

## MUTUAL CONFIDENTIALITY & NONDISCLOSURE AGREEMENT

This Agreement is made and entered into by **Bizbrain Technologies LLC** a Florida Corporation, having its office at 34 NE 101st Street, Miami Shores, FL 33138, its subsidiaries, affiliates, successors, or assigns (together the “Company”), and \_\_\_\_\_ having its principal office at \_\_\_\_\_, its subsidiaries, affiliates, successors, or assigns (together the “Client”) in consideration of receipt of the services (the “Services”) now and hereafter performed by the Company, Client agrees to the following (collectively referred to as the “Agreement”):

### RECITALS

Company and Client (hereinafter collectively referred to as “the parties”) have entered into a separate agreement whereby Company will provide Services to Client, and, in connection therewith, Client will come into contact with certain proprietary and confidential information (“Confidential Information”) belonging to Company, and

The parties wish to assure that the Confidential Information that will be disclosed in connection with the Services Company is providing to Client is held in confidence, and

The parties understand and agree that this Agreement is reasonably necessary to protect a legitimate business interest as identified in Florida Statute §542.335, and

The parties understand and agree that they each have information, including a formula, pattern, compilation, program, device, method, technique, or process that under Florida Statute §688.002(4) that derives independent economic value, actual or potential, that is not generally known to, and not readily ascertainable by other persons who can obtain economic value from its disclosure or use; and

NOW, THEREFORE, based on the facts set forth above, and in consideration of the mutual covenants and conditions set forth herein, the parties hereto agree as follows:

### I. INTELLECTUAL PROPERTY

1) Intellectual Property. It is hereby agreed that the parties have developed or acquired certain products, technology, unique or special methods, trade secrets, special written marketing plans and special customer arrangements, client lists, and other proprietary rights and confidential information and shall during the Services term continue to develop, compile and acquire said items (all hereinafter collectively referred to as the “Intellectual Property”). Each party is obligated to uphold confidentiality regarding the other party’s Intellectual Property..

2) Intellectual Property Survives Termination. Each party retains ownership of its

respective Intellectual Property created prior to or independently of this Agreement. Jointly created Intellectual Property will remain the exclusive property of the creating party, unless otherwise agreed in writing. No party shall incorporate the Intellectual Property or inventions of the other party into any product, process, or machine without prior written consent. In the event that the Services are terminated, for whatever reason, the parties agree not to copy, make known, disclose or use, any of the Intellectual Property without the other party's prior written consent. In such event, the parties further agree not to endeavor or attempt in any way to interfere with or induce a breach of any prior proprietary contractual relationship that the other party may have with any customer, contractor, supplier, representative, or distributor. Upon termination of Services, each party agrees to deliver to the other (and will not keep in its possession, recreate, or deliver to anyone else) any and all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment, other documents or property, or reproductions thereof, developed pursuant to the Services or otherwise belonging to the other party, including all digital files and electronic backups. The parties recognize that violation of covenants and agreements contained in this agreement may result in irreparable injury to the other party which would not be fully compensable by way of money damages. *See* Section VI, Subsection (2), below.

## **II. CONFIDENTIAL INFORMATION**

1) Confidential Information; Definition. The parties understand that Confidential Information as used in this Agreement, refers to any information which has commercial value and is either (i) scientific, technical, or engineering information, including patent, copyright, trade secret, and other proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, and formulae related to the current, future and proposed products and services, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing, (ii) non-technical information relating to products, including without limitation pricing, margins, merchandising plans and strategies, finances, financial and accounting data and information, suppliers, customers, customer lists, purchasing data, sales and marketing plans, future business plans (including business ventures and strategic plans), economic, marketing (including marketing strategies and programs), or (iii) information recognized as proprietary trade secrets, or (iv) any other information which could reasonably be considered proprietary and confidential.

2) Confidential Information; Non-Disclosure. The parties acknowledge that each party will derive significant value from the Services that by its very nature will disclose the Confidential Information of the other party. The parties further acknowledges that fulfillment of the obligations contained in this Agreement, including, but not limited to, the obligation neither to disclose nor to use the Confidential Information other than for the exclusive benefit is necessary to protect the Confidential Information and, consequently, to preserve the value and goodwill of the other party. The parties agree at all times during the term of the Services and thereafter, to hold in strictest confidence, and not to use or to disclose to any person, firm or corporation without

written authorization of the Managers or Members of the other party, any Confidential Information. Confidential Information shall only be used to perform the mutually agreed-upon services under this Agreement and for no other purpose unless prior written consent is provided by the other party.

