



SUBSCRIPTION AND SERVICES AGREEMENT

Date of Last Revision: February 18, 2019

This Subscription Services Agreement and any contemporaneously or subsequently executed addenda (collectively, this "Agreement") between Lots of Freakin' Talent LLC ("LOFT") and Customer (as defined below) shall govern the provision of the Services (as defined below). This Agreement shall commence on the date agreed to by Customer (the "Effective Date").

1. **Services.** LOFT will provide the Plan and accompanying services as selected by the Customer at the time of purchase and as mutually agreed between LOFT and Customer ("Services").
 - a. There are no formal deliverables associated with this Agreement. LOFT will work under the direction of Customer to deliver Services included in the Plan chosen and contained in this Agreement.
 - b. LOFT represents that it will perform Services with reasonable care and skill.
 - c. Hardware, infrastructure, hosting, domain, and third-Party software costs are not included in this Agreement. In the event payment of costs such as these are required for the performance of Services hereunder, Customer agrees to obtain these outside this Agreement.
 - d. This Agreement assumes that LOFT will use LOFT's standard issue-tracking, project management, and communication tools used to track all technical work, updates, bugs, or requests.
 - e. Since the Customer is directing the work and may add or prioritize initiatives, LOFT makes no representation to the timeframe within which a particular service can be completed.
 - f. The work is expected to mostly occur *away from* Customer's facilities.
 - g. Customer must provide a primary point of contact for each application.
2. **Pricing, Costs, and Payment.** LOFT will invoice Customer on a monthly basis for Services performed, in accordance with the Pricing and Plan chosen by the Customer. Payment is due upon receipt. If payment is overdue by fifteen (15) days or more, LOFT reserves the right to suspend any further performance until payment of overdue amounts is made in full. Such suspension will not be considered a breach of this Agreement. In the unfortunate event that LOFT is required to incur costs in connection with collecting amounts due hereunder, Customer will be responsible for those costs, including reasonable attorneys' fees and court costs. Customer is responsible for any applicable sales, use, or value added taxes that may be due. LOFT reserves the right to adjust Pricing upon notice to Customer; provided, however, that any change in Pricing shall not take effect until the subsequent Renewal Term.
3. **Service Level Agreement (SLA).** LOFT is available to Customer during normal business hours via email, support portal, and phone. Unless otherwise agreed in this Agreement, LOFT will meet the following Average Response Time Guarantee:
 - a. Acknowledge response time: 1 hour
 - b. Troubleshoot response time: 1 business day



- c. Normal Business Hours are defined as any day between Monday and Friday, from 8:00 A.M. to 5:00 P.M., EST/EDT, excluding holidays. Support extending beyond normal business hours must be agreed to in writing by the Parties.
- d. If LOFT fails to meet the agreed SLA more than twice in 3 consecutive months, Customer may terminate the Agreement without paying for remaining months of subscription.

4. Warranties.

- a. LOFT stands by the Services it provides. As a legal matter, however, LOFT warrants during the term of this Agreement (the "Warranty Period") only that (i) all Services will be performed in a professional and workmanlike manner, in accordance with industry standards, and substantially in accordance with the specifications agreed to between LOFT and Customer; (ii) the Services will not violate any agreement or obligation between LOFT and a third Party; and (iii) LOFT has full power, right and authority to enter into this Agreement and to carry out its obligations under this Agreement.
- b. LOFT will use all commercially reasonable efforts to re-perform, correct or repair any non-conformance to such warranty standards of any Services of which Customer has notified LOFT in writing during the applicable Warranty Period, provided that such Service has not been materially modified or altered by Customer or any third Party. If LOFT is unable to correct or repair any such non-conformance, LOFT shall refund any fees paid by Customer for such nonconforming Service.
- c. EXCEPT AS STATED IN THIS SECTION 4, LOFT MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, INTENDED USE, MERCHANTABILITY, OR NON-INFRINGEMENT WITH RESPECT TO THIS AGREEMENT.

5. **Customer Responsibilities.** Customer shall provide LOFT with all the assistance, information, data, and materials which LOFT reasonably deems necessary for the performance of the Services, including without limitation, access to the materials to be provided by Customer which are the subject of the Services (which materials shall be referred to as the "Customer Originals"). Customer grants LOFT and any LOFT contractors who may be providing Services hereunder, a non-exclusive, non-transferable, royalty-free license during the term of this Agreement to use and copy the Customer Originals solely to provide Services under this Agreement. Customer represents and warrants that it has all rights and licenses necessary to grant this license. Customer agrees to hold LOFT harmless for any claims made against LOFT related to the permitted use of the Customer Originals. Unless otherwise directed by Customer, LOFT shall return all Customer Originals within a reasonable period of time following completion of Services hereunder.

