

## BUZZTIME MASTER SERVICES AGREEMENT TERMS AND CONDITIONS

THIS BUZZTIME MASTER SERVICES AGREEMENT (“**Master Agreement**”) is entered into by and between NTN Buzztime, Inc. (“**Buzztime**”) and the legal entity (“**Customer**”) identified on the services and pricing sales order (“**Order**” or “**Sales Order**”). This Master Agreement will be effective when the Order is signed by both parties (“**Effective Date**”). The Sales Order and this Master Agreement are collectively referred to as the “**Agreement**.” In the event of a conflict between an Order and this Master Agreement, the Order shall control.

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**1. DEFINITIONS.** For purposes of this Master Agreement, capitalized terms used but not otherwise defined herein shall have the following meanings:

**1.1 “Affiliates”** means, with respect to a party, any other entity directly or indirectly controlling or controlled by, or under direct or indirect common control with, such party or one or more of the other parents or subsidiaries of that entity (or a combination thereof), but only so long as such control exists.

**1.2 “Applicable Laws”** mean laws (including common law), codes, statutes, rules, regulations, orders or decrees of any governmental authority that apply to each party.

**1.3 “Buzztime Services”** or “**Services**” means the Buzztime® services set forth in the Order. Services may include subscription-based marketing, entertainment, payment, and dining services, live hosted trivia events, and any other services as provided by Buzztime from time to time in accordance with the applicable documentation made available to Customer.

**1.4 “Buzztime Service Devices”** or “**Devices**” means Buzztime devices (e.g., Buzztime Tablets, etc.) that are licensed to Customer and its Guests for the purpose of receiving the Buzztime Services.

**1.5 “Buzztime System”** or “**System**” means all hardware, software and transmission equipment and facilities that are deployed, installed or maintained by Buzztime or its Affiliates or anyone under contract (whether written or verbal) with Buzztime or its Affiliates, in each case for the purpose of providing the Buzztime Services to Customer. The Buzztime System includes Internet Server/Site PC, Site Hub, Secure Wi-Fi Access Point (“**WAP**”), Buzztime Service Devices, charging stations, cables, video integration components, surge protectors, and any other hardware provided by Buzztime to Customer. The Buzztime System does not include any hardware, software or transmission facilities supplied, operated or maintained by Customer or third-party providers.

**1.6 "Customer Network"** means the interconnected, integrated telecommunications equipment, software and network owned, operated, licensed, maintained or leased by Customer, and which is distinct from, and will interconnect with the Buzztime System for the purpose of enabling the connectivity and delivery of the Buzztime Services. The Customer Network shall at a minimum meet the requirements provided by Buzztime to Customer, including the interconnection of the Buzztime Services to third party providers, networks, hardware and systems.

**1.7 "Guest"** means a Customer's patron who accesses the Buzztime Services at the Site (defined below).

**1.8 "Site"** means the Customer location listed in the Order.

## 2. TERM.

**2.1 Minimum Term Commitment.** Customer agrees to order and pay for the Services during the term listed in the Order (the "Minimum Term Commitment"). In the event of any early termination, Customer shall pay all outstanding amounts owed to Buzztime, including any periodic fees for the remainder of the Minimum Term Commitment. For avoidance of doubt, Customer agrees that all payment obligations are unconditional for the duration of the Minimum Term Commitment.

### 2.2 Minimum Term Commitment Start Date.

**(i) Self-Installed Services.** For self-installed Services (e.g., Buzztime Basic), the Minimum Term Commitment starts upon activation of the Services or ten (10) days after shipment of the Buzztime System to the Site, whichever occurs first, and continues for the period listed in the Order.

**(ii) Buzztime Installed Services.** For Buzztime installed Services (e.g., Buzztime Elite), the Minimum Term Commitment starts when the System is delivered to the Site or Services go-live, whichever is later, and continues for the period listed in the Order.

**(iii) Live Buzztime Hosted Events.** For Live Buzztime Hosted Events, the Minimum Term Commitment starts when the first event takes place.

**2.3 Automatic Renewal for Subscription Services.** Except as otherwise specified in an Order, subscriptions will automatically renew for additional periods equal to the expiring subscription term unless either party gives the other written notice (email acceptable) at least fourteen (14) business days before the end of the relevant subscription term.

