Consulting and Training Services: Terms and Conditions

Boldly Agile, LLC, with an office at, 7525 Paragon Rod #751014, Dayton, OH, 45475,(“Boldly Agile”) will provide Customer with the consulting and training services (the “Services”) as more fully set forth in the Customer’s order (“Order”) which references these Terms and Conditions.  Collectively, Boldly Agile and Customer shall be known individually as “party” or collectively as the “parties”. The parties agree as follows:

1. SERVICES PROVIDED BY BOLDLY AGILE.

Boldly Agile shall provide Customer with certain consulting and training services (the “Services”) as specified in Customer’s Order.  Each Order shall incorporate by reference these terms and conditions (hereafter the ”Agreement”). To the extent an Order provides additional and/or conflicting terms to this Agreement, the terms of the Order shall prevail.  All Boldly Agile subcontractors under an Order, if any, shall be bound to perform all obligations under this Agreement as if they were being performed by Boldly Agile.

2. TRAINING.

**2.1 LOCATION AND TIMING.**

Training shall be provided at the location set forth in Customer’s Order (the “Location”). If no location is specified in the Order, the training will be provided at a Location to be determined and confirmed in writing with the Customer. For onsite, virtual and e-learning training the Customer is responsible for testing all necessary facilities and systems prior to the scheduled training to enable Boldly Agile to provide the training unless otherwise specified on the Order.  Unless otherwise advised, Customer training participants who attend public training should arrive at the classroom location no later than 15 minutes (and no later than 30 minutes to the virtual classroom) prior to the commencement of the training on the first training day . Where and when the length of a course is specified in a number of days, a “day” is not more than 6 hours of lecture with a one hour breakfast or lunch. Any onsite training will be agreed between the parties, but shall not include more than 6 hours of lecture on any single day. Training is only valid for the number of courses, dates and times (including the start and end date), Locations, delivery mechanisms (i.e., onsite, virtual or other), and number of students (participants) specified in the Order. Training dates must be confirmed three or more weeks in advance of the training date. All confirmed training registrations will be subject to the cancellation policy as detailed in Section 2.4 and the postponement policy as detailed in Section 14.

**2.2 COURSE AVAILABILITY AND CONTENT.**

Training content will be substantially in line with the relevant training description set forth in Customer’s Order. Boldly Agile reserves the right to withdraw or re-schedule training at any time prior to the training start date without any liability to the Customer. In the event that Boldly Agile is aware that there is a need to reschedule, then Boldly Agile will make a reasonable effort to notify the Customer at least one week in advance.

**2.3 TRAINING PARTICIPANTS.**

Customer may substitute training participants by giving 48 hour written notice to Boldly Agile prior to the commencement of the scheduled training. Boldly Agile reserves the right to exclude training participants from the class who are, in its reasonable opinion, causing disruption to such class. In the event of such exclusion no refund of any associated fees will be made. Boldly Agile does not allow Customers to have additional participants “audit” its training courses. Customer agrees to pay for any and all participants that are in the classroom at the time of training, including last minute participants and drop-ins.

**2.4 TRAINING PAYMENT AND CANCELLATION CHARGES FOR IN-PERSON COURSES.**

Boldly Agile will invoice Customer for training upon Customer signing the Order in accordance with Section 4. Unless different payment terms were agreed in the Order, the entire amount invoiced plus any applicable taxes is due in full no later than 30 days from the date of Boldly Agile’s invoice. Unless otherwise agreed in an Order, Customer agrees to pay for all fees associated with additional participants present in the classroom at the time of the training.  Customer may cancel training by giving prior written notice to Boldly Agile. The following cancellation charges will apply to all confirmed training courses requesting cancellation: (a) notice of cancellation received between signing of the Order and 2 weeks before training course start date – 50% of the relevant fee plus reimbursement of any nonrefundable set-up and travel expenses; (b) notice of cancellation received less than two weeks before training course start date – 100% of the payable fee plus reimbursement of all set-up and travel expenses. Customer may not resell Boldly Agile’s training course.