6. **Third Party Licenses.** Customer agrees to be bound by the provisions of any license agreements (including shrink-wrap or online license agreements or other agreements of adhesion) applicable to software or hardware procured directly by Customer or provided by LOFT, if any, in connection with the Services.

7. Indemnification and Insurance.

- a. **Customer Indemnification.** Customer shall, at its own expense, defend, hold harmless and indemnify LOFT, and its officers, directors, employees and contractors, from and against any and all liabilities, damages, losses, costs and expenses (including reasonable attorneys' fees) (collectively, "Liabilities") to the extent such Liabilities arise out of or in connection with any third Party claim that the Customer



Originals, software or hardware procured directly by Customer, or any part thereof, infringes any patent, copyright, trademark, trade secret, moral, or any other intellectual property rights of such third Party.

- b. **LOFT Indemnification.** LOFT shall, at its own expense, defend, hold harmless and indemnify Customer, and its officers, directors, employees and contractors, from and against any and all Liabilities to the extent such Liabilities arise out of or in connection with any third Party claim that the Services as performed or provided by LOFT hereunder, infringe any patent, copyright, trademark, trade secret, moral or any other intellectual property rights of such third Party.
- c. **Mutual Indemnification.** Each Party shall defend, hold harmless and indemnify the other from and against any and all Liabilities in connection with claims for personal injury of either Party's employees or contractors, to the extent such Liabilities result from the gross negligence or intentional misconduct of the indemnifying Party, its employees, contractors or invitees in connection with this Agreement.

8. Confidential Information.

- a. Each Party shall (i) use the Confidential Information (as defined below) of the other Party only for the purposes contemplated under this Agreement; (ii) hold the Confidential Information of the other Party in confidence and not disclose it to any third Party, except to its and its subsidiaries' employees and contractors who have a need to know such Confidential Information for the purposes of this Agreement and who are bound by written agreements of confidentiality consistent with the provisions of this Section; and (iii) use the same degree of care as it uses to protect its own confidential information of a similar nature, but not less than a reasonable standard of care. The term "Confidential Information" shall mean any information and materials (in any form) disclosed hereunder which are generally treated as confidential by the disclosing Party, including but not limited to, all logic, design, coding methodology, code, inventions and know-how, and all business, technical, customer, product, marketing and financial information. The obligations of either Party under this Section will not apply to information that the receiving Party can demonstrate (i) was in its possession at the time of disclosure hereunder and without restriction as to confidentiality, (ii) is or becomes generally available to the public through no breach of this Section by the receiving Party, (iii) has been received from a third Party without restriction on disclosure, or (iv) is independently developed by the receiving Party without use of the Confidential Information of the other Party. In addition, the receiving Party may disclose Confidential Information as required to comply with applicable law or any judicial or governmental order, provided that the receiving Party notifies the disclosing Party of such required disclosure and cooperates with the disclosing Party in its efforts to seek to limit such disclosure or obtain a protective order or other confidential treatment with respect thereto.
 - b. The receiving Party acknowledges that disclosure of the disclosing Party's Confidential Information may cause substantial harm to the disclosing Party for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the receiving Party the disclosing Party shall be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.
 - c. The obligations set forth in this Section shall continue for five years except with respect to Confidential Information which constitute Trade Secrets which shall remain confidential for as long as such information remains trade secret.
9. **Use of Name.** LOFT may reference and use Customer's name and trademarks and may disclose the nature of the Services provided hereunder, in LOFT's business development and marketing efforts, including its website and case studies. In doing so, LOFT will not disclose confidential information, per Section 8.