**2.4 Cancellation Policy for Live Buzztime Hosted Events.** Live Buzztime hosted events may be rescheduled without penalty at least 24 hours prior to the scheduled start time. Any live Buzztime hosted events missed, late cancelled, or changed without 24-hour notice will result in a charge equal to 100% of the reserved service amount.

## 3. BUZZTIME SERVICES; RIGHTS AND LICENSES.

**3.1 Provision of Services.** Buzztime will (i) make the Buzztime System and Services available to Customer, and (ii) provide applicable support and maintenance for the System and Services to Customer pursuant to the Order and this Master Agreement. Customers in good standing may order additional Devices and/or Services during the then current term. In the case of additional Devices, each additional Device Order shall (a) incorporate all of the terms and conditions of this Master Agreement, and (b) will terminate on the same date as the underlying Order. Customer acknowledges that new Services not listed in the Order may not be compatible with current Devices and/or Buzztime System. Customer may be required to upgrade or replace Devices and/or Buzztime System at additional costs in order to receive future Services.

**3.2 Use of Services and Buzztime System.** Buzztime grants Customer a limited, non-exclusive, non-transferable license to use the Services and System at the Site set forth in the Order during the term solely in accordance with the Order and this Master Agreement. ***The Services and System are licensed only; they are not sold.*** This Master Agreement does not convey to Customer any ownership interest in the content, the Services, or the System or any component thereof, Buzztime trademarks (and all goodwill associated therewith), Guest data, usage statistics and any intellectual property rights in any one or more of the foregoing, as may exist now and/or hereafter come into existence and all renewals and extensions thereof. As between the parties, Buzztime is and shall remain the sole and exclusive owner of, and at all times retain, all worldwide rights, title and interest in and to each of the foregoing. Any rights not expressly granted to Customer in this Master Agreement are reserved to Buzztime.

**3.3 Use of Services on Personal Mobile Devices.** Certain Services allow Customer's Guests the ability to access and use the Services via their own personal mobile device. The interface of the Services may vary based on the type of personal device used at time of access. A Guest's access and use of the Services on a personal mobile device is conditioned on the Guest's agreement to Buzztime's [Terms of Service](#) and [Privacy Policy](#). A Guest must allow his/her smartphone browser to enable cookies and location services (e.g., GPS) to access the Services. **Message and data rates may apply to which Guest is solely responsible.**

#### **3.4 Content.**

(i) **Buzztime Content.** Customer understands and agrees that Buzztime shall have sole discretion with respect to all programming and content, including advertising, as part of the Services. Customer agrees that Buzztime may edit or remove certain content or service within the Services due to legal, regulatory, technical, business or third-party considerations; except that any discontinuance or modification that materially changes the features, functionality or performance of the Services is subject to Buzztime, when reasonably possible and not as a result of any rule or law change, providing Customer thirty (30) days' prior written notice. The parties agree that any action taken by Buzztime in good faith to remove or edit any content or service pursuant to this paragraph shall not constitute a breach of this Master Agreement.

(ii) **Customer Content.** As it relates to Customer generated content (i.e., Customer elects custom trivia module), Customer hereby grants Buzztime and its Affiliates and related entities, a worldwide, royalty-free, perpetual, irrevocable, non-exclusive right and fully sub-licensable license to use, copy, reproduce, distribute, publish, publicly perform, publicly display, modify, adapt, translate, archive, store, and create derivative works from such content, in any form, format, or medium, of any kind now known or later developed. Customer waives any moral rights it might have with respect to any content Customer provides Buzztime. Customer further grants Buzztime the right to use any feedback material, information, ideas, concepts, know-how or techniques contained in any communication Customer provides Buzztime for any purpose whatsoever, including but not limited to, commercial purposes, and developing, manufacturing and marketing commercial products using such information. All rights in this paragraph are granted without the need for additional compensation of any sort to Customer.

**3.5 License and Branding.** Customer hereby grants to Buzztime a limited non-transferable license to use, display, reproduce, distribute, adapt and transmit in digital or printed form information provided by Customer relating to its organization, including but not limited to its name, trademarks, service marks and logo, in connection with the implementation and promotion of the Services; provided, however, that such use shall be as necessary to Buzztime's performance under this Master Agreement.

**3.6 Customer Data.** Customer hereby grants Buzztime a perpetual, non-exclusive license to store, copy and use data provided by or on behalf of Customer to Buzztime ("**Customer Data**") to perform the Services, comply with Applicable Laws, and to use and disclose such Customer Data in an aggregated or de-identified form for Buzztime's business purposes.

