




BrightPlum.com

Creative Engineering. Exceptional Service.

Master Services Agreement



This Master Services Agreement, together with any approved proposal ("Proposal") incorporating these terms by reference (collectively, "Agreement") is entered into between Bright Plum, Inc. ("Bright Plum"), with its principal place of business located at 1020 Park Dr. #860, Flossmoor, IL 60422 and you ("Client") as identified in the Proposal. The Effective Date is the date on which Bright Plum's Proposal has been signed by Client ("Effective Date") and shall be effective until terminated in accordance with the terms below.

Background

Bright Plum is engaged in the business of providing web design, development, marketing, hosting, email and related services;

Client desires to retain Bright Plum to perform the services.


NOW, THEREFORE, Bright Plum and Client agree as follows:

Services

1.1 Services. Bright Plum will perform for Client the activities, services, and work (the "Services") specified in a Proposal. The parties may choose to enter into more than one Proposal from time to time, and all the Proposals are subject to the terms of this document. To the extent there is an express conflict between this Agreement and a Proposal, the Proposal will control for the purposes of that specific Proposal only. Services will be provided according to the terms of the then-current Service Level Agreement, a copy of which is attached hereto and marked as "Exhibit A". The Service Level Agreement may be modified from time to time in Bright Plum's sole discretion. Promptly upon any such change, Bright Plum shall notify Client of the change and what provisions of the Service Level Agreement have been changed. Client's continued use of the Services after seven (7) days after such notice will constitute Client's acceptance of the modified terms.

1.2 Changes. Any significant changes in the scope of the Services and/or any Deliverables, shall be documented in a change order or amendment to the applicable Proposal. Bright Plum shall have no obligation to perform any additional Services or provide additional Deliverables unless a change order or amendment has been approved in writing by both parties (email approval is sufficient). Bright Plum reserves the right to re-estimate any agreed upon fees based on significant changes to the scope of the Services and/or Deliverables. Such re-estimates will be detailed in a change order or amendment to the Proposal.

1.3 Client Obligations. Client will cooperate fully with Bright Plum in connection with Bright Plum's performance of the Services. Client will immediately notify Bright Plum of any changes in Client's mailing address, telephone, e-mail or other contact information.



Except as otherwise provided in a Proposal, Client is responsible for all data and/or content uploaded in conjunction with the Services (the “Content”).

1.4 Customer Service. Bright Plum will provide Client reasonable amounts of billable consultation via telephone and/or electronic mail in the use of the technology, but may not be able to assist with any services that are not maintained or controlled by Bright Plum.


Fees

2.1 Fees. Client will pay Bright Plum the project fee or monthly rates as identified in each Proposal for the Services performed by Bright Plum under the Proposal. Unless otherwise specified in the Proposal, payment of invoices is due thirty (30) days from the date of the invoice. Bright Plum may change the prices charged for recurring fees, including, without limitation, hosting, marketing, domain renewals or registration, and email accounts upon forty-five (45) days’ notice to Client, but such increases shall not exceed twenty percent (20%) of the rate currently being charged at that time. Fixed price proposals for web based projects will be honored unless there exist significant technology, scope or functionality changes from the agreed to Proposal. Modifying elements, including, without limitation, designs, templates, infographics, technologies, content management systems or web pages after verbal or written approval by Client may incur additional hourly charges.

2.2 Advertising Fees. Bright Plum will commence billing for digital advertising management at the inception of services rendered. Services rendered may commence prior to formal advertising and as much, billing may commence before advertisements are published. Payments to Bright Plum for recurring marketing services are separate from payments to Google, Facebook, LinkedIn, or any other advertising platform or provider. Charges from Google, Facebook, and LinkedIn are billed to the card placed on file. Upon request, an invoice for advertisements rendered will be provided to the client.

