

# PERSONNEL SERVICES AGREEMENT

Agreement Effective Date: \_\_\_\_\_

Between Brahma Technologies, Inc. ("BTI"), 13629 Palmetto Circle , Germantown, Maryland 20874, USA and \_\_\_\_\_ ("Client"), with its principal location at \_\_\_\_\_.

## I. PERSONNEL SERVICES

- 1.1 In connection with the use or proposed use of services provided by BTI under a Service and License Agreement with Client, BTI will provide Client the personnel services listed below ("Services") subject to the terms and conditions of this Agreement and the Task Description applicable to each Service.
- 1.2 The Services to be provided are described in the attached Task Descriptions which are listed below:

### Task Descriptions

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THE TASK DESCRIPTIONS LISTED ABOVE FORM AN INTEGRAL PART OF THIS AGREEMENT. Additional Task Descriptions may be added by written agreement of the parties.

- 1.3 If Client is using any on line services, Client will provide BTI and its personnel, to the extent reasonably required to perform Services, access to and use of the application and password assigned to Client under the Services and License Agreement. Client will be responsible for payment for this usage in accordance with the terms of the BTI Services and License Agreement.

## II. SOFTWARE DEVELOPMENT SERVICES (If the development of software is included in any Task Description, the provisions of this Article II shall apply.)

- 2.1 Software Development. BTI will design, develop, test and install the software program and related documentation described in the attached Task Description ("Program"). The Task Description contains the full and complete specifications for the work to be performed. Any features, reports, formats or procedures not explicitly detailed in the Task Description will not be developed by BTI unless agreed in writing in accordance with Paragraph 2.5 below.
- 2.2 Development Schedule. BTI will use reasonable efforts to complete development of the Program in accordance with the schedule contained in the Task Description. It is understood that this schedule is an estimate and is dependent upon timely receipt from Client of all necessary authorizations to proceed and all necessary information such as specifications, test data, and check calculations.
- 2.3 Property Rights. Client will own and have all right and title in all materials first developed under this Agreement. BTI retains the unrestricted right to copy, use, and authorize others to use such materials. Each of the parties will take reasonable precautions to protect the other party's intellectual property rights in the materials contained in the Program. BTI grants to Client an irrevocable, non-exclusive, worldwide, royalty-free license to use, execute and copy any pre-existing materials contained in the Program in connection with Client's use of Services. Nothing in this Agreement will be construed to restrain BTI or its personnel in the use of the techniques and skills of computer operation, system design, and programming acquired in the performance of Services.

- 2.4 **Client Material and Data.** Client agrees that any machine readable input furnished to BTI will be in good and usable condition. Client will be responsible for the correctness and completeness of any programs, data or other materials provided to BTI. Client will retain copies of all such materials and will provide BTI with an additional copy of any programs, data or other materials lost or damaged while in BTI' possession. If the loss or damage results directly from any negligent or willful act of BTI, BTI will reimburse Client for the reasonable cost of providing copies. All materials provided by Client will remain the property of Client and, within ninety (90) days after the completion of Services, will be returned to Client or disposed of in accordance with Client's instructions.
- 2.5 **Reviews and Changes.** Client will review the progress of the work with BTI no less frequently than monthly. All changes requested by Client will be in writing. BTI will notify Client if a requested change would either require additional time or increase BTI' charges in excess of that provided in the Task Description. BTI will perform the change only if BTI and Client agree in writing on additional time and/or charges.
- 2.6 **Acceptance.** BTI will notify Client when the Program is ready for acceptance testing by Client. Client will perform the acceptance test specified in the Task Description ("Acceptance Test") within the time period specified. BTI will, at BTI's option, have the right to be present during the Acceptance Test. When the Program meets all material requirements of the Acceptance Test, Client will promptly notify BTI in writing that it accepts the Program. If Client fails for any reason to conduct the Acceptance Test within the time period specified, Client will be deemed to have accepted the Program. If the Program fails to meet all material requirements of the Acceptance Test, Client will promptly notify BTI with reasonable detail of the deficiency and with sufficient documentation and data to enable BTI to replicate the deficiency. BTI will thereafter attempt to correct such deficiencies and the Acceptance Test will then be repeated. If BTI fails to correct such deficiencies within a reasonable time after receipt of Client notification of the deficiency, Client will promptly, at its option, (i) terminate the applicable Task Description by written notice to BTI and return the Program and all related materials to BTI, or (ii) accept the Program despite the deficiency. If Client elects to terminate the Task Description, BTI will promptly refund to Client all amounts paid for the Program. If Client elects to accept the deficient Program, the price of the Program shall be equitably reduced.