**3.7 Customer and Third-Party Services.** The Services may contain Customer and/or third-party content that are not owned or controlled by Buzztime. Inclusion of, linking to or permitting the use or installation of any Customer and/or third-party web site, applications, software, content or advertising does not imply approval or endorsement thereof by Buzztime. Customer understands and agrees that Buzztime has no control over, and assumes no responsibility for, the content, privacy policies, terms, or practices of Customer and/or any third parties.

**3.8 Restrictions.** (Attempted) cheating, abuse or circumvention of the intended use of the Services is a breach of this Master Agreement. Customer is expressly prohibited from using the Services, in conjunction with any lottery, gambling or similar activity and shall not sponsor, encourage, organize or allow its Guests to participate in such activity in connection with the Services. Customer shall not permit betting or charge Guests to use the Devices or Services; only fees charged within the Services by Buzztime or its partners are permitted. Customer will not knowingly or intentionally introduce into the Services or the Buzztime System any "back door", "time bomb", "Trojan Horse", "worm", "drop dead device", virus or other computer software routines or hardware components that have not been authorized and approved for distribution or that are designed to (i) permit unauthorized access to, or unauthorized use of, the Services or System, (ii) damage or disable the Buzztime System, or (iii) perform any other similar actions that would preclude full use of the Services or Devices (collectively, "**Harmful Code**").

## **4. INSTALLATION, INTERCONNECTION AND OPERATION, AND SUPPORT AND MAINTENANCE**

**4.1 Installation.** Except for the case of self-installation, Customer shall pay an installation fee in the amount listed in the Order (the "**Installation Fee**") for the standard and customary installation, provisioning and the use of the Buzztime System.

Buzztime reserves the right to charge the actual costs incurred at any Site for any exceptional or extraordinary installations or conversions that exceed the scope of the standard and customary work. All work and costs that exceed the amount of the Installation Fee will be approved in advance by Customer prior to work being performed.

**4.2 Self-Installation.** Where applicable, Customer may elect to self-install the System at the Site listed in the Order. Customer agrees to install the System in a timely fashion (in no event will installation exceed ten (10) days from time of shipment) pursuant to instructions provided by Buzztime. Customer is solely responsible for any damage to the System as a result of self-installation. In the event Customer elects to have Buzztime install the System after delivery has occurred, Customer acknowledges and agrees to pay the then current Installation Fee in advance of installation.

**4.3 Interconnection and Operation.** Customer acknowledges and agrees that the Buzztime System is designed to work with an internet connection. Customer shall establish and at all times thereafter maintain a minimum bandwidth of 10 Mbps at its Site, which is necessary for the proper interconnection between the Buzztime System and the Customer Network. The maintenance of a consistent configuration of the Customer Network and uninterrupted internet connectivity is a material requirement to this Master Agreement and to, among other things, Buzztime's ability to provide the Services. Customer further agrees to notify Buzztime promptly, but in all events within 10 days, of an interruption in transmission or any malfunction of the Services ("**Outage**"). Provided that the Outage is due to a cause or condition within Buzztime's reasonable control, Buzztime shall have one (1) week from its knowledge of the Outage ("**Cure Period**") to commence corrective action. If the Outage continues beyond the Cure Period, Customer's exclusive remedy shall be that the current term is extended for a period of time equal to the duration of the Outage, at no charge to Customer. If Buzztime determines that access to the Services from the Site cannot be reestablished, Buzztime will notify Customer and this Master Agreement shall terminate. If Buzztime determines the Outage is due to Customer, Customer shall promptly pay to Buzztime the reasonable costs for any related service call. The obligations in this **Section 4.3** (Interconnection and Operation) do not apply to Services which do not require the Buzztime System .

**4.4 Support and Maintenance.** Buzztime shall: (i) use commercially reasonable efforts to provide Services during normal business hours; (ii) provide customer support via customersupport@buzztime.com or 800-745-4686 during normal business hours; (iii) repair the Buzztime System in accordance with **Section 5.3** (Buzztime System and RMA Process); and (iv) provide updates to the Services (e.g., bug fixes, patches, maintenance releases). For clarity, updates do not include upgrades (releases or versions that include new features or additional functionality).