2.3 Late Payments. If Client has not paid an undisputed invoice within ten (10) days of Client’s receipt of notice of nonpayment, a one and one-half percent (1.5%) interest charge (or the highest rate permissible under applicable law, whichever is less) will be assessed on all overdue balances. In addition, Client shall reimburse Bright Plum for all reasonable costs incurred by Bright Plum in collecting any late payments, including, without limitation attorneys’ fees. In the event any invoice is not paid when due, Bright Plum may suspend performance of Services under any or all Proposals without liability, in addition to any other remedies to which Bright Plum may be entitled.

2.4 Taxes. Fees are exclusive of applicable sales, use and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local government entity (collectively, the “Taxes”) relating to the sales, purchase, delivery, or




provision of the Services and Deliverables under this Agreement. Client shall be responsible for the Taxes; provided that in no event shall Client be responsible for any taxes imposed on, or with respect to, Bright Plum's income, revenues, gross receipts, personnel or assets.

2.5 Expenses. Client shall reimburse Bright Plum for all reasonable out-of-pocket expenses incurred by Bright Plum in the performance of the Services and approved in advance by Client; provided that such expenses are supported by receipts and other supporting documentation. Expense invoices will be billed on a monthly basis and are due within thirty (30) days of the invoice date.

2.6 Security Patches. From time to time, it may be necessary for Bright Plum to apply security patches to remediate potential vulnerabilities on your site. In that instance, Bright Plum will install security patches at Bright Plum's hourly rate and Client agrees to pay Bright Plum for this work, even if Client was not consulted proactively. Client acknowledges and agrees that Bright Plum cannot wait for Client's approval prior to applying the patches due to potential risks posed by potential security vulnerabilities. Security patches generally happen a few times per quarter and typically take one (1) to two (2) hours to install and test. This cost can vary depending on the security patch, the complexity of the site, the number of installed plug-ins, and other factors. Clients with support contracts may be exempt from these charges.

Rights in Deliverables; Background IP and Residuals

3.1 Deliverables. Contingent upon payment in full by Client, unless otherwise agreed in a writing signed by Bright Plum and Client, all rights, title and interest (including, but not limited to, all copyrights and all other intellectual property rights and ownership rights of every nature) in and to all material originated and prepared by Bright Plum (whether by Bright Plum's employees or by Bright Plum's subcontractors) specifically for Client under this Agreement (collectively, "Deliverables") will be deemed works-made-for-hire, and as such, Client will own the Deliverables (excluding any Background IP included with or incorporated in the Deliverable). If for any reason a Deliverable is not a work-made-for-hire, or certain rights in and to the Deliverable are not covered by the work-made-for-hire doctrine, then Bright Plum, on behalf of itself, its employees, and its subcontractors, contingent upon Client's payment in full of all outstanding undisputed invoices, agrees to transfer and assign, and by executing this Agreement does hereby transfer and assign, to Client, without further consideration, all right, title and interest in and to the Deliverable, including, but not limited to, all copyrights and all other intellectual property rights and ownership rights of every nature. Client will maintain and control ownership of all Internet protocol numbers and addresses that may be assigned by Bright Plum to Client. Client may, in its sole discretion, change or remove any and all such Internet protocol numbers and addresses, and upon so doing shall promptly notify Fist Scribe.




3.2 Bright Plum IP. Bright Plum hereby grants to Client a non-exclusive, non-transferrable, royalty-free license, for the term of this Agreement, to use the provided technology solely for the purpose of accessing and using the Services. Client may not use the provided technology for any purpose other than accessing and using the Services. Except for the rights expressly granted herein, this Agreement does not transfer from Bright Plum to Client any right, title, or interest in and to the provided technology, and all right, title and interest thereto will remain solely with Bright Plum. Client will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from any of the provided technology. Bright Plum's trademarks, trade names, service marks, logos, other names and marks, and related product and service names, design marks and slogans are the sole and exclusive property of Bright Plum. Client will not use any of the foregoing in any advertising, publicity or in any other commercial manner without the prior written consent of Bright Plum.