### III. INVENTIONS

1) Inventions Retained and Licensed. Each party has attached hereto, as an Exhibit, a list describing all inventions, original works of authorship, developments, improvements, and trade secrets which were made prior to the commencement of Services (collectively referred to as “Prior Inventions”), which relate to the proposed business, products or research and development, and which are not assigned hereunder; *or, if no such list is attached, the parties represent that there are no such Prior Inventions*. If in the course of the Services the parties incorporate into a product, process, or machine a Prior Invention owned or in which either party has an interest, the other party is hereby granted and shall have a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license to make, have made, modify, use and sell such Prior Invention as part of or in connection with such product, process, or machine.

- (a) Assignment of Inventions. Each party will promptly make full written disclosure to the other party, will hold in trust for the sole right and benefit of the other party, and hereby assign to the other party, or its designee, all the right, title, and interest in and to any and all inventions, original works of authorship, developments, concepts, improvements or trade secrets, whether or not patentable or subject to registration under copyright or similar laws, which the parties may solely or jointly conceive or develop or reduce to practice, or cause to be conceived or developed or reduced to practice, during the period of time Services are provided by the parties (collectively referred to as “Inventions”). The parties further acknowledges that all original works of authorship which are made by (solely or jointly with others), and within the scope of, and during the period of Services and which are subject to copyright protection are “works made for hire,” as that term is defined in the United States Copyright Act and are property of the Company.
- (b) Inventions Assigned to the United States. The parties agree to assign to the United States government all right, title, and interest in and to any and all Inventions whenever such full title is required to be in the United States by a contract between the parties and the United States government or any of its agencies.
- (c) Maintenance of Records. The parties agree to keep and maintain adequate and current written records of all Inventions made (solely or jointly with others) during the term of Services. The records will be in the form of notes, sketches, drawings, and any other format that may be specified. The records will be available to and remain the property of each party at all times.
- (d) Patent and Copyright Registrations. The parties agree to assist, at their own expense, in every way to secure the rights in the Inventions and any copyrights, patents, mask

work rights or other intellectual property rights relating thereto in any and all countries, including the disclosure of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments and all other instruments which the parties shall deem necessary in order to apply for and obtain such rights and in order to assign and convey to the parties, their successors, assigns and nominees the sole and exclusive rights, title and interest in and to such Inventions, and any copyrights, patents, mask work rights or other intellectual property rights relating thereto. The parties further agrees that the obligation to execute or cause to be executed, any such instrument or papers shall continue after the termination of this Agreement.

#### **IV. RETURNING DOCUMENTS**

The parties agrees that, at the time of termination of Services for whatever reason, each party will deliver to the other (and will not keep in its possession, recreate or deliver to anyone else) any and all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment, other documents or property, or reproductions of any aforementioned items developed pursuant to the Services or otherwise belonging to the other party, its successors or assigns in the event of the termination of the Services.

#### **V. REPRESENTATIONS**

The parties agree to execute any proper oath or verify any proper document required to carry out the terms of this Agreement. The parties represent that performance of any and all the terms of this Agreement will not cause the parties to be in breach of any other agreement. The parties have not entered into, and will not enter into, any oral or written agreement in conflict herewith.

#### **VI. WAIVER OF JURY TRIAL AND EQUITABLE RELIEF**

1) Waiver of Jury Trial; Arbitration. The parties hereby irrevocably and knowingly waive to the fullest extent permitted by law any right to a trial by jury in any action or proceeding arising out of this Agreement. The parties agree that any action or claim arising out of any dispute in connection with this Agreement, any rights, remedies, obligations, or duties hereunder, or the performance or enforcement hereof or thereof that either party brings against the other shall be determined by arbitration administered by the American Arbitration Association (“AAA”) in accordance with its Commercial Arbitration Rules to be conducted in Miami-Dade County, Florida. Arbitration shall be conducted before a mutually acceptable arbitrator with knowledge of the industry and subject area. If parties cannot agree, the AAA shall assign an Arbitrator with knowledge of the industry and subject area. Judgment on the award rendered in any such arbitration may be entered in any court having jurisdiction and shall not be subject to appeal.