## **5. SYSTEM INSPECTION; CUSTOMER OBLIGATIONS; BUZZTIME SYSTEM AND RMA PROCESS.**

**5.1 System Inspection.** Customer shall inspect the Buzztime System within five (5) business days after receipt. Unless Customer, within said period of time, gives written notice to Buzztime, specifying any defect in or other proper objection to the System, Customer agrees that it shall be conclusively presumed, as between Buzztime and Customer, that Customer has fully inspected and acknowledged that the System is in good condition and repair.

**5.2 Customer Obligations.** Customer agrees to: (i) make the Services and Devices obvious, open and accessible to Guests during normal business hours and to provide such support to Guests as reasonably necessary to encourage the use of Devices and Services; (ii) provide Buzztime with continuous unrestricted high speed internet connection and one (1) designated tv screen; and (iii) prevent misuse of or damage to the Buzztime System. Customer further agrees that the System shall remain at the Site and shall remain personal property of Buzztime and not become fixtures, and that it shall not permit any lien to be placed upon the System. Customer is solely responsible for the loss, theft, destruction or unauthorized use of the Buzztime System by Customer, Customer's agents, employees and invitees.

### **5.3 Buzztime System and RMA Process.**

(i) Buzztime in its sole discretion may replace any Device or component of the Buzztime System due to normal wear and tear at no cost to Customer. Normal wear and tear means deterioration that results from the intended use of the Devices and System. Customer is solely responsible for repair/replacement costs of the Buzztime System as a result of: (a) abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by Buzztime; (b) repairs, or alterations made by a third-party not authorized by Buzztime; or (c) use with any third-party product that has not been previously approved in writing by Buzztime.

(ii) **RMA Process.** Customer shall contact customer support via customersupport@buzztime.com or 800-745-4686 during normal business hours to report malfunction, damage, or theft to Buzztime System.

## 6. FEES AND PAYMENT.

**6.1 Fees.** Customer will pay all fees specified in the Order. Unless otherwise indicated in the Order, all prices are in the currency of the country in which Customer is located. No delivery shall be made until Customer has provided payment pursuant to **Section 6.2** (Invoicing and Payment). Risk of loss passes to Customer upon delivery of the System to the Customer's Site listed in the Order. Fees are based on Services subscriptions purchased and not actual usage, and payment obligations are non-cancelable and fees paid are non-refundable. All fee changes, including those due to changes in the Services and/or System, shall be effective at the start of the next billing cycle. Buzztime reserves the right to increase the fees after expiration of the then current term. In the event Customer terminates this Master Agreement early, and which termination is due to any reason other than Customer terminating under Section 12.1 (**Termination**), Customer shall pay all outstanding amounts owed to Buzztime, including (i) any accrued fees not previously paid, (ii) any periodic subscription fees for the remainder of the then current term, (iii) any System de-installation costs, and (iv) fees associated with lost or damaged System components (e.g. Devices).

### 6.2 Invoicing and Payment.

**(i) Auto Charge Credit Card/Electronic Funds Transfer.** Customer will provide Buzztime with a valid and updated credit card or checking account information. If Customer provides credit card/checking account information to Buzztime, Customer authorizes Buzztime to charge such credit card or checking account for all purchased Services listed in the Order Form for the Minimum Term Commitment and any renewal subscription term(s).

**(ii) Invoicing and Payment.** Unless stated otherwise in the applicable Order, such charges shall be made in advance, in accordance with the billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than an auto charge/electronic funds transfer, Buzztime will invoice Customer in advance and otherwise in accordance with the relevant Order Form. Invoiced fees are due upon receipt. Customer is responsible for providing complete and accurate billing and contact information to Buzztime and notifying Buzztime of any changes to such information.

**(iii) Taxes.** Customer will pay all applicable sales, use, withholding and excise taxes, and any other assessments against Customer in the nature of taxes, duties or charges however designated on the Services, or their license or use, on or resulting from this Master Agreement, exclusive of taxes based on the net income of Buzztime unless exempted by law and unless a valid tax exemption certificate has been provided to Buzztime prior to invoicing.

**6.3 Late Fees and Returned Payment.** If any invoiced amount is not received by Buzztime by the due date, then without limiting Buzztime's rights or remedies, (i) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by Applicable Laws, whichever is lower, and/or (ii) Buzztime may condition future subscription renewals and Order Forms on payment terms shorter than those specified in the "Invoicing and Payment" section above. **A \$25.00 service fee will be applied for each returned payment, plus any late fees.**

**6.4 Disputed Fees.** For any amounts due pursuant to this Master Agreement that Customer disputes in good faith, such amounts shall not be deemed to be late or in default with respect to such payment during such time as the dispute is ongoing. The parties shall work in good faith to resolve any such dispute in a timely manner.