3.3 Background IP. For the sake of clarity, Bright Plum retains all rights, title and interest, including without limitation, intellectual property rights in and to all materials, business processes, ideas, know-how, tools, media, source code, inventions or items developed, conceived and/or owned by Bright Plum prior to the date of the applicable Proposal or apart from and independent of Bright Plum's performance for Client under this Agreement, including any derivatives, modifications improvements, or enhancements thereof ("Background IP"). Unless set forth otherwise in a Proposal, Bright Plum grants Client a non-exclusive, perpetual, royalty-free, non-transferable license to use the Background IP solely as necessary to make reasonable use of the Deliverables and the Services for its internal business purposes.

3.4 Residual Knowledge. Notwithstanding the above, but subject to Bright Plum's obligations under Section 4, Bright Plum and its personnel shall be free to use any ideas, concepts or know-how developed or acquired by Bright Plum or its personnel during the performance of this Agreement to the extent obtained and retained by Bright Plum's and its personnel as impressions and general learning. Nothing in this Agreement shall be construed to preclude Bright Plum from acquiring, developing, marketing or enhancing for itself or others deliverables of a similar nature or function as those used or created pursuant to this Agreement. Any feedback, data, answers, questions, comments, suggestions, ideas or the like that Client sends to Bright Plum relating to the Services will be treated as non-confidential and non-proprietary. Bright Plum may use, disclose or publish any ideas, concepts, know-how or techniques contained in such information for any lawful purpose.

3.5 Client IP. Client hereby grants to Bright Plum a non-exclusive, royalty-free, worldwide right and license during the term of this Agreement, and solely for the purpose of providing the goods and services Bright Plum is obligated to provide pursuant to this Agreement, to (a) digitize, convert, install, upload, select, order, arrange, compile, combine, synchronize, use, reproduce, store, process, retrieve, transmit, distribute, publish, publicly



display, publicly perform, and hyperlink the Content; and (b) make archival or back-up copies of the Content. Except for the rights expressly granted herein, Bright Plum does not acquire any right, title or interest in or to the Content.

3.6 Third Party IP. If specified in a Proposal, Bright Plum may provide as part of the Deliverables certain third party items, including but not limited to premium fonts and stock photos, subject to license terms and conditions set by the third party. Whenever a third party is referenced in a Proposal, Client agrees to be bound by that third party's terms and conditions. With regard to images obtained from Getty Images or any other third party image supplier, Client agrees Bright Plum is authorized to accept Getty Images', or such other third party image supplier's, terms and conditions on Client's behalf. Client's use of stock images provided by Bright Plum under Getty Images's terms and conditions is restricted to web use only.


Confidentiality

4.1 Regarding information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party") identified by the Disclosing Party as "confidential" or "proprietary" or that under the circumstances ought reasonably to be treated as confidential or proprietary (collectively, "Confidential Information"), the Receiving Party shall not, without the prior written consent of the Disclosing Party: (i) disclose such Confidential Information to any third person or entity other than in the proper course of performance under this Agreement; (ii) use such Confidential Information for any purpose other than performance hereunder; or (iii) use such Confidential Information in any manner that would be adverse to the interests of the Disclosing Party. The terms of this Agreement are also confidential. The confidentiality obligations of this Section 4.1 do not apply to any information or development that the Receiving Party can demonstrate: (i) is or subsequently becomes available to the general public other than through a breach by the Receiving Party; (ii) is already known to the Receiving Party before disclosure by the Disclosing Party; (iii) is developed through the independent efforts of the Receiving Party without reference to the Disclosing Party's Confidential Information; or (iv) the Receiving Party receives rightfully from third parties that are not subject to any restriction as to use or disclosure of the information.

Warranties

5.1 Each party represents and warrants that it has the full legal power and authority to enter into and perform its obligations under this Agreement (including any Proposal).

5.2 Client warrants that it will adhere to Bright Plum's Acceptable Use Policy, a copy of which is attached hereto and marked as "Exhibit B". The Acceptable Use Policy may be modified from time to time in Bright Plum's sole discretion. Promptly upon any such




change, Bright Plum shall notify Client of the change and what provisions of the Acceptable Use Policy have been changed. Client's continued use of the Services after seven (7) days after such notice will constitute Client's acceptance of the modified terms. Failure by Client to adhere to the Acceptable Use Policy, or any modifications thereto will constitute a material breach of this Agreement.

