

SOFTWARE DEVELOPMENT AGREEMENT

This agreement is between Tillamook County at 201 Laurel Avenue Tillamook, OR 9714, the Customer agreeing to these terms (**Customer**) and LVSYS Corp (dba Buildable), an Oregon corporation, the service provider agreeing to these terms (**Service Provider**), effective as of the date of the last signature below.

1. SCOPE.

Service Provider agrees to render software development services (**Services**) to Customer as described in each statement of work signed by the parties (**SOW**). All SOWs are governed by the terms of this agreement.

2. SERVICE FEES.

- a. **Net Terms.** The fees payable to Service Provider for the Services will be detailed in a SOW. Customer will pay amounts invoiced within 10 days following receipt of an invoice in accordance with this agreement and the SOW.
- b. **Monthly Billing.** Service Provider will invoice the Customer on the first day of each month. The invoice will be for the total hours worked by the Service Provider in the prior month pertaining the corresponding SOW, Appendix 1, and Addenda.
- c. **Benchmarks.** Service Provider and Customer will agree to a timeline for the project and progress benchmarks will be detailed in a SOW for each sprint and attached as addenda to the Agreement.

3. FEE SCHEDULE.

- a. **Statement of Work.** The SOW will include a detailed fee schedule and estimates.

4. WARRANTY.

- a. **Performance Warranty.** Service Provider represents and warrants to Customer for a period of 60 days from completion of the Services under the SOW, that the Deliverable (defined below) will perform in material accordance with the terms of the SOW and were developed in accordance with industry standards. This warranty does not apply to changes to the computing environment or a Deliverable made after the delivery of the Deliverables by Service Provider.
- b. **REMEDY. CUSTOMER'S EXCLUSIVE REMEDY AND SERVICE PROVIDER'S SOLE LIABILITY UNDER THIS WARRANTY WILL BE FOR SERVICE PROVIDER TO RE-PERFORM ANY NON-CONFORMING PORTION OF THE DELIVERABLES FOR NO FEE WITHIN A REASONABLE PERIOD OF TIME. CUSTOMER MUST COOPERATE WITH SERVICE PROVIDER TO REMEDY THE BREACH. IF SERVICE PROVIDER CANNOT REMEDY THE BREACH WITHIN SUCH TIME PERIOD, THEN SERVICE PROVIDER WILL REFUND THE PORTION OF THE FEE ATTRIBUTABLE TO SUCH NON-CONFORMING PORTION OF THE DELIVERABLES.**
- c. **DISCLAIMER. SERVICE PROVIDER DISCLAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE DELIVERABLE MAY NOT BE ERROR FREE AND USE MAY BE INTERRUPTED.**

5. MUTUAL CONFIDENTIALITY.

- a. **Definition of Confidential Information.** Confidential Information *means* all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally, visually, or in writing, under this agreement (**Confidential Information**). The Deliverables are considered the Confidential Information of Customer.
- b. **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) and may not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement.
- c. **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser; (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser; (iii) is received from a third party without breach of any obligation owed to Discloser; or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.

6. PROPRIETARY RIGHTS.

- a. **Ownership of Deliverables.**
 - **Copyright.** CUSTOMER owns all right, title, and interest in all work product (**Deliverables**), including without limitation all lines of code, design elements, trademarks, trade dress or other intellectual property The Deliverables are designated as 'work made for hire' under U.S. Copyright Law. If for any reason the Deliverables are not 'work made for hire' under applicable law, then Service Provider hereby automatically assigns and transfers to CUSTOMER all right, title, and interest in such Deliverables, as they are created, which includes, without limitation, the right to sue and recover damages for any past infringement. If requested, Service Provider must execute any documents requested by CUSTOMER (at the expense of CUSTOMER) to vest in CUSTOMER registered ownership of the Deliverables. If Service Provider does not execute such documents, then Service Provider hereby appoints CUSTOMER as its attorney-in-fact solely to execute any documents deemed necessary to record the copyright in the United States and in foreign countries.
 - **Inventions.** Service Provider may under a SOW make, develop, or conceive of any inventions, discoveries, concepts, ideas, information, and improvements (solely or jointly with others), either patentable or not, which relate to or are useful in the business or activities in which CUSTOMER is or may become engaged (collectively, **Inventions**). Service Provider agrees to disclose promptly, in writing, all Inventions made, developed, or conceived during the term of any SOW. All such Inventions are the property of CUSTOMER. Service Provider hereby automatically assigns to CUSTOMER all of its right, title, and interest in any such Inventions, whether or not reduced to practice (which includes, without limitation, the right to sue and recover damages for any past infringement), and agrees to execute all patent applications, assignments, and other documents (at the expense of CUSTOMER), and to take all other steps necessary to vest in CUSTOMER the entire right, title, and interest in and to those Inventions, and in and to any patents obtainable in the United States and in foreign countries.
 - **Pre-Existing Works.** To the extent that Service Provider incorporates into any Deliverable pre-existing works or code, then Service Provider hereby grants Customer a non-exclusive,