**6.5 Future Functionality.** Customer acknowledges and agrees that Order(s) are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Buzztime regarding future functionality or features.

## 7. INFORMATION COLLECTION AND DATA SECURITY

**7.1 Guest's Information.** Each party may collect certain personal information from Guests via the use of Buzztime Services and Devices. Each party agrees that the collection, use, and disclosure of any Guest information will be in material compliance with (i) Applicable Laws, including, without limitation, those governing data privacy and security, and (ii) in accordance with its terms of service and privacy policy.

**7.2 Data Security.** Each party will implement and maintain administrative, technical and physical security measures to protect information contained in its possession. Each party is solely responsible for the security and integrity of its systems, software, equipment, and data centers that it uses in its business. Customer is solely responsible for the security of its login information, authorization credentials, and similar access information (collectively "**Login Information**") and for the use or misuse

of such Login Information. Customer agrees to only allow access to and use of the Services and System to its authorized users. Customer acknowledges and agrees that Buzztime may provide access to or use of the Services, and Buzztime System to anyone utilizing Customer's Login Information or who is otherwise authorized by Customer to use or access the System and Services on Customer's behalf. Customer is responsible for such users' compliance with the terms and conditions of this Master Agreement. Buzztime may suspend or terminate any such user's access upon notice to Customer if Buzztime reasonably determines that any such user has violated the terms and conditions of this Master Agreement or is otherwise using the System or Services for suspect purposes. Customer will immediately either notify Buzztime in writing or disable such user's access if any previously authorized Customer user is no longer authorized to use the Login Information or otherwise use or access the Services.

**7.3 Incident Response.** Each party will notify the other promptly, after discovery, of any unauthorized access to, use of, or acquisition of, or suspected unauthorized access to, use of, or acquisition of, any of the other party's data. Such notification shall include (i) the nature of the security incident; (ii) the type of information at risk; and (iii) remediation efforts the party took or will take to prevent further non-permitted or violating uses or disclosures. The party suffering the security incident will undertake all remediation efforts at its sole expense.

## **8. REPRESENTATIONS AND WARRANTIES; DISCLAIMERS.**

**8.1 Mutual Representations and Warranties.** Each party hereby represents and warrants to the other party that: (i) it has the full corporate power and authority to execute and deliver this Master Agreement and any applicable Order; (ii) this Master Agreement has been duly authorized and executed by such party; (iii) this Master Agreement is a legally valid and binding obligation of such party, enforceable in accordance with its terms; (iv) the execution, delivery and performance of this Master Agreement do not conflict with any agreement to which it is a party; and (v) it will remain in material compliance with Applicable Laws.

**8.2 EXCLUSION OF WARRANTIES.** THE EXPRESS WARRANTIES SET OUT IN THIS MASTER AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, AND THERE ARE NO OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS, OR GUARANTEES OF ANY KIND WHATSOEVER APPLICABLE, EITHER EXPRESS OR IMPLIED BY APPLICABLE LAW (IN CONTRACT OR TORT OR OTHERWISE) OR CUSTOM, INCLUDING, BUT NOT LIMITED TO THOSE REGARDING MERCHANTABILITY, FITNESS FOR PURPOSE, DURABILITY, NON-INFRINGEMENT, TITLE, DESIGN, CONDITION, OR QUALITY. WITHOUT LIMITING THE ABOVE, BUZZTIME DOES NOT WARRANT THAT THE SYSTEM OR SERVICES PROVIDED HEREUNDER WILL MEET THE REQUIREMENTS OF CUSTOMER OR THAT THE OPERATION OF THE SYSTEM AND SERVICES PROVIDED HEREUNDER WILL BE FREE FROM INTERRUPTION OR ERRORS. CUSTOMER WAIVES THE BENEFITS OF ALL SUCH REPRESENTATIONS AND WARRANTIES. APPLICATION OF THE UNIFORM COMMERCIAL CODE IS EXPRESSLY DISCLAIMED.