**2.5 TRAINING PAYMENT AND CANCELLATION CHARGES FOR VIRTUAL COURSES.**

Boldly Agile will invoice Customer for training upon Customer signing the Order in accordance with Section 4. Unless different payment terms were agreed in the Order or in writing with Boldly Agile, the entire amount invoiced plus any applicable taxes is due in full when Customer registers for training via <http://boldlyagile.com> website. Customer may cancel training by giving prior written notice to Boldly Agile. The following cancellation charges will apply to all confirmed training courses requesting cancellation: (a) notice of cancellation received between online registration of the course or of the Order and 2 weeks before training course start date – 50% of the relevant fee plus reimbursement of any nonrefundable set-up fees; (b) notice of cancellation received less than two weeks before training course start date – 100% of the payable fee plus reimbursement of all set-up. Customer may not resell Boldly Agile’s training course.

3. CUSTOMER DUTIES.

(a) Customer shall perform such duties and tasks designated in an Order to facilitate Boldly Agile’s performance of the Services outlined thereunder and provide Boldly Agile with reasonable and necessary access to Customer’s facilities during Customer’s normal business hours and otherwise as reasonably requested by Boldly Agile in order to facilitate Boldly Agile’s performance of the Services outlined in each Order. (b) Customer shall not contract for related services with any current or former Boldly Agile employee(s) or subcontractor(s) for a period of six (6) months from the date that his/her subcontracting agreement or employment relationship with Boldly Agile terminated. Failure to comply with the requirements of 3(b) may, at Boldly Agile’s sole discretion, result in (i) removal of all existing consultant resources from Customer sites and/or (ii) the immediate termination of this Agreement and Boldly Agile’s obligation to provide any further Services.

4. FEES, EXPENSES, & PAYMENT.

Unless otherwise set forth in the Order, for all Services performed under any Order(s) and/or any other request for Services that references this Agreement, Customer shall: (a) pay Boldly Agile in accordance with each Order or at Boldly Agile’s then-current standard rates, whichever is applicable; (b) reimburse Boldly Agile for all reasonable and necessary travel and living expenses Boldly Agile incurs performing such Services, provided that such expenses are incurred pursuant to an applicable Order or other request for Services by Customer; and (c) pay Boldly Agile net 30 days from the date of Boldly Agile’s invoice. All payments made pursuant to this Agreement are non-refundable. Unless Customer provides Boldly Agile with a valid tax exemption or direct pay certificate upon execution of this Agreement, Customer is responsible for all taxes, duties, and customs fees which may be assessed on the amounts paid for Services performed hereunder, excluding taxes based on Boldly Agile’s income or payroll. Boldly Agile reserves the right to invoice Customer the lesser of eight percent (8%) annual interest or the highest interest rate allowable under applicable laws for any outstanding, undisputed invoice not timely paid. Boldly Agile invoices shall describe the following: (i) the time period for which Services and expenses are billed; (ii) the Services to be or which were performed; (iii) the hourly rates charged, if applicable; (iv) travel and living expenses by type and amount; and (v) totals.

5.  CONFIDENTIAL INFORMATION & PROPRIETARY RIGHT.

**5.1 DEFINITION.**

The term “Confidential Information” shall mean: (a) any and all information which is disclosed by either party (“Owner”) to the other (“Recipient”) verbally, electronically, visually, or in a written or other tangible form which is either identified or should be reasonably understood to be confidential or proprietary at the time of disclosure; and (b) the terms, including without limitation, price and pricing of Boldly Agile’s Services and any proposals or other documents that preceded this Agreement. Confidential Information also includes, without limitation, trade secrets, computer programs, software, documentation, formulas, data, inventions, techniques, marketing plans, strategies, forecasts, client lists, employee information, and financial information. In addition, Confidential Information may include information concerning any of Owner’s past, current, or possible future products or methods, including information about Owner’s research, development, engineering, purchasing, manufacturing, accounting, marketing, selling, leasing, and/or software (including third party software).

**5.2 TREATMENT OF CONFIDENTIAL INFORMATION.**

Owner’s Confidential Information shall be treated as strictly confidential by Recipient and shall not be disclosed by Recipient to any third party except to those third parties operating under non-disclosure provisions no less restrictive than the terms herein this Section and who have a justified business “need to know”.  Customer shall protect the deliverables resulting from Services with the same degree of care.  This Agreement imposes no obligation upon the parties with respect to Confidential Information which either party can establish by legally sufficient evidence that: (a) was in the possession of, or was rightfully known by the Recipient without an obligation to maintain its confidentiality prior to receipt from Owner; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by Recipient in good faith from a third party having the right to disclose it without an obligation of confidentiality; (d) is independently developed by Recipient without the participation of individuals who have had access to the Confidential Information; or (e) is required to be disclosed by court order or applicable law, provided notice is promptly given to the Owner and provided further that diligent efforts are undertaken to limit disclosure.

