



1 Cheshire Lane
Ringwood, NJ 07456-2712
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Standard Terms and Conditions

The following terms and conditions (the "Terms and Conditions") are incorporated into and form part of the Agreement (which is labelled as the "Statement of Work") between Consultant (Bower Web Solutions, Inc.) and Client. The Agreement also includes any Appendices, Exhibits, Schedules and Change Orders attached to the Agreement or made pursuant to the Agreement and signed by Consultant and Client. Subject to the terms and conditions of the Agreement, Client agrees to retain Consultant and Consultant agrees to provide the Services.

1. Services. Client wishes to acquire the consulting, implementation, development, maintenance, design and/or production services (the "Services") as set out and further described in the Agreement under the heading *Description of Services* (the "Services Description") and which may include any deliverables arising from the Services which are specifically described in the Agreement ("Deliverables") and which are intended to be used on Client's system designated in the Agreement (the "Client's System"). Unless specified to the contrary in the Agreement, the Services shall be provided and invoiced for the fee set out in the Agreement. Any additional services requested by Client and which Consultant may agree to provide shall be invoiced on a time and materials basis by Consultant at its prevailing published rates (the "Published Rates") which may be set out in the Agreement or otherwise available from Consultant and are subject to change from time to time, and shall be deemed to form part of the Services. Any additional services requested by Client and which Consultant may agree to provide shall be invoiced at the Published Rates. Consultant shall use reasonable commercial efforts to meet any implementation schedules set out in the Agreement. Consultant shall not be responsible for any delays resulting from a failure of Client to comply with its obligations in a timely manner, or for other delays unless caused by Consultant's negligence.

2. Changes. Proposed changes to the Services Description and/or Deliverables may be initiated by either party. Client acknowledges that any such changes may result in delays, additional charges and/or a revision to any estimated charges (if applicable). Consultant shall prepare a change order form ("Change Order") which describes the proposed changes to the Services Description and/or Deliverables, and any associated changes to the fee and estimated delivery times, if applicable. Following execution by both parties, the changes set out in the Change Order shall constitute amendments to the Agreement.

3. Client Responsibilities. Client acknowledges that Consultant may require its timely assistance or that of its staff in order to achieve the objectives set out in the Agreement. Client is responsible for verifying that the Services are being provided in accordance with the Service Descriptions and in notifying Consultant in a timely basis of any inconsistency. Client shall provide



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Consultant with work space, telecommunications and incidental supplies while at Client's premises.

To the extent required for the performance of the Services, Client shall also provide Consultant, at no cost, with data preparation services, computer system time and facilities, production facilities required for test compilation and production runs and access to applicable data files. Client shall provide Consultant with timely and accurate information, documentation and content as reasonably required for Consultant to provide the Services. All content to be provided by Client to Consultant shall be in computer readable form (i.e., on floppy, in e-mail or retrievable by FTP) and in a format designated by Consultant. Client authorizes Consultant to access the Client System for the purposes of this Agreement and shall provide any necessary access rights. From time to time, Consultant may request review of work, including work-in-progress, and upon such request, Client shall promptly review and comment on such work, failing which such works shall be deemed to be approved by Client. The Agreement may also contain other specific obligations that are to be performed by Client. Consultant shall not be responsible for any delays resulting from a failure of Client to comply with its obligations in a timely manner.

4. Payments. Client shall pay Consultant in accordance with the payment schedule set out in the Agreement (the "Payment Schedule"). All amounts are stated and payable in U.S. dollars. Client shall pay all sales, use, goods and services or other taxes (except taxes on the income of Consultant). To the extent that Consultant is required to collect and remit such taxes, charges or levies, they will be reimbursed by Client. Client shall also reimburse Consultant for all reasonable travel and out-of-pocket expenses incurred by Consultant or its representatives related to the provision of the Services.

5. Late Payments. All invoices are payable upon receipt. Any invoice not paid when due shall bear interest at the rate of eighteen percent (18%) per annum or the maximum rate permitted by law, whichever is less. Consultant shall be entitled to recover its collection costs, including legal fees. Consultant reserves the right to withhold delivery of Services, any Deliverables and/or where any Deliverable includes web pages, to remove access to such web pages hosted by Consultant, until Client has paid all overdue charges and any applicable interest and collection costs.

6. Confidentiality. Each party agrees that with respect to any confidential information of the other (the "Confidential Information"), (i) disclosed in writing and marked as confidential, or (ii) disclosed orally with notice that such material is confidential and with a summary of such material provided in writing to the receiving party within five (5) business days of the disclosure, the receiving party shall not disclose such Confidential Information to third parties without the prior consent of the disclosing party. The foregoing obligation shall not apply to any information that (i)



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is in the public domain, (ii) was previously known to the receiving party prior to disclosure or becomes known to the receiving party from other sources, or (iii) is required to be disclosed by law.