## **9. LIMITATION OF LIABILITY**

**9.1 NO INDIRECT DAMAGES.** WITHOUT LIMITING THE GENERALITY OF **SECTIONS 8.2** (EXCLUSIONS OF WARRANTIES) and **9.2** (LIMITS ON LIABILITY), IN NO EVENT WILL BUZZTIME BE LIABLE TO CUSTOMER OR TO ANY OTHER PARTY FOR INDIRECT DAMAGES OR LOSSES (IN CONTRACT OR TORT OR OTHERWISE), INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST SAVINGS, LOST DATA, LOSS OF USE OF INFORMATION OR SERVICES, OR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES.

**9.2 LIMITS ON LIABILITY.** IF, FOR ANY REASON, BUZZTIME BECOMES LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR DIRECT OR ANY OTHER DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION (IN CONTRACT OR TORT OR OTHERWISE), THEN:

(i) THE TOTAL AGGREGATE LIABILITY OF BUZZTIME TO CUSTOMER AND ALL OTHER PARTIES IN CONNECTION WITH THIS MASTER AGREEMENT WILL BE LIMITED TO THE AMOUNT OF FEES ACTUALLY PAID BY CUSTOMER TO BUZZTIME AS CONSIDERATION FOR THE SERVICES GIVING RISE TO SUCH CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION AROSE; AND

(ii) IN ANY CASE CUSTOMER MAY NOT BRING OR INITIATE ANY ACTION OR PROCEEDING AGAINST BUZZTIME ARISING OUT OF THIS MASTER AGREEMENT OR RELATING TO THE SERVICES PROVIDED HEREUNDER MORE THAN TWO YEARS AFTER THE RELEVANT CAUSE OF ACTION HAS ARISEN.

## **10. INDEMNIFICATION.**

**10.1 Mutual Indemnification.** Each party (the “**Indemnifying Party**”) shall defend, settle, and pay damages (including reasonable attorneys’ fees) (“**Damages**”) relating to any third party claim, demand, cause of action or proceedings (whether threatened, asserted, or filed) (“**Claims**”) against the other party, and its Affiliates, and its and their directors, officers, employees or agents hereto (the “**Indemnified Party**”) to the extent that such Claim is based upon provision, by the Indemnifying Party, of materials, products, or services as part of such party’s obligations hereunder that infringe the intellectual property rights of any third party provided that such materials, products, or services are used in accordance with this Master Agreement.

(i) If any Claim that Buzztime is obligated to defend, settle, and pay damages to Customer under this Section 10.1 has occurred or, in Buzztime’s opinion, is likely to occur, Buzztime may, at its option and expense either (a) obtain for Customer the right to continue to use the applicable Services, (b) replace or modify the Services so it becomes non-infringing, without materially adversely affecting the Services’ specified functionality, or (c) if (a) or (b) are not readily available after using reasonable commercial efforts or, if neither of the foregoing options is commercially reasonable, refund a pro-rata portion of the fees paid by Customer based on its lost use and terminate this Master Agreement. Buzztime shall not be obligated to defend, settle, or pay Damages for any Claims to the extent based on: (1) any Customer or third party intellectual property or software incorporated in or combined with the Services where in the absence of such incorporated or combined item, there would not have been infringement, but excluding any third party software or intellectual property incorporated into the Services at Buzztime’s discretion; (2) Services that have been altered or modified by Customer, by any third party, or by Buzztime at the request of Customer (where Buzztime had no discretion as to the implementation of modifications to the Services), where in the absence of such alteration or modification the Services would not be infringing; or (3) use of any version of the Services with respect to which Buzztime has made available a non-infringing version.

**10.2 Additional Customer Indemnification Obligations.** Customer agrees to defend, settle, and pay Damages relating to Claims to the extent based on (i) Customer’s violation of Applicable Laws, (ii) injury or death to a person or damage to property resulting from the participation in an event operated by Customer in connection with the Services, (iii) Customer’s negligence or willful misconduct, or (iv) Customer’s breach of any of its obligations, warranties or representations in this Master Agreement.

**10.3 Indemnification Claims Procedure.** Each party’s obligations under this Section 10 are conditioned upon: (i) prompt written notice of the existence of a Claim, provided that a failure of prompt notification shall not relieve the Indemnifying Party of liability hereunder except to the extent that defenses to such Claim are materially impaired by such failure of prompt notification; (ii) sole control over the defense or settlement of such Claim by the Indemnifying Party; and (iii) the provision of assistance by the Indemnified Party at the Indemnifying Party’s request to the extent reasonably necessary for the defense of such Claim.