### **III. PAYMENT; TAXES; CHANGES**

- 3.1 Client will be billed via invoice or credit card account by BTI for Services as stated in each Task Description plus an amount equal to any applicable sales, use, excise, value added, goods and services or similar taxes. In lieu of paying such taxes, Client will provide BTI with a tax-exemption certificate acceptable to the taxing authorities. In addition, Client will reimburse BTI for reasonable travel and living expenses incurred by BTI for travel approved by Client.
- 3.2 BTI will give written notice of any non-payment and specify a cure period of at least ten (10) days. If an invoice or credit card charge remains unpaid after the cure period expires, BTI may (reserving all other remedies and rights) terminate this Agreement without further notice to Client.
- 3.3 Except as otherwise expressly provided in a Task Description, BTI may change the prices under this Agreement or any Task Description(s) on thirty-five (35) days prior notice to Client.

### **IV. NON-DISCLOSURE**

- 4.1 Client acknowledges that BTI' personnel may gain access to Client's data in the course of providing Services to Client. BTI will protect from unauthorized disclosure or access Client data in its possession to which its personnel gain access by using the same degree of care that BTI takes to protect its own data of a similar nature.

However, this obligation will not apply to Client data which is or becomes publicly available without fault on the part of BTI, is already in BTI' possession prior to the time BTI gains access to the data under this Agreement, is independently developed by BTI, or is rightfully obtained from third parties.

## **V. WARRANTY**

- 5.1 BTI warrants that each Service will be performed substantially in accordance with the applicable Task Description. BTI further warrants that any Program developed pursuant to Article II will conform in all material respects to the applicable Task Description. These warranties will apply only to failures to meet the applicable warranty which are reported to BTI in writing within ninety (90) days after (i) the date of the failure in the case of Services, or (ii) the date of acceptance in the case of a Program.
- 5.2 BTI's sole obligations for failure to meet these warranties, will be as follows: (a) For failure to perform any Service substantially in accordance with the Task Description, BTI will refund any charges paid for individual services which were not performed as warranted and will attempt to correct any such failure. If BTI does not restore the affected Service to warranted performance within a reasonable time, Client may terminate the affected Service. (b) For failures of any Program to conform in all material respects to the Task Description, BTI will promptly attempt to correct such failure provided that Client makes available to BTI sufficient documentation and data to enable BTI to replicate the failure. If BTI fails to correct the failure within a reasonable time after receipt of Client report of the failure, Client will promptly, at its option, (i) terminate the applicable Task Description by written notice to BTI and return the Program and all related materials to BTI, or (ii) retain the Program despite the failure. If Client elects to terminate the Task Description, BTI will promptly refund to Client all amounts paid for the Program. If Client elects to retain the Program, the price for the Program shall be equitably reduced.
- 5.3 The warranties and remedies stated in Sections 5.1 and 5.2 are exclusive. NO OTHER CONDITIONS OR WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY CONDITION OR WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WILL APPLY. In addition, the warranties and remedies stated in Sections 5.1 and 5.2 will not apply to any Program that is modified after delivery by BTI to Client.
- 5.4 BTI DOES NOT WARRANT THAT THE SERVICES OR PROGRAMS WILL MEET CLIENTS REQUIREMENTS OR THAT USE OF THE SERVICES OR PROGRAMS WILL BE UNINTERRUPTED OR ERROR-FREE. CLIENT ASSUMES THE RESPONSIBILITY TO TAKE ADEQUATE PRECAUTIONS AGAINST DAMAGES TO ITS OPERATIONS WHICH COULD BE CAUSED BY DEFECTS, INTERRUPTIONS, OR MALFUNCTIONS IN THE SERVICES OR PROGRAMS.