royalty-free, irrevocable, perpetual, worldwide license to make, have made, modify, adapt, copy, distribute, create derivative works, and otherwise use and sell such work and code only with the Deliverable. Notwithstanding the foregoing, Service Provider retains its confidentiality and ownership of all pre-existing works and code and all enhancements and derivatives thereto.

- b. **Employees and Subcontractors.** Service Provider warrants and represents that it has the right, through written agreements with its employees, to secure for CUSTOMER the rights specified in this Section. If Service Provider uses any subcontractor, consultant, or other third party to perform any of the services contracted for under this agreement, Service Provider agrees to enter into and provide to CUSTOMER such written agreements with such third party, and to take such other steps as are or may be required to secure for CUSTOMER the rights specified in this Section.

7. TERM AND TERMINATION.

- a. **Term.** This agreement is a master agreement and continues until all SOWs have expired or are terminated as allowed for below in this **Section 7**. This agreement may be terminated at any time by mutual written consent of the parties.
- b. **Termination by CUSTOMER.** CUSTOMER may, at its sole discretion, terminate this agreement, in whole or in part, upon 30 days written notice to Service Provider. In the event of such a termination, CUSTOMER agrees to pay Service Provider the fees incurred, and expenses reasonably incurred, prior to the effective date of such termination.
- c. **Termination by Service Provider.** Service Provider may terminate this agreement upon 10 days' written notice to CUSTOMER, if CUSTOMER fails to pay Service Provider pursuant to the terms of this agreement and CUSTOMER fails to cure within 30 days after receipt of Service Provider's written notice, or such longer period as Service Provider may specify in such notice.
- d. **Mutual Termination for Material Breach.** In addition, either party may terminate this agreement immediately upon notice to the other party, if the other party commits any material breach or default of any covenant, warranty, obligation or agreement under this agreement, and such breach, default, or failure is not cured within 10 business days after delivery of notice.

8. LIABILITY LIMIT.

- a. **Exclusion of Indirect Damages.** Service Provider is not liable for any indirect, special, incidental, or consequential damages arising out of or related to this agreement (including, without limitation, costs of delay; loss of or unauthorized access to data or information; and lost profits, revenue, or anticipated cost savings), even if it knows of the possibility or foreseeability of such damage or loss.
- b. **Limit on Liability.** Service Provider's total liability arising out of or related to this agreement (whether in contract, tort or otherwise) does not exceed the actual amount paid by CUSTOMER within the 12-month period prior to the event which gave rise to the claim.
- c. **The above disclaimer and limitation do not apply to Section 5, 6, or 9.**

9. INDEMNITY.

- a. **Infringement.**

- **Defense of Third-Party Claims.** Service Provider will defend or settle any third-party claim against CUSTOMER (and its Members, officers, employees) to the extent that such claim alleges that the Deliverable violates a third-party copyright, trademark, or trade secret; if CUSTOMER promptly notifies Service Provider of the claim in writing; cooperates with Service Provider in the defense; and allows Service Provider to solely control the defense or settlement of the claim.
 - **Costs.** Service Provider will pay infringement claim defense costs it incurs in defending CUSTOMER, Service Provider negotiated settlement amounts, and court awarded damages.
 - **Process.** If such a claim appears likely, then Service Provider may modify the Deliverable, procure the necessary rights, or replace it with the functional equivalent.
 - **Exclusions.** Service Provider has no obligation for any claim arising from any aspects or technology not provided by Service Provider.
 - THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND SERVICE PROVIDER'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.
- b. **Tangible Property and Bodily Injury Indemnity.** Service Provider must indemnify, defend, and hold harmless CUSTOMER from all third-party claims and the associated liabilities, damages, and expenses for physical damage to tangible property and bodily injury, including death, to the extent caused by the wrongful acts or omissions of Service Provider or its employees arising out of this agreement and while at CUSTOMER's premises.

10. GOVERNING LAW AND FORUM.

This agreement shall be governed by the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding between CUSTOMER and Service Provider arising from or related to this agreement shall be brought and conducted in the Circuit Court of Yamhill County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought in the U.S. District Court for the State of Oregon.

11. INSURANCE.

- a. **Workers' Compensation.** Service Provider will carry Workers' Compensation insurance in compliance