**11. CONFIDENTIALITY.** Customer agrees to keep the terms of this Master Agreement confidential, and Customer will not disclose any information concerning the terms of this Master Agreement to anyone, unless required by subpoena or court order. If Buzztime and Customer are party to a separate confidentiality agreement, such agreement shall govern the parties’ rights and remedies with respect to confidential information and such agreement shall be deemed co-terminus with this Master Agreement. In the event no such agreement exists, “**Confidential Information**” shall mean any non-public information that is designated as confidential or proprietary, which the receiving party knew or reasonably should have known, was confidential or proprietary, or that derives independent value from not being generally known to the public. The terms and conditions of this Master Agreement, including pricing, are strictly Confidential Information. Without limiting the generality of the foregoing, Confidential Information shall include information regarding either party’s products, services, sales, marketing, personnel, business plans and strategies, proprietary methodologies, software, or means of doing business and other non-public information obtained directly or indirectly by one party from the other in the course of their business relationship. Neither party shall use any Confidential Information of the other party hereto for any purpose other than in furtherance of this Master Agreement and shall not disclose any such Confidential Information to any other person other than (i) to the extent reasonably necessary for purposes of this Master Agreement, under a confidentiality arrangement that preserves the confidentiality and non-use obligations relating to such Confidential Information (in which case that party will remain responsible for any breaches by the recipient) or (ii) as required by law, but subject to notifying the other party of such disclosure and giving the other Party the opportunity to seek a protective order. The obligations under this Section 11 shall survive any termination or expiration of this Master Agreement for three (3) years.

## **12. TERMINATION.**

**12.1 Termination.** This Master Agreement will terminate: (i) at the option of either party if the other party materially defaults in the performance or observance of any of its obligations hereunder and fails to remedy the default within thirty (30) days after the date of the written notice of default or to commence good faith efforts to cure the breach and diligently to pursue the cure to completion; and (ii) without limiting (i), at the option of Buzztime if (a) Customer breaches its payment obligations, or (b) it

determines that Customer is bankrupt, insolvent or demonstrates an inability to meet its current obligations, provided that the right of termination will be in addition to all other rights and remedies available to the parties for breach or default by the other.

**12.2 Suspension of Obligations.** If either party should materially default in the performance or observance of any of its obligations hereunder, then, in addition to all other rights and remedies available to the non-defaulting party, the non-defaulting party may suspend performance and observance of any or all its obligations under this Master Agreement, without liability, until the other party's default is remedied, provided however that this Section 12.2 will not permit Customer to suspend its obligation to make any payments due for Services that are unrelated to any default alleged against Buzztime. If Buzztime suspends Services and Customer requests reactivation, then if Buzztime agrees to reactivate the Services, Customer may be required to pay a reactivation fee.

**12.3 Return of System and Materials.** In the event of termination of this Master Agreement for any reason whatsoever, Customer will immediately return to Buzztime the System in accordance with instructions provided by Buzztime. In addition, Customer will return the physical copies of any Confidential Information delivered by Buzztime to Customer or otherwise in Customer's possession or control, or if expressly permitted by Buzztime, destroy all physical copies of the Confidential Information not returned to Buzztime and delete all electronic copies of the Confidential Information from its systems and certify in writing to Buzztime that such actions have all been completed. If Customer refuses or delays the return of the System, or the System is not returned in good repair and working order, Customer shall be responsible for the cost of replacement.

### **13. MISCELLANEOUS.**

**13.1 Insurance.** Each party shall procure and maintain at its sole cost and expense sufficient insurance to meet its industry standards for its goods and services provided. Without limiting the generality of the foregoing, Customer warrants to Buzztime that it has adequate general liability insurance, and agrees to designate Buzztime as an additional insured on such insurance if Buzztime so requests.

**13.2 Material Change.** Customer shall provide Buzztime with written notice of any material change (e.g. transfer of ownership or management, move or discontinuation) to the Site or to Customer as soon as possible, but not less than thirty (30) days before a change.

**13.3 Assignment.** This Master Agreement may be assigned by Buzztime, in whole or in part. Customer may assign this Master Agreement or its rights or duties hereunder only with the prior written consent of Buzztime. If Customer transfers ownership of the Site or otherwise, Customer shall: (i) assist in assigning this Master Agreement to the new owner, subject to qualification as a Buzztime customer; and (ii) if the new owner does not assume such obligations, remain responsible for all obligations hereunder, including the return of the System or the replacement costs thereof.