5.3 Client warrants to Bright Plum, and agrees that during the Term of this Agreement it will ensure that: (a) Client is the owner or valid licensee of Content, and that Client has secured all necessary licenses, consents, permissions, waivers and releases for the use of Content and each element thereof, including without limitation, all trademarks, logos, names and likenesses contained therein, without any obligation by Bright Plum to pay any fees, residuals, guild payments or other compensation of any kind to any person; (b) Client's use, publication and display of the Content will not infringe any copyright, patent, trademark, trade secret or other proprietary or intellectual property right of any person, or constitute a defamation, invasion of privacy or violation of any right of publicity or any other right of any person, including, without limitation, any contractual, statutory or common law right or any "moral right" or similar right however denominated; (c) Client will comply with all applicable rules, regulations, and laws regarding the Content (whether local, state, national, or foreign) and will use the Services only for lawful purposes; (d) Client has used its best efforts to ensure that the Content is and will at all times remain free of all computer viruses, worms, Trojan horses and other type of malicious code; and (e) if Client records or uses the Services or tools provided under this Agreement to record any telephone calls or other communications, Client shall ensure that a notice of recording is provided in conformance with applicable law.

5.4 Bright Plum warrants that the Services will be performed in a professional and workmanlike manner. This warranty is applicable to the Services at the time delivered. Client must report any material deficiencies to Bright Plum within ninety (90) days of becoming aware of any such deficiency. This warranty does not apply if any error or defect in the Services is caused by Client's misuse of the Services or the Services have been modified by any entity other than Bright Plum and such modification has caused the said error or defect. For clarity, Client is solely responsible for Content provided by Client and for specifications or instructions provided by Client to Bright Plum, including ensuring any such instructions comply with any applicable laws.

5.5 Bright Plum warrants to Client, and agrees that during the Term of this Agreement it will ensure that Client's use of any software or other intellectual property provided by Bright Plum (whether sold, licensed, or sublicensed by Bright Plum to Client) will not infringe any copyright, patent, trademark, trade secret or other proprietary or intellectual property right of any person.

5.6 In the event of a breach of the foregoing warranties, or any alleged defect or breach for any Deliverable, Bright Plum will use commercially reasonable efforts to cure any such breach, at no additional cost to Client, within a reasonable timeframe. If Bright



Plum is unable to cure such breach within a reasonable timeframe (not to exceed 30 days after receipt of Client's written notice of such breach), Client may, at its option, terminate the Agreement by serving written notice in accordance with Section 8.2.

Warranty Disclaimer

THE WARRANTY ABOVE IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE SERVICES OR DELIVERABLES PROVIDED UNDER THIS AGREEMENT, AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, Bright Plum IS A WEB DEVELOPMENT BUSINESS AND CANNOT AND DOES NOT PROVIDE LEGAL ADVICE OR CLEARANCE. CLIENT IS RESPONSIBLE FOR COMPLIANCE WITH LAWS RELATED TO CLIENT'S BUSINESS, INCLUDING BUT NOT LIMITED TO WEBSITE ACCESSIBILITY, PAYMENT CARD INDUSTRY DATA SECURITY STANDARDS, DATA PRIVACY AND SECURITY LAWS (INCLUDING THE E.U.'S GENERAL DATA PROTECTION REGULATION), AND/OR RECORDING OF TELEPHONE CALLS OR OTHER COMMUNICATIONS. ALL RECOMMENDATIONS AND DELIVERABLES PROVIDED UNDER THIS AGREEMENT ARE FOR INFORMATIONAL PURPOSES ONLY AND ARE NOT INTENDED TO SERVE AS LEGAL ADVICE OR AS A SUBSTITUTE FOR THE LEGAL ADVICE OF AN ATTORNEY. Bright Plum DOES NOT GUARANTEE ANY PARTICULAR VOLUME OF BUSINESS TO BE ACHIEVED THROUGH THE USE OF SERVICES PROVIDED BY Bright Plum UNDER THIS AGREEMENT.


