

BTS Professional Services Agreement

Effective starting: January 01, 2022

This BTS Professional Services Agreement ("**Agreement**") is between you ("**you**" or "**Customer**"), and Busch Technology Solutions, LLC ("**BTS**" or "**we**"). If you are agreeing to this Agreement not as an individual but on behalf of your company, then "Customer" or "you" means your company, and you are binding your company to this Agreement and represent and warrant that you have all necessary authority to do so.

This Agreement sets forth the terms under which BTS will provide you with certain professional services described on order forms (including online order flows) referencing this Agreement ("**Order Forms**" and such services, "**Services**"). Services are provided on a subscription basis for a set term designated on the Order Form (the "**Subscription Term**"). This Agreement governs Customer's initial purchase of Services as well as any future purchases made by Customer that reference this Agreement. The Agreement also includes any BTS policies or documents attached to or referenced in this document, as well as any Order Forms entered into by the Parties.

This Agreement is separate from the agreement that BTS has with its end users at <https://www.buschtechsolutions.com/legal-notice/end-user-agreement/> (as may be modified by BTS from time to time, "BTS End User Agreement") regarding the use of BTS Products (the "**Products**").

This Agreement does not have to be signed in order to be binding. You indicate your assent to the terms by clicking on the "I agree" (or similar button) that is presented to you at the time of your order or by signing an Order Form.

1. Services and Deliverables.

During the applicable Subscription Term BTS agrees to use diligent efforts to render the Services by the delivery dates specified on the applicable Order Form, if any. Subject to Section 4 (BTS Products) below, any reports, recommendations or other deliverables provided by BTS to you as part of the Services are "**Deliverables**". BTS grants you a perpetual, worldwide, royalty-free, non-exclusive license to use the Deliverables internally in connection with the applicable Products.

2. Customer Materials.

Customer agrees to provide BTS with reasonable access to Customer materials, personnel, equipment or facilities (including without limitation Customer's instances of the Products) to the extent such access is necessary for the performance of Services. To the extent that Customer does not timely provide the foregoing access required for BTS to perform the Services or deliver the Deliverables, BTS shall be excused from performance until such items are provided. Customer hereby grants BTS a limited right to use any Customer materials provided to BTS in connection with the Services (the "**Customer Materials**") solely for the purpose of performing the Services for Customer. Customer owns and will retain ownership (including all intellectual property rights) in and to the Customer Materials (subject to BTS's ownership of any underlying Products, service descriptions, documentation, and underlying technology ("**BTS Technology**").

3. Ownership of Deliverables; Feedback.

BTS owns and will retain ownership (including all intellectual property rights) in and to the Deliverables and any modifications, improvements, and derivative works thereof (including any such materials to the extent incorporating any Feedback). If Customer provides any feedback, comments, suggestions, ideas, description of processes, or other information to BTS about or in connection with the Products, Deliverables or Services, including without limitation any ideas, concepts, know-how or techniques contained therein ("**Feedback**"), then Customer grants BTS a worldwide, royalty-free, non-

exclusive, perpetual and irrevocable license to use, copy, modify and otherwise exploit the Feedback for any purpose, without any compensation to Customer or any restriction or obligation on account of intellectual property rights or otherwise. For clarity, no Feedback will be deemed Customer's Confidential Information, and nothing in this Agreement, including without limitation Section 9 (Confidential Information), limits BTS's right to independently use, develop, evaluate, or market products, whether incorporating Feedback or otherwise.

4. BTS Products.

For the avoidance of doubt, the rights to and delivery and use of any BTS Technology (including any Product) is governed by the terms of the End User Agreement and not the terms of this Agreement, and, even if listed in an Order Form, no BTS Technology (including any Product updates, upgrades, patches and bug fixes) shall be considered a Deliverable hereunder. Customer acknowledges that the Services are being purchased separately from any Product licenses or subscriptions and that no such license or subscription is being provided or offered under this Agreement. Fees for the Services are separate from any fees paid for Products, and Customer's payment obligations hereunder are not contingent on the purchase or use of any Product.