**13.4 Relationship of the Parties.** Neither party is the legal representative, agent, joint venturer, partner, or employee of the other party for any purpose whatsoever. Neither party has any right or authority to assume or create any obligations of any kind or to make any representation or warranty on behalf of the other party, whether express or implied, or to bind the other party in any respect whatsoever.

**13.5 Notice.** All notices, consents, waivers and other communications intended to have legal effect under this Master Agreement must be in writing, must be delivered to the other party at the address set forth in the Order by personal delivery, certified mail (postage pre-paid), or a nationally recognized overnight courier, and shall be effective upon receipt. Each party may change its address for receipt of notices by giving written notice of the new address to the other party.

**13.6 Captions and Headings.** All indices, titles, subject headings, section titles and similar items contained in this Master Agreement are provided for the purpose of reference and convenience only and are not intended to be inclusive, definitive or to affect the meaning, content or scope of this Master Agreement.

**13.7 Governing Law.** This Master Agreement shall be governed and construed in accordance with the laws of the State of California without giving effect to its principles of conflicts of law. THE PARTIES IRREVOCABLY AGREE THAT ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF THIS MASTER AGREEMENT OR THE SERVICES, WHETHER IN TORT, CONTRACT OR OTHERWISE SHALL BE BROUGHT EXCLUSIVELY IN A STATE COURT OF COMPETENT JURISDICTION IN THE CITY OF VISTA, STATE OF CALIFORNIA OR IN A FEDERAL COURT OF COMPETENT JURISDICTION IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA. BY EXECUTING THIS MASTER AGREEMENT, EACH OF THE PARTIES HEREBY



IRREVOCABLY ACCEPTS AND SUBMITS TO THE JURISDICTION OF SAID COURTS IN PERSON, GENERALLY AND UNCONDITIONALLY IN CONNECTION WITH ANY SUCH ACTION OR PROCEEDING.

**13.8 Injunctive Relief.** It is understood and agreed that, notwithstanding any other provision of this Master Agreement, any breach of this Master Agreement by either party may cause irreparable damage for which recovery of money damages would be inadequate, and that the non-breaching party shall therefore be entitled to seek injunctive or other equitable relief in a court of competent jurisdiction, to protect such party's rights under this Master Agreement in addition to any and all remedies available at law.

**13.9 Force Majeure.** Neither party shall be liable for any failure, inability or delay to perform hereunder, if such failure, inability or delay is due to any cause beyond the reasonable control of the party so failing (a "**Force Majeure Event**"), including events such as war, natural disaster, fire, terrorism, acts of state or governmental action prohibiting or impeding any party from performing its respective obligations under this Master Agreement (except for changes in the law or regulations as already addressed elsewhere in this Master Agreement) or other acts of God, and due diligence is used in attempting to cure such cause and in resuming performance. Upon the occurrence of a Force Majeure Event, the affected party shall provide written notice to the other party.

**13.10 Waiver.** The failure of either party to require performance by the other party of any provision of this Master Agreement shall not affect the full right of such party to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision of this Master Agreement be taken or held to be a waiver of the provision itself or any other provision.

**13.11 Severability.** If any provision of this Master Agreement is unenforceable or invalid under Applicable Laws, such unenforceability or invalidity shall not render this Master Agreement unenforceable or invalid as a whole, and such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of Applicable Law.

**13.12 Construction.** Use of the word "example", "include" or "including" or "e.g." is intended as an introduction to illustrative matters and not as a limitation and shall be deemed to be followed by the phrase "and without limitation."

**13.13 Survival.** The sections titled "Use of Services and Buzztime System," "Customer Content," "Fees and Payments," "Exclusions of Warranties," "Limits of Liability," "Indemnification," "Confidentiality," "Return of System and Materials," and "Miscellaneous" will survive any termination or expiration of this Master Agreement.

**13.14 Entire Agreement.** This Master Agreement, including all attachments and referenced Orders, and exhibits, constitutes the complete and exclusive statement of the agreement between Buzztime and Customer with respect to the subject matter hereof. It supersedes and replaces all proposals, prior agreements, and other prior or contemporaneous communications between the parties concerning the subject matter of this Master Agreement. This Master Agreement may not be modified or altered except by written instrument duly executed by both parties.