2) Equitable Remedies. The parties agree that notwithstanding the above waiver of jury trial, each party shall be entitled to injunctive and other equitable relief in the event of, or to

prevent, a breach of any provision of this Agreement for improper use or disclosure of trade secrets or other Confidential or proprietary information. The parties acknowledge and agree that the business of each party is highly specialized and competitive and that violation of any of the covenants in this Agreement would cause immediate, immeasurable, and irreparable harm, loss, and damage not adequately compensable by a monetary award. Each party shall be entitled to seek injunctive relief in the event of a breach of this Agreement regarding the improper use or disclosure of its own trade secrets or other proprietary or Confidential Information. Accordingly, the parties agree, without limiting any of the other remedies or damages available, that any violation of any such covenants may be redressed through an *injunction, restraining order or other equitable remedy issued by a court of competent jurisdiction*.

3) Bond. The parties further agree that no bond or other security shall be required in obtaining such equitable relief and hereby consent to the issuance of such injunction and to the ordering of specific performance without requirement for such bond.

## **VII. CHOICE OF LAW; PERSONAL JURISDICTION**

1) Choice of Law and Consent to Personal Jurisdiction. *This Agreement will be governed by the laws of the State of Florida without reference to any conflicts of law provisions. In addition, the parties hereby expressly consent to the personal jurisdiction of the state and federal courts located in Miami-Dade County, Florida for any lawsuit filed there arising from or relating to the Services or this Agreement.*

## **VIII. GENERAL PROVISIONS**

1) Entire Agreement. This Agreement sets forth the entire agreement and understanding between the parties relating to the subject matter hereof and merges all prior discussions. No modification of, or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing signed by the party to be charged. Any subsequent change or changes in the duties, or compensation will not affect the validity or scope of this Agreement.

2) Headings. Section headings are not to be considered a part of this Agreement and are not intended to be a full and accurate description of the contents hereof.

3) Amendment. No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties hereto.

4) Severability. If any provision of this Agreement is deemed void or unenforceable, the parties agree that such provision shall be modified to the extent necessary to make it enforceable, and the remaining provisions shall continue in full force and effect.

5) Successors and Assigns. This Agreement will be binding upon the parties' heirs, executors, administrators, successors, and its assigns and/or other legal representatives.

6) Attorney's Fees. In any suit, action or proceeding arising out of or in connection with this Agreement, the prevailing party shall be entitled to an award of the amount of attorneys' fees, costs, expenses and disbursements actually billed to such party in connection therewith, including fees and disbursements. Reference to attorneys' fees or similar phrases in these Terms and Conditions shall be deemed to include fees and disbursements whether suit be brought or not, and fees and disbursements incurred in any regulatory, investigative, bankruptcy, insolvency, appellate, arbitration or other proceeding.

7) Conflicts. The terms of this Agreement shall control over any conflicting terms in any referenced agreement or document.

8) Notices. All notices, requests, demands or other communication required or permitted by the terms of these Terms and Conditions or any related Work Order shall be given via email, and in writing and be delivered a) in person, b) by certified mail, postage prepaid, return receipt requested, or c) by a commercial courier that provides a receipt, and such notices shall be addressed as follows:

If to the Service Client:

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**If to Bizbrain:**

Bizbrain Technologies LLC  
Manager  
34 NE 101st Street  
Miami, Florida 33138  
Email: [operations@bizbraintech.com](mailto:operations@bizbraintech.com)

**With Copy to:**

L.V. Marenco, Esq.  
Trust Counsel, PL  
201 Alhambra Circle, Ste 802  
Miami, FL 33134-5108  
Email: [Marenco@TrustCounsel.com](mailto:Marenco@TrustCounsel.com)

Any party hereto may change its address for purposes of this paragraph by written notice given in the manner provided above. Any notice shall be effective only upon delivery.

9) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which collectively shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the parties have executed this Agreement on the day, month and year first set forth below.

For and on behalf of (Client):

For and on behalf of:

\_\_\_\_\_  
Name:

**Bizbrain Technologies LLC**

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_