10. **Non-Solicitation.** Each Party agrees that during the term of this Agreement and for one (1) year thereafter (the “Non-Solicitation Period”) it will not directly or indirectly solicit or employ or cause another company to attempt to solicit or employ, any employee or contractor of the other Party or its subsidiary who has been involved in this Agreement or the provision or acquisition of services hereunder. Hiring which results from general solicitations which are not in any way targeted to such employees or contractors shall not be deemed a breach of this Section.
11. **Term; Termination.** This Agreement shall commence on the Effective Date and continue for a period of one (1) year from the the Effective Date (the “Term”) until terminated by either Party upon sixty (60) days prior written notice or as otherwise terminated pursuant to the terms of this Agreement. After the Initial Term or any subsequent Renewal Term (as defined below), the term of this Agreement will automatically and immediately renew for successive 1 year periods at the applicable fees in accordance with the Pricing and Plan chosen and/or contained in this Agreement (each, a “Renewal Term” and collectively with the Initial Term, the “Term”), provided that each Party will have the right not to renew by providing notice to the other Party of its intent not to renew at least thirty (30) days prior to the end of the Initial Term or any Renewal Term. In the event of expiration or termination of this Agreement, Customer shall be obligated to pay LOFT for all Services performed, and expenses incurred, in accordance with this Agreement up to the effective date of expiration or termination.
- a. **Early Termination Fee.** If Customer terminates this Agreement prior to term length of the subscription, Customer is obligated to pay at Early Termination Fee equal to 40% of the remaining monthly fees of the subscription unless the reason for termination is a failure of LOFT to meet agreed SLA per Section 3. The Early Termination Fee is not a penalty, but a charge to compensate LOFT for Customer’s failure to complete its commitment, which LOFT used to determine Pricing.
 - b. **Additional Termination Rights.** In addition to any other termination rights set forth in this Agreement, LOFT will have the right to terminate this Agreement upon written notice to Customer: (i) immediately if the Customer becomes insolvent or an insolvency proceeding is begun by or against the other Party and not dismissed or stayed within 90 days; (ii) immediately if any material portion of Customer’s assets is attached, seized, levied on, or comes into possession of a trustee or receiver and the attachment, seizure, or levy is not removed within 10 days; or (iii) if Customer fails or neglects to perform, keep, or observe any other material term, provision, condition, covenant, or agreement included or incorporated by reference in this Agreement and, to the extent it can be cured, fails to cure such default within 10 business days after notice by LOFT of such default.
 - c. **Effect of Termination.** If this Agreement is terminated or expires for any reason, (i) Customer will complete all pending transactions in accordance with this Agreement and immediately stop using the Services; (ii) Customer’s use of the Services shall cease; and (iii) any license granted herein shall immediately and automatically terminate.
12. **Limitation of Liability.** EXCEPT WITH RESPECT TO AMOUNTS PAYABLE PURSUANT TO THE PARTIES’ INDEMNIFICATION OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY BE LIABLE HEREUNDER FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT DAMAGES OF ANY KIND, OR FOR LOST PROFITS, DATA OR BUSINESS, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. IN ADDITION, IN NO EVENT SHALL LOFT’S LIABILITY TO CUSTOMER IN THE AGGREGATE FOR ANY AND ALL CLAIMS OR DAMAGES ARISING UNDER THIS PROPOSAL AND AGREEMENT EXCEED THE TOTAL AMOUNT PAID TO LOFT BY CUSTOMER PURSUANT TO THIS PROPOSAL AND AGREEMENT DURING THE CALENDAR YEAR IN WHICH THE CLAIM AROSE.



13. **Force Majeure.** Neither Party will be liable for any delay or related damages or penalties when such delay is due to causes beyond its reasonable control, including without limitation, acts of God, acts of civil or military authority, fires, floods, epidemics, quarantine restrictions, war or riots.
14. **Independent Contractor.** For all purposes under this Agreement, LOFT shall be and act as an independent contractor, and under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture or employment between LOFT and Customer. LOFT shall be solely responsible for the conduct and supervision of its employees and contractors in connection with the performance of its obligations hereunder.
15. **Services on Customer Premises.** LOFT, its employees and contractors will comply with all applicable Customer regulations, policies and procedures of which it is notified while on Customer's premises, and LOFT agrees to remove from Customer's premises immediately any of its employees or contractors at Customer's reasonable request.
16. **General Provisions.** No waiver of this Agreement shall be effective unless in writing and signed by the waiving Party. All obligations and duties which by their nature survive the expiration or termination of this Agreement shall remain in effect beyond any expiration or termination of this Agreement.
17. **Law and Venue.** This Agreement shall be construed in accordance with the laws of the State of North Carolina without regard to its conflicts of laws principles, and any claim or conflict arising out of this Agreement shall be adjudicated in Guilford County, North Carolina. The parties hereby submit to the jurisdiction of such Guilford County, North Carolina courts.
18. **Entire Agreement.** This Agreement constitutes the complete agreement between LOFT and Customer with respect to its subject matter and supersedes all prior proposals, understandings, agreements and other communications between the parties, whether oral or written. This Agreement may be amended or modified only by a signed writing executed by both parties. Each Party acknowledges that it is not relying on any statement or information made or given, directly or indirectly, orally or in writing, by the other Party or its representatives, except as specifically set forth herein.