss of revenue or profits, or loss of business or business interruption) even if such party has been made aware of the possibility of such damages, and any such claim is hereby waived by the parties. In no event shall the aggregate liability of BCC hereunder exceed the amount of fees actually received by BCC under the SOW giving rise to a claim.
5. **WARRANTY.** BCC will perform the Services rendered hereunder in a professional and workmanlike manner. Except as expressly set forth in this Agreement, BCC makes no warranties written or oral, either express, implied or statutory, including, without limitation, any warranty or merchantability or fitness for a particular purpose.
6. **NO SOLICITATION.** During the period commencing upon the date hereof and continuing until three hundred sixty-five (365) days after the termination of the term of this Agreement, neither Customer nor its agents or employees shall directly or indirectly solicit or hire (on Customer's behalf or on behalf of any third party) any of BCC's employees. For three hundred sixty-five (365) days following the termination of the Services, neither BCC nor its employees shall directly or indirectly solicit or hire any employees of Customer as long as they are still employed by Customer.
7. **RELATIONSHIP OF PARTIES**
- 7.1 **INDEPENDENT CONTRACTORS.** Each party will be and act as an independent contractor and not as an agent or partner of the other party for any purpose related to this Agreement or the transactions contemplated by this Agreement. Under no circumstances shall BCC or any of its employees, agents or authorized representatives be construed to be an employee, agent or authorized representative of Customer, and neither BCC nor any of its employees, agents or authorized representatives shall be entitled to participate in Customer's profit sharing, pension, bonus or other plans for the benefit of Customer's employees.
- 7.2 **CONTACT PERSON.** Each party will appoint in writing an employee or agent of such party to act as the "Contact Person" for all communications between the parties related to the Services. Each party may change its Contact Person upon written notice to the other.
- 7.3 **COORDINATION WITH 3rd PARTY VENDORS.** BCC understands and agrees that other persons and entities may be, involved in supporting Customer's operations. BCC understands and agrees that BCC's performance may be involved in and related to the activities of such other entities, on Customer's behalf. BCC agrees that it will consult with such other persons or entities and coordinate its services and activities performed to the extent specified in the SOW and to the extent necessary to ensure provision of appropriate, cost effective solutions. Customer agrees and acknowledges that BCC shall in no event be liable for any damages, delays, errors or other liabilities caused by or attributable to the services, actions or inaction of any such third parties engaged by Customer. Further, Customer acknowledges that BCC shall

not be responsible for any delays or failures in the performance of BCC's Services hereunder, to the extent that such delays or failures are caused by the actions or inactions of any such third parties engaged by Customer.

8. **RIGHTS TO WORK PRODUCT.** Any expression, work, findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, tools, applications, interfaces, enhancements, software, and other technical information (collectively "WORK PRODUCT") created by BCC in the course of performing the Services are the property of BCC and are licensed to Client, without further license fees, pursuant to the BCC software license(s) to which the consultation Services pertain, provided, however, to the extent such Work Product provided to Client by BCC contains Client's Confidential Information, Client shall retain title to such Confidential Information. Client shall have no right to sublicense, transfer, assign, convey or permit any third party to use or copy any Work Product.
9. **MAINTENANCE OF CUSTOM DEVELOPMENT WORK.** Standard maintenance and support services offered by BCC do not cover any customized software or new development created under an SOW. If available, separate maintenance and support may be addressed for these items.
10. **CONFIDENTIALITY.** BCC and Customer each agree that the performance of this Agreement will result in the disclosure to the other of information not generally known by third parties and treated as proprietary ("Confidential Information"). Neither party shall, without the written consent of the other party, divulge, communicate, or use in any way (except as permitted by this Agreement) the Confidential Information of the other party, and each party shall utilize the same degree of care and precaution as each utilizes with respect to its own proprietary information to prevent the unauthorized disclosure of the other party's Confidential Information.
11. **GOVERNING LAW: JURISDICTION.** This Agreement shall be governed by and subject to the internal laws (exclusive of the Conflicts of Law provisions) and decisions of the courts of the State of Illinois. The parties consent to the exclusive jurisdiction of any local, state or federal court located within Cook County, Illinois and waive any objection relating to improper venue or forum non conveniens with regard to any litigation, action or proceedings arising from or relating to this Agreement.
12. **ENTIRE AGREEMENT.** This Agreement represents the entire agreement of the parties, merging herein and superseding all prior negotiations and agreements between them as to such subject matter. Any and all terms, conditions and provisions contained in any purchase order, acknowledgment form or other communications that Customer uses with respect to the transactions contemplated by this Agreement, whether prior or subsequent to the date hereof are agreed to be surplusage and without any force or effect.

The parties' authorized representatives signify their agreement and acceptance by their signature below.

BCC Software, LLC

(Customer Name)

(Authorized Signature)

(Authorized Signature)

(Name)

(Name)

(Title)

(Title)

(Date)

(Date)