**5.3 RIGHTS AND DUTIES.**

The Recipient shall not obtain, by virtue of this Agreement, any rights, title, or interest in any Confidential Information of the Owner. Within fifteen (15) days after termination of this Agreement, each party shall certify in writing to the other that all copies of Confidential Information in any form, including partial copies, have been destroyed, returned, or used solely as the Owner so directs.

**5.4 PROPRIETARY INFORMATION.**

Ownership of all copyright and other intellectual property rights in any training course material or other documentation, technical information and know-how (together “Boldly Agile Proprietary Information”) provided to training participants or otherwise to Customer remains vested in Boldly Agile. Customer acknowledges that the Boldly Agile Proprietary Information is confidential and proprietary to and constitutes valuable trade secrets of Boldly Agile and that Customer shall not obtain any intellectual property or other ownership rights whatsoever in any Boldly Agile Proprietary Information. All Boldly Agile Proprietary Information shall be held in confidence and not disclosed, copied, or provided to third parties. Subject to the restrictions set forth herein, a training participant may use training course material to carry out his duties for the Customer, but neither the training course material nor any Boldly Agile Proprietary Information may be copied or used by any other person, including other employees or sub-contractors working for the Customer or to provide training to any other person, including other employees or sub-contractors working for the Customer.

**5.5 SURVIVABILITY.**

The terms of this Section 5 shall survive termination of this Agreement.  If the Parties have executed a separate agreement that contains confidentiality terms prior to or contemporaneously with this Agreement, those separate confidentiality terms shall remain in full force to the extent that they do not conflict with any terms contained herein.

6.  INDEMNITY.

Each party (“Indemnifying Party”) shall indemnify and hold the other party (“Indemnified Party”) harmless against any third party claim, including costs and reasonable attorney’s fees, in which the Indemnified Party is named as a result of the negligent acts and omissions, or failure to act by the Indemnifying Party, its employees or agents, while performing its obligations hereunder, which result in death, personal injury, or tangible property damage. This indemnification obligation is contingent upon the Indemnified Party providing the Indemnifying Party with prompt written notice of such claim, information, all reasonable assistance in the defense of such action, and sole authority to defend or settle such claim.  The terms of this Section 6 shall survive termination of this Agreement.

7.  WARRANTIES AND REPRESENTATIONS.

Each party warrants that it has the right and power to enter into this Agreement, and that an authorized representative has executed this Agreement.  Boldly Agile warrants that the Services will be performed in a professional and workmanlike manner in accordance with recognized industry standards. To the extent Services provided by Boldly Agile are advisory, no specific result is assured or guaranteed.  BOLDLY AGILE EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY (BY ANY TERRITORY OR JURISDICTION) TO THE EXTENT PERMITTED BY LAW, AND FURTHER BOLDLY AGILE EXPRESSLY EXCLUDES ANY WARRANTY OF NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY TO THE EXTENT PERMITTED BY LAW.

8.  LIMITATION OF LIABILITY.

BOLDLY AGILE’S MAXIMUM LIABILITY FOR ANY ACTION ARISING UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION AND WHETHER IN TORT OR CONTRACT, SHALL BE LIMITED TO THE AMOUNT OF SERVICES FEES PAID BY CUSTOMER FOR THE SERVICES FROM WHICH THE CLAIM AROSE.  IN NO EVENT SHALL BOLDLY AGILE BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOST DATA OR LOST PROFITS, HOWEVER ARISING, EVEN IF BOLDLY AGILE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.  THE PARTIES AGREE TO THE ALLOCATION OF RISK SET FORTH HEREIN.

9. RIGHTS TO WORK PRODUCT.

Any expression or result of Boldly Agile’s Services, or the work, findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, tools, applications, interfaces, enhancements, software, and other technical information (collectively “Work Product”) created by Boldly Agile in the course of performing the consulting services hereunder are the property of Boldly Agile and are licensed to Customer, without further license fees, pursuant to the Boldly Agile software license(s) to which the consulting services pertain, provided, however, to the extent such Work Product provided to Customer by Boldly Agile contains Customer’s Confidential Information, Customer shall retain title to such Confidential Information. With the exception of Customer’s Confidential Information, Customer shall have no right to sublicense, transfer, assign, convey or permit any third party to use or copy any Work Product.