7. Governing Law. This Agreement shall be governed by the laws of the State of New Jersey and the laws of the United States applicable therein without regard to any conflict of law provisions. Except in the case of an action to protect a party's proprietary rights, each of the parties consents to the exclusive jurisdiction of the courts of New Jersey in any action or proceeding instituted in connection with this Agreement and to a venue of New Jersey.

8. Conflict. In the event of a conflict or inconsistency between anything contained in these Terms and Conditions and the portion of the Agreement excluding such Terms and Conditions, these Terms and Conditions shall take precedence except to the extent such other portion of the Agreement explicitly provides that it is to over-ride specific provisions contained in these Terms and Conditions.

9. Independent Contractors. The parties acknowledge that they are independent contractors and that each of them is not an employee, agent or partner of the other party. Consultant acknowledges that its staff are not employees of Client and that Consultant is responsible to remit applicable taxes and other withholdings for its staff. Consultant may subcontract with other developers or consultants.

10. Cure Period. With the exception of payment obligations, if either party is in default of any obligation under this Agreement, the non-defaulting party shall give the defaulting party written notice of its default. If the defaulting party does not remedy the default within a forty-five (45) day cure period where such breach is reasonably capable of being cured within such time then the defaulting party shall be in breach of this Agreement. Notwithstanding the foregoing, where a breach is not reasonably capable of being cured within such forty-five (45) day cure period then the defaulting party shall have up to ninety (90) days to cure so long as it commences to take commercially reasonable action to cure such breach during the forty-five (45) day cure period and continues such action thereafter.

11. Ownership.

11.1 Client shall retain all right, title and interest, including copyright and other intellectual property rights (the "Rights") in all materials provided by Client directly or indirectly to Consultant for inclusion in the Deliverables or the performance of the Services ("Client Content"). Client grants



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Consultant and its representatives the right to use, reproduce and modify the Client Content in the course of performing the Services and producing any Deliverable. To the extent that any pre-existing works ("Pre-Existing Works") are incorporated into any Deliverables arising from the Services, (i) Consultant shall retain all Rights in such Pre-Existing Works; (ii) Consultant grants Client a non-exclusive license, effective upon payment in full for the Services, to use such Pre-Existing Works to directly support its use of the Deliverables. Any new works created by Consultant in the performance of the Services ("New Works") shall be owned by Client, subject to Consultant being entitled (and Client hereby grants Consultant the right) to re-use, sublicense, further develop and incorporate into other works, (i) all general know-how, concepts, methods, storyboards, structure, sequence, organization, layering of information, and (ii) any generic re-useable code, graphical elements, programming code, subroutines and libraries, arising from the performance of the Services, provided such use would not result in a disclosure of any Confidential Information of Client. The Pre-Existing Works and the New Works shall be collectively referred to hereinafter as the "Consultant Content". Notwithstanding the foregoing, the Agreement may designate ownership of specifically identifiable New Works. Client acknowledges and agrees that the Deliverables may incorporate works owned by third parties ("Third Party Content"), and all Rights in such works shall remain with their respective owners subject to any rights or applicable licenses (i) Consultant may have to pass along to Client, or (ii) that such third parties may grant directly to Client, to utilize the Third Party Content.

11.2 Client shall indemnify, defend and hold Consultant harmless against any legal fees and damages finally awarded against Consultant by a court of competent jurisdiction based on a claim made by a third party that the Client Content infringes any copyright, or trade-secret of any such third party. With the exception of a claim falling under section 11.3, Client shall also indemnify, defend and hold Consultant harmless for any claim arising from Client's use of a Deliverable and/or the operation of the Client's System including but not limited to any transactions involving third parties that are carried out on Client's System. Client shall be responsible for the payment of any tariffs that may be applicable to the use of content on the Client's System.

11.3 Consultant shall indemnify, defend and hold Client harmless against any legal fees and damages finally awarded against Client by a court of competent jurisdiction based on a claim by a third party that the Consultant Content infringes any copyright or trade-secret of such third party under the laws of the United States, except to the extent that the infringement arises due to the Client's requirements set out in the Agreement. Client's obligation under subsection 11.2 and Consultant's obligation under this subsection is contingent on the other party (i) giving it prompt notice of the claim, (ii) giving it full control over the defense and settlement of the claim, (iii) giving



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it all reasonable co-operation, information and assistance to handle the defense or settlement (such co-operation, information or assistance to be provided without cost but with the defending/indemnifying party covering reasonable out-of-pocket expenses (but not legal fees), (iv) removing from the Client's System and refraining from use of any component which may be infringing, (v) not having contributed to the infringement, (vi) not making any admissions without the defending/indemnifying party's consent (other than as may be required by law), (vii) being in compliance with its financial and other obligations under this Agreement. Should the Services become the subject of a claim of infringement then Consultant may, at its option, either (i) use reasonable efforts to procure the right to permit the continued provision of the Services, (ii) provide modified Services that are not infringing, or (iii) refrain from the provision of such Services.