5. Subscription Term; Payment.

5.1. Subscription Term and Renewals. Unless otherwise specified on the applicable Order Form, each Subscription Term for Services will automatically renew for additional successive Subscription Terms of the same length at BTS's then-current rates, unless either party gives the other written notice of non-renewal at least thirty (30) days prior to expiration of the then-current Subscription Term.

5.2. Payment. Customer will pay BTS the amounts and at the times set forth on the applicable Order Form. Customer agrees to reimburse BTS for pre-approved travel, lodging and meal expenses incurred in the course of performing the Services at any

location other than BTS's site, unless otherwise specified on the Order Form (including any data sheet incorporated therein by reference). BTS will invoice Customer for expenses incurred and at Customer's request and expense, BTS will provide copies of receipts for which charges are incurred. All payments are non-refundable and all payment obligations non-cancellable unless otherwise specified on an Order Form. Payments shall be made in U.S. dollars within thirty (30) days from the date of BTS's invoice. Customer will be responsible for all taxes, withholdings, duties, and levies in connection with the Services (excluding taxes based on the net income of BTS). Upon termination all payments for Services shall be accelerated and become immediately due and payable. Any late payments shall be subject to a service charge equal to 1.5% per month of the amount due or the maximum amount allowed by law, whichever is less.

6. Term and Termination.

This Agreement takes effect on the Effective Date and, unless earlier terminated in accordance with this Section 6, remains in effect until expiration or termination of all Subscription Terms. The "**Effective Date**" of this Agreement is the date which is the earlier of (a) Customer's initial receipt of Services or (b) the effective date of the first Order Form referencing this Agreement. Either party may terminate this Agreement or any Order Form if the other party: (i) fails to cure any material breach of this Agreement within thirty (30) days after written notice of such breach; (ii) ceases operation without a successor; or (iii) seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such party (and not dismissed within sixty (60) days thereafter). Sections 3 (Ownership of Deliverables; Feedback), 4 (BTS Products), 5.2 (Payment) (but only with respect to orders placed during the term hereof), 7 (Warranty Disclaimer), 8 (Limitation of Liability), 9 (Confidential Information), 10 (Publicity), 11 (Dispute Resolution; Governing Law), 14 (Assignment) and 15 (General) will survive any termination or expiration of this Agreement. Unless termination is for Customer's breach, Customer's right under Section 1 (Services and Deliverables) to use Deliverables

shall survive so long as Customer has a valid right under the End User Agreement to use the applicable Product and provided that Customer remains in compliance with the applicable use restrictions and confidentiality obligations in Sections 1 and 9 herein.

7. Warranty Disclaimer.

ALL SERVICES AND DELIVERABLES ARE PROVIDED "AS IS" AND BTS EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8. LIMITATION OF LIABILITY.

8.1. Waiver of Consequential Damages. TO THE FULLEST EXTENT ALLOWED BY LAW, NEITHER BTS NOR ITS SUPPLIERS SHALL BE LIABLE FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

8.2. Liability Cap. TO THE FULLEST EXTENT ALLOWED BY LAW, BTS'S AND ITS THIRD-PARTY SUPPLIERS' ENTIRE LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS ACTUALLY PAID BY CUSTOMER TO BTS UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE THE CLAIM AROSE.

9. Confidential Information.

Each party (as "**Receiving Party**") agrees that all code, inventions, know-how, and business, technical and financial information it obtains from the disclosing party (as

"**Disclosing Party**") constitute the confidential property of the Disclosing Party ("**Confidential Information**"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. The Deliverables and any software, documentation or technical information provided by BTS (or its agents) shall be deemed Confidential Information of BTS without any marking or further designation. Except as expressly authorized herein, the Receiving Party will hold in confidence and not use or disclose any Confidential Information. The Receiving Party's nondisclosure obligation shall not apply to information which the Receiving Party can document: (a) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (b) is or has become public knowledge through no fault of the Receiving Party; (c) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (d) is independently developed by employees of the Receiving Party who had no access to such information. Receiving Party may also disclose Confidential Information if so required pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party).