10.  MAINTENANCE OF DEVELOPMENT WORK.

Standard maintenance and support services offered by Boldly Agile do not cover any customized software or new development created under an Order. If available, maintenance and support may be addressed under a separate services agreement.

11.  INDEPENDENT CONTRACTOR STATUS.

Boldly Agile performs this Agreement as an independent contractor, not as an employee of Customer.  Nothing in this Agreement is intended to construe the existence of a partnership, joint venture, or agency relationship between Customer and Boldly Agile.

12.  NOTICE.

All notices or other communications referenced under this Agreement shall be made in writing and sent to the address designated in the specific Order or as designated from time to time in writing by the Parties. All notices shall be deemed given to the other party if delivered receipt confirmed using one of the following methods: registered or certified first class mail, postage prepaid; recognized courier delivery; or electronic mail with read receipt requested.

13.  TERMINATION OF SERVICES.

Unless otherwise agreed to, either party may terminate this Agreement or any Order at any time by giving the other party written notice of termination.  If this Agreement or an Order is terminated by the Customer, Customer shall pay Boldly Agile the cancellation fees for training services as forth in Section 2.4 and for all consulting services performed and for all expenses incurred prior to the effective date of termination.  For consulting services, Customer shall also pay a termination fee equal to 25% of the total amount contracted for the consulting service under the applicable Order.  If Customer provides less than ten (10) business days advance notice of an Order termination for which consulting services have been scheduled, the termination fee payable as set forth above shall be equal to 100% of the scheduled consulting service fee as set forth in the Order.

14.  POSTPONEMENT OF SERVICES.

No penalty will be assessed if Customer postpones a scheduled training or consulting service (hereafter the “scheduled service”) at least twenty business days or more before the start of the scheduled service.  If Customer postpones a scheduled service at least ten (10) but less than twenty (20) business days before the start of the scheduled service, a penalty of 25% of the amount of the scheduled service may be assessed. If Customer postpones a scheduled service less than ten (10) business days before the start of the scheduled service, a penalty up to 100% of the scheduled service may be assessed.

15.  WAIVER.

No modification to this Agreement nor any failure or delay in enforcing any term, exercising any option, or requiring performance shall be binding or construed as a waiver unless agreed to in writing by both parties.

16. FORCE MAJEURE.

Neither party shall be liable for any failure to perform its obligations under this Agreement or any Order if prevented from doing so by a cause or causes beyond its control, including without limitation, acts of God or public enemy, failure of suppliers to perform, fire, floods, storms, earthquakes, riots, strikes, war, and restraints of government.

17.  SEPARATE AGREEMENTS.

All Services provided herein are acquired separately from any software licenses agreed to between the Parties. Specifically, Customer may acquire software licenses without acquiring consulting or training services. Customer understands and agrees that this Agreement and any Order is a separate and independent contractual obligation from any order relating to software licenses. Customer shall not withhold payments that are due and payable under this Agreement because of the status of any software license orders, nor shall Customer withhold payments that are due and payable relating to software license order because of the status of work performed hereunder.

18.  DISPUTE RESOLUTION.

Any disputes or claims under this Agreement or its breach shall be submitted to and resolved exclusively by arbitration conducted in accordance with the rules of Judicial Arbitration and Mediation Services, Inc. (J.A.M.S.). One arbitrator appointed under such rules shall conduct arbitration.  The parties agree that arbitration shall be in Dayton, OH, and the laws of Ohio shall be applied.  Any decision in arbitration shall be final and binding upon the parties.  Judgment may be entered thereon in any court of competent jurisdiction.  Notwithstanding the above, Boldly Agile may sue in any court for infringement of its proprietary or intellectual property rights.

19.  GENERAL.

This Agreement shall be governed by Ohio law, excluding choice of law principles. Except as otherwise specifically stated herein, remedies shall be cumulative and there shall be no obligation to exercise a particular remedy. If any provision of this Agreement is held to be unenforceable, the other provisions shall nevertheless remain in full force and effect. This Agreement and the Order(s) constitute the entire understanding between the Parties with respect to the subject matter herein and may only be amended or modified by a writing signed by a duly authorized representative of each party.  This Agreement may be executed by facsimile. This Agreement replaces and supersedes any prior verbal or written understandings, communications, and representations between the Parties regarding the subject matter contained herein.

*These Consulting and Training Terms were last modified February 24, 2022.*