## **VI. EXCLUSIONS AND LIMITATION OF LIABILITY; EXCLUSIVE REMEDIES**

- 6.1 AS A MATERIAL CONDITION OF RECEIVING BTI'S SERVICES AT THE PRICES SPECIFIED IN THE APPLICABLE TASK DESCRIPTION, AND IN REGARD TO ANY AND ALL CAUSES ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO CLAIMS OF NEGLIGENCE, BREACH OF CONTRACT, CONDITION OR WARRANTY, FAILURE OF A REMEDY TO ACCOMPLISH ITS ESSENTIAL PURPOSE, OR OTHERWISE, CLIENT AGREES:
- (a) THE LIABILITY OF BTI WITH RESPECT TO ANY SERVICE WILL NOT EXCEED, IN THE AGGREGATE, THE GREATER OF: (i) THE AMOUNTS PAID BY CLIENT TO BTI FOR THE SERVICE IN THE THREE (3) MONTHS PRECEDING THE EVENT WHICH IS THE CAUSE OF LIABILITY OR (ii) TEN THOUSAND DOLLARS (\$10,000);
- (b) THE LIABILITY OF BTI WITH RESPECT TO ANY PROGRAM WILL NOT EXCEED, IN THE AGGREGATE, THE AMOUNTS PAID BY CLIENT TO BTI FOR THE PROGRAM, OR PART THEREOF, WHICH IS THE CAUSE OF LIABILITY;
- (c) BTI WILL NOT BE LIABLE TO CLIENT FOR LOST PROFITS OR SAVINGS, LOSS OF USE OF SERVICES, COST OF CAPITAL, COST OF SUBSTITUTE SERVICES OR FACILITIES, DOWNTIME COSTS, DAMAGES AND EXPENSES ARISING OUT OF THIRD PARTY CLAIMS OR FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (EVEN IF BTI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES).
- 6.2 THE REMEDIES SPECIFIED IN THIS AGREEMENT ARE EXCLUSIVE.

## **VII. FORCE MAJEURE**

- 7.1 Except for the failure to make payments when due, neither party will be liable to the other by reason of any failure in performance of this Agreement if the failure arises out of the unavailability of communications facilities or energy sources, acts of God, acts of the other party, acts of governmental authority, fires, strikes, delays in transportation, riots or war, or any cause beyond the reasonable control of that party. If any such event prevents Client from receiving any Service and continues for more than one (1) month, Client may terminate the Task Description for the affected Service upon delivery of notice to BTI.

**VIII. GENERAL PROVISIONS**

- 8.1 Client will not directly or indirectly solicit or offer employment to, or accept from others, services by an employee of BTI during the performance of Services by said employee and for six (6) months thereafter.
- 8.2 The provisions of this Agreement are for the sole benefit of the parties, and not for the benefit of any other persons or legal entities.
- 8.3 Neither party may assign this Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld; provided, however, that either party may assign this Agreement, without consent, to a successor in interest to substantially all of the business of that party to which the subject matter of this Agreement relates.
- 8.4 If any part or parts of this Agreement are held to be invalid, the remaining parts of the Agreement will continue to be valid and enforceable.
- 8.5 This Agreement will be governed by the laws of the State of Maryland.
- 8.6 The export or re-export of any Program by Client may be restricted under U.S. law. It is Client's responsibility to determine and comply with any applicable restriction, including, if necessary, making timely application in its own name for any export license which might be required.
- 8.7 The headings in this Agreement are for reference purposes only; they will not affect the meaning or construction of the terms of this Agreement.
- 8.8 Any action of any kind by either party arising out of this Agreement must be commenced within two (2) years from the date the right, claim, demand or cause of action shall first arise.
- 8.9 Any notice under this Agreement shall be given in writing by personal delivery or by mail directed to the address of the party which is set forth in this Agreement or to such other address as may be substituted by notice to the other party. All notices shall be effective upon the date of receipt.
- 8.10 The provisions of Sections 3.2, 4.1, 6.1, 6.2, 8.5, 8.6 and 8.8 shall survive any termination or expiration of any Task Description or of this Agreement.
- 8.11 This Agreement (including all applicable Task Descriptions) contains the complete and exclusive understanding of the parties with respect to the subject matter hereof. No waiver, alteration or modification of any of the provisions hereof will be binding unless in writing and signed by a duly authorized representative of the party to be bound. Neither the course of conduct between the parties nor trade usage will act to modify or alter the provisions of this Agreement. If Client issues a purchase order or other similar document it shall be for Client internal purposes and, therefore, even if it is acknowledged by BTI, the terms and conditions of such purchase order or similar document will have no effect on this Agreement or the Services.

**BRAHMA TECHNOLOGIES, INC.**

\_\_\_\_\_  
(Client)

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

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