11.4 Consultant, its suppliers and representatives retain the exclusive ownership of all know-how, ideas, technical development tools, concepts and materials relating thereto used in the provision of Services which are owned by Consultant, or which were known by Consultant, its suppliers or representatives prior to the provision of Services to Client (the "Company Tools"). Consultant agrees to grant Client a non-exclusive license to use any Company Tools embedded in any Deliverable on the Client System subject to the Consultant's license agreement applicable to such Company Tools. Client acknowledges that the Company Tools may constitute confidential, valuable proprietary information and trade secrets of Consultant, its suppliers or representatives. Client agrees not to use, copy, disclose or otherwise make available any Company Tools which may come into its possession, knowledge or control to any other person.

11.5 Client agrees that Consultant may publicize and otherwise refer to work performed for the Client, including referring to any Client System or the Deliverable developed for Client, in any Consultant promotional materials and submissions for awards and other forms of recognition. Where Consultant assists in the development of a Web site for Client, Client shall include a reference and hypertext link to Consultant's Web site on the home page of such Client Web site. Consultant may retain a single copy of any Deliverable and may use, reproduce, display and perform any Client Content incorporated in such Deliverable solely for marketing and promotional purposes.

12. Assignment. This Agreement may not be assigned by Client without the prior written consent of Consultant, not to be unreasonably withheld.

13. Warranties and Disclaimers.



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13.1 Services Description. Consultant warrants that the Services set out in the Agreement will be performed materially in accordance with the Services Description. Consultant does not provide any warranty in respect of any third party software, or any services provided by third parties where Client explicitly request Consultant to acquire services of third parties selected by Client.

13.2 Disclaimer. WITH THE EXCEPTION OF ANY EXPRESS WARRANTIES CONTAINED IN THIS ARTICLE 13 CONSULTANT EXPRESSLY DISCLAIMS, ANY AND ALL OTHER REPRESENTATIONS, WARRANTIES, OR CONDITIONS WITH RESPECT TO THE SERVICES, CONSULTANT CONTENT, COMPANY TOOLS, DELIVERABLES OR OTHERWISE ARISING FROM THIS AGREEMENT HEREOF; WHETHER EXPRESS OR IMPLIED, PAST OR PRESENT, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR OF QUALITY, PRODUCTIVENESS OR ACCURACY, EVEN IF CONSULTANT HAS BEEN ADVISED OF SAME BY CLIENT. CONSULTANT DOES NOT GUARANTEE UNINTERRUPTED OR ERROR FREE OPERATION OF ANY DELIVERABLE.

13.3 Remedy. In the event any portion of the Service provided by Consultant was not provided in accordance with the warranties contained in this Article, and Client notifies Consultant of such non-conformance within 30 days of the performance of such portion of the Service (or within such shorter time that Consultant requests Client to review any work in accordance with Section 3 above), then Consultant shall reperform such portion of the Services. Such reperformance shall be at (i) the Published Rates for any Services originally performed at the Published Rates, or (ii) at no cost to Client for any Services originally performed on a fixed price basis. If Consultant is unable to reperform the applicable Services in accordance with the applicable warranty, then Consultant shall refund any fees paid by Client for such portion of the Services. The foregoing obligations of Consultant represent Client's exclusive remedy and Consultant's sole obligation and liability in respect of any Services or Deliverable.

14. Liability.

IN NO EVENT SHALL CONSULTANT BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF DATA, OR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES RELATING TO THE SERVICES, CONSULTANT CONTENT, COMPANY TOOLS, DELIVERABLES OR OTHERWISE ARISING FROM THIS AGREEMENT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR



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OTHERWISE, INCLUDING ANY FUNDAMENTAL BREACH. CLIENT SHALL BE RESPONSIBLE FOR ENSURING IT MAINTAINS ADEQUATE BACKUP COPIES OF DATA AND CONSULTANT SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE TO DATA. CLIENT FURTHER AGREES THAT, WITH THE EXCEPTION OF SECTION 11.3, CONSULTANT WILL NOT BE LIABLE FOR ANY CLAIM AGAINST CLIENT MADE BY ANY THIRD PARTY. THE PARTIES AGREE THAT CONSULTANT'S LIABILITY FOR THE SERVICES, ANY DELIVERABLE OR ANY CLAIM ARISING OR RELATED TO THIS AGREEMENT SHALL BE LIMITED TO SUCH DIRECT MONEY DAMAGES AS ARE ACTUALLY INCURRED BY CLIENT AND SHALL NOT IN THE AGGREGATE EXCEED THE TOTAL FEES PAID TO CONSULTANT PURSUANT TO THIS AGREEMENT IN THE PREVIOUS TWELVE MONTH PERIOD FROM THE DATE UPON WHICH THE FIRST CLAIM MAY ARISE. ACTIONS FOR ANY CLAIMS ARISING FROM EITHER PARTY'S PERFORMANCE UNDER THIS AGREEMENT OR OTHERWISE RELATED TO THIS AGREEMENT, WITH THE EXCEPTION OF PAYMENT OBLIGATIONS, MUST BE COMMENCED WITHIN ONE (1) YEAR FROM THE DATE WHEN SUCH CLAIM ARISES.

15. Termination.

15.1 In the event either party ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceedings under the laws of the United States or any other statute of any federal government, province or state relating to insolvency or the protection of rights of creditors, then the other party is, entitled to terminate the Agreement, subject to the applicable insolvency legislation.

15.2 The Agreement shall also terminate as otherwise specified in the Agreement, or if not otherwise specified, shall automatically terminate thirty (30) days after completion of the Services.

15.3 Subject to section 10, either party may terminate the Agreement in the event the other party is in material breach of its obligations.

16. Entire Agreement. This Agreement constitutes the complete agreement between Consultant and Client with respect to its subject matter and supersedes all prior or other proposals, understandings, agreements or other communications between the parties, whether oral or written, and may be amended or modified only by a signed writing executed by both parties. Client acknowledges that it is not relying on any statement or information made or given, directly or



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indirectly, orally or in writing, by Consultant or its representatives, except as specifically set forth herein. Consultant shall not be subject to any terms and conditions contained in any purchase order issued by Client. Each party agrees to execute such further documents and agreements as may be required to give effect to provisions of this Agreement. Client agrees to be bound by the provisions of any license agreements (including shrink wrap license agreements or other agreements of adhesion) applicable to software provided by Consultant or third parties.

17. No Solicitation. The Client hereby undertakes that during the term of this Agreement and for a period of twelve (12) months thereafter, without the prior written approval of Company, it will not offer employment to any representatives of Consultant who shall have been assigned to provide Services under this Agreement, nor will it directly or indirectly induce such representatives to terminate their employment or other relationship with Consultant.

18. Force Majeure. Except with respect to payment of fees hereunder, neither party hereto shall be liable to the other party for any delay or failure to perform its obligations hereunder due to strikes, labor disputes, riots, storms, floods, explosions, earthquakes, acts of God, acts of any governmental authority, war, failure or delay of any third party supplier, unavailability or shortages of materials or labor, equipment failures, or without limitation, any other cause or causes which are beyond the reasonable control of such party.

19. Notice. Any notice, request, demand, consent or other communication required or permitted hereunder is to be given by personal delivery, in writing, or facsimile transmission or sent by registered or certified mail, during normal postal conditions, postage prepaid, written receipt requested, addressed to the party for which it is intended and addressed to the parties as set out in the Agreement, and provided, however, that any party may change its address for purposes of receipt of communications by giving not less than ten (10) business days prior written notice of the change to the other party in the manner prescribed above. Any notice so given is deemed to have been received on the next business day following the date it was hand delivered or facsimile machine, or if mailed on the fifth (5th) business day next following the mailing of the notice during normal postal conditions. In the event of a postal disruption, any notice mailed will be deemed received on the fifth (5th) business day following the resumption of regular postal service. Where notice is given by facsimile then the hardcopy of the original notice shall be sent by prepaid regular mail on the next business day after the original notice was sent.

20. General. No term or provision of the Agreement is deemed waived and no breach excused, unless the waiver or consent is in writing and signed by the party claiming to have waived or



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consented. Any consent by any party to, or waiver of, a breach by the other, whether expressed or implied, does not constitute a consent to, waiver of, or excuse for, any other different or subsequent breach. If any provision of the Agreement is held to be invalid, illegal or unenforceable, all other provisions will nevertheless continue in full force and effect. Paragraphs 4, 5, 6, 11.2, 11.3 13.2, 13.3, 14 and 17 shall survive any termination of this Agreement. Each of the parties hereby irrevocably acknowledges the receipt and sufficiency of the mutual covenants contained in this Agreement and other good and valuable consideration.