Limitation of Liability

7.1 Client is responsible for verifying and maintaining accurate tax and shipping data if applicable and agrees to hold Bright Plum harmless from errors in tax and shipping even if Bright Plum assists in setting up tax and shipping calculations.

7.2 IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR PUNITIVE DAMAGES REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, FAILURE OF ESSENTIAL PURPOSE, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Term and Termination

8.1 The term of this Agreement shall commence on the Effective Date and will extend for a period of one hundred eighty (180) days and will automatically renew every six months thereafter, unless earlier terminated as provided herein.



8.2 Either party may terminate this agreement upon written notice for material breach, provided, however, that the terminating party has given the other party at least fourteen (14) days written notice of and the opportunity to cure the breach. Termination for breach will not alter or affect the terminating party's right to exercise any other remedies for breach.

8.3 The terms of Sections 3, 4, 5.1, 5.6, 6, 7, 8, 9 and 11 shall survive the termination or expiration of this Agreement, as well as any other provisions as the circumstances may naturally dictate.

8.4 Upon termination (except in the case of breach by Bright Plum) or expiration of this Agreement or of any Proposal, Client shall pay all of Bright Plum's unpaid fees and out-of-pocket expenses that are due and have been accrued through the date of termination or expiration under each applicable Proposal, including labor or resources assigned through the termination date.

Indemnification

Client will indemnify and hold Bright Plum harmless against any claims incurred out of or in conjunction with breach of this Agreement, as well as all reasonable costs, expenses and attorneys' fees incurred therein. Bright Plum will indemnify and hold Client harmless against any and all claims incurred out of or in conjunction with Bright Plum's breach of this Agreement, as well as reasonable costs, expenses and attorney's fees incurred therein.


Notices

All notices, authorizations, and requests in connection with this Agreement shall be deemed given on the day they are (i) deposited in the U.S. mails, postage prepaid, certified or registered, return receipt requested; or (ii) sent by express courier (e.g., DHL, Federal Express or UPS), charges prepaid; and addressed as for Bright Plum to the address provided in the introduction of this Agreement and for Client to the address provided in the applicable Proposal, or as updated from time to time.

Miscellaneous

11.1 Assignment. Neither party may assign this Agreement, in whole or in part, without the express written consent of the other party, which shall not be unreasonably withheld, except that either party may assign this Agreement to an affiliate or in whole to a successor entity by way of merger, corporate reorganization, sale of substantially all assets, or similar transaction without the other party's consent.

11.2 Dispute Resolution; Applicable Law; Venue. Any dispute arising under this Agreement will be subject to binding arbitration by a single Arbitrator with the American



Arbitration Association, in accordance with its relevant industry rules, if any. The parties agree that this Agreement will be governed by and construed and interpreted in accordance with the laws of the State of Illinois. The arbitration will be held in Illinois. The Arbitrator will have the authority to grant injunctive relief and specific performance to enforce the terms of this Agreement. Judgement on any award rendered by the Arbitrator may be entered in any Court of competent jurisdiction.


11.3 Entire Agreement. This Agreement and any Proposals constitute the entire agreement between Bright Plum and Client regarding its subject matter, and merges all prior and contemporaneous communications with respect to the subject matter hereof and thereof. The terms on any purchase order or other form submitted by Client shall not apply to this Agreement. Neither this Agreement nor any Proposal may be modified except by a written agreement signed by both parties.

11.4 Compliance with Laws. Client shall at its own expense obtain and maintain any governmental approval, consent, license or other authorization necessary to the performance of this Agreement. Client confirms that if Client acquires any Deliverables, documentation, or Services under this Agreement that are subject to the export control laws and regulations of the United States, it will not export or re-export them, directly or indirectly, either to (i) any countries that are subject to U.S. export restrictions; or (ii) any end-user whom Client knows or has reason to know will utilize them in the design, development or production of nuclear, chemical or biological weapons or any prohibited persons or entities.