10. Dispute Resolution; Governing Law.

10.1. Dispute Resolution; Arbitration. In the event of any controversy or claim arising out of or relating to this Agreement, the parties hereto shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a solution satisfactory to both parties. If the parties do not reach a settlement within a period of 60 days, any unresolved controversy or claim arising out of or relating to this Agreement shall proceed to binding arbitration under the Rules of Arbitration of the International Chamber of Commerce. The parties shall seek to mutually appoint an arbitrator. If the parties cannot agree on a single arbitrator, then there shall be three (3) arbitrators: one selected by each party, and a third selected by the first two. Arbitration will take place in

one of the following cities as mutually agreed between the parties: Los Angeles, CA (USA), Nashville, TN (USA) or Salt Lake City, UT (USA). If the parties are unable to agree to one of these cities, then the arbitration shall proceed in Salt Lake City, UT. All negotiations and arbitration proceedings pursuant to this Section 10.1 will be confidential and treated as compromise and settlement negotiations for purposes of all similar rules and codes of evidence of applicable legislation and jurisdictions. The language of the arbitration shall be English.

10.2. Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the applicable laws of the State of Utah, USA, without giving effect to the principles of that State relating to conflicts of laws. Each party irrevocably agrees that any legal action, suit or proceeding that is not otherwise subject to the arbitration provisions of Section 10.1 (Dispute Resolution; Arbitration) must be brought solely and exclusively in, and will be subject to the service of process and other applicable procedural rules of, the State or Federal court in Salt Lake City, Utah, USA, and each party irrevocably submits to the sole and exclusive personal jurisdiction of the courts in Salt Lake City, Utah, USA, generally and unconditionally, with respect to any action, suit or proceeding brought by it or against it by the other party. Notwithstanding the foregoing, BTS may bring a claim for equitable relief in any court with proper jurisdiction.

10.3. Injunctive Relief; Enforcement. Notwithstanding the provisions of this Section 10, nothing in this Agreement shall prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights, confidentiality obligations or enforcement or recognition of any award or order in any appropriate jurisdiction.

10.4. Exclusion of UN Convention and UCITA. The terms of the United Nations Convention on Contracts for the Sale of Goods do not apply to this Agreement. The Uniform Computer Information Transactions Act (UCITA) shall not apply to this Agreement regardless of when or where adopted.

11. Force Majeure.

Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to events which are beyond the reasonable control of such party, including but not limited to any strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or of telecommunications or data networks or services, or refusal of approval or a license by a government agency.

12. Subcontractors.

BTS may use the services of subcontractors for performance of Services under this Agreement, provided that BTS remains responsible for (a) compliance of any such subcontractor with the terms of this Agreement and (b) for the overall performance of the Services as required under this Agreement.

13. Assignment.

Customer may not assign this Agreement without the prior written consent of BTS (which consent will not be unreasonably withheld), provided that the assignee agrees to be bound by the terms and conditions contained in this Agreement. BTS may assign its rights and obligations under this Agreement in whole or in part without consent of Customer. Any permitted assignee shall be bound by the terms and conditions of this Agreement.

14. General.

This Agreement is the entire agreement between you and BTS relating to the Services and supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the Services or any other subject matter covered by this Agreement. If any provision of this Agreement is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect. No

supplement, modification, or amendment of this Agreement shall be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. As used herein, "including" (and its variants) means "including without limitation" (and its variants). If either party to this Agreement breaches any provision of this Agreement relating to Confidential Information or intellectual property rights, there may not be an adequate remedy available solely at law; therefore, an injunction, specific performance or other form of equitable relief or monetary damages or any combination thereof may be sought by the injured party to this Agreement. No failure or delay by the injured party to this Agreement in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder at law or equity. The parties are independent contractors. This Agreement shall not be construed as constituting either party as a partner of the other or to create any other form of legal association that would give on party the express or implied right, power or authority to create any duty or obligation of the other party. Any notice, report, approval or consent required or permitted under this Agreement will be in writing to the address specified on the Order Form or such other address as may be given in writing by either party to the other.