11.5 Severability/Waiver. If any provision of this Agreement proves to be or becomes invalid or unenforceable under any applicable law, then such provision shall be deemed modified to the extent necessary in order to render such provision valid and enforceable in the manner that best advances the spirit of this Agreement; if such provision may not be so saved, it shall be severed and the remainder of this Agreement shall remain in full force and effect. No waiver of any provision of this Agreement or the breach thereof shall be effective unless made in writing and signed by an authorized representative of the waiving party.

11.6 Independent Contractor. Bright Plum is an independent contractor, and nothing in this Agreement shall be construed as creating a partnership, joint venture or any other equivalent relationship between the Client and Bright Plum, except as explicitly stated in this Agreement.

11.7 Non-Solicitation. Unless otherwise agreed to by Bright Plum in writing, during the term of this Agreement and for a period of twelve (12) months following the expiration or termination of the Services under a Proposal, Client shall not directly or indirectly, solicit or induce for employment any person who performed worked under the Proposal. A general advertisement or notice of a job listing shall not be construed as a solicitation or inducement for purposes of this Section 11.7. The Client acknowledges that



Bright Plum will incur administrative, recruiting, resettlement and other costs in obtaining a replacement employee in addition to potentially increased compensation costs and loss of other revenues, which damages are impossible to determine with certainty and accordingly agree to this liquidated damages provision. If Client breaches this Section 11.7 as a result thereof employs any such person, then Client shall, on demand, pay to Bright Plum as liquidated damages, and not as a penalty, a sum reasonable in amount. In calculating the base amount of liquidated damages under this paragraph, it will be assumed that Employee's base salary on the date of termination would remain in effect for up to five years.

11.8 Counterparts. This Agreement and any Proposals may be executed in any number of counterparts, each of which when executed and delivered shall be deemed an original, and such counterparts together shall constitute one and the same instrument. A signed copy of this Agreement or a Proposal delivered by facsimile, email, or other electronic means is deemed to have the same legal effect as delivery of an original signed copy of this Agreement or the Proposal.

11.9 Subcontractors. For any Services provided by Bright Plum, Bright Plum may subcontract with third party providers (e.g., PayPal, Drupal, WordPress, Amazon Web Services).

11.10 Force Majeure. Neither party will be held responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay is caused by events or circumstances beyond the delayed party's reasonable control. This provision does not apply to Client's obligation to pay.

11.11 Publicity. Bright Plum may, as a demonstration of its work and for marketing purposes, (i) reproduce and display the results of the Services and Deliverables created pursuant to this Agreement; and/or (ii) use Client's name and logo(s) on its Client list.


Exhibit A

Service Level Agreement

This Service Level Agreement ("Agreement") sets forth the details regarding the level of service and technical support that apply when your account is in good financial standing.

Hosting Service Level Agreement

- For purposes of this Agreement, a Unit of Downtime is one period of at least 4 hours during which access to your website is unavailable because of problems with



hardware or system software. Downtime does not include (i) problems caused by factors outside of our reasonable control, (ii) problems resulting from any actions or inactions by you or any third party, (iii) problems resulting from your equipment and/or third party equipment not within our sole control, or (iv) network unavailability during scheduled maintenance of our network and/or web servers.

- In any calendar month, we guarantee that Downtime will not exceed 8 hours Units of Downtime excluding, however, regularly scheduled maintenance. Most regularly scheduled maintenance will be performed during the hours of 8:00 PM CST and 6:00 AM CST. We work to ensure the functioning of all web servers through continuous monitoring by our staff.
- If Downtime exceeds 8 hours Units of Downtime in any calendar month, we will, upon your written request, credit your account (a “Downtime Credit”) in an amount equal to the pro-rata price for one (1) day of service, for each instance of Downtime as that term is defined herein.
- To receive Downtime Credit, you must request such credit by sending an email to support@brightplum.com within seven (7) days after the occurrence of Downtime. The aggregate maximum number of Downtime Credits to be issued for any and all instances of Downtime occurring in a single calendar month will not exceed seven (7). Downtime Credits will be applied upon issue of the first invoice following the request for Downtime Credit, unless the Downtime occurs in your final month of service. In such case, a refund for the dollar value of the Downtime Credit will be mailed to you within thirty (30) days of the expiration of your service agreement.

Other Services

- Other services including, but not limited to, graphic design, web development, internet marketing, digital advertising and domain renewals will be performed in a workmanlike manner, and in conformity with generally prevailing industry standards. User must report any material deficiencies in the Services to Bright Plum in writing within ninety (90) days of User’s discovery of the deficiency. User’s exclusive remedy for a breach will be the re-performance of the defective services within a commercially reasonable time, or any service credit set forth in any attachments to this agreement. Bright Plum is not responsible for (i) problems caused by factors outside of our reasonable control, (ii) problems resulting from any actions or inactions by you or any third party, (iii) problems resulting from User’s equipment and software and/or third party equipment and software not within our sole control, or issues resulting from a divergence in project scope as written in the agreed to proposal.

Technical Support


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- A member of our technical support help desk staff will be available to assist you with problems and questions regarding other services. We will supply email support to you regarding these services between 9:00 AM and 5:00 PM CST.
 - You may contact our technical support help desk via email at support@brightplum.com. We may, from time to time, develop additional methods for you to contact the help desk, and will make information regarding such methods available at our website.

EXHIBIT B


Acceptable Use Policy

This Acceptable Use Policy sets forth guidelines relating to the types of content that you may transmit to or from web and email servers under your agreement with Bright Plum for services (the “Services”). Bright Plum, Inc. may remove any materials that, in its sole discretion, may be illegal, may subject it to liability, or which may violate this Acceptable Use Policy. Bright Plum will cooperate with legal authorities in the investigation of any suspected or alleged crime or civil wrong arising from any use of the Services. Your violation of this Acceptable Use Policy may result in the suspension or termination of either your access to the Services and/or your account or other actions as detailed in the Services Agreement. Bright Plum reserves the right, in our sole discretion, to update this policy from time to time.

Acceptable Use

The following constitute violations of this Acceptable Use Policy:

- Using the Services to transmit or post any material that contains or contains links to nudity, pornography, adult content, sex, or extreme violence.
- Using the Services to transmit or post any material that, intentionally or unintentionally, violates any applicable local, state, national or international law, or any rules or regulations promulgated thereunder.
- Using the Services to harm, or attempt to harm, minors in any way.
- Using the Services to transmit or post any material that harasses, threatens or encourages bodily harm or destruction of property.
- Using the Services to make fraudulent misrepresentations or offers including, but not limited to, offers relating to “pyramid schemes” and “Ponzi schemes.”
- Using the Services to access, or to attempt to access, the accounts of others, or to penetrate, or attempt to penetrate, security measures of Bright Plum, Inc. or another entity’s computer software or hardware, electronic communications system or telecommunications system, whether or not the intrusion results in the corruption or loss of data.

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- Using the Services to transmit or post any material that infringes any copyright, trademark, patent, trade secret or other proprietary rights of any third party, including, but not limited to, the unauthorized copying and/or distribution of copyrighted material, the digitization and distribution of photographs from magazines, books, music, video or other copyrighted sources, and the unauthorized transmittal of copyrighted software.
 - Using the Services to collect, or attempt to collect, personal information about third parties without their knowledge or consent.
 - Reselling the Services without the prior written authorization of Bright Plum.
 - Using the Services for any activity that adversely affects the ability of other people or systems to use the Services or the Internet. This includes but is not limited to “denial of service” (DoS) attacks against another network, Bright Plum or individual user. Interference with or disruption of other network users, network services or network equipment is prohibited.

Reporting of Violations of This Acceptable Use Policy

Bright Plum requests that anyone who believes that there has been a violation of this Acceptable Use Policy to immediately send an email detailing such violation to support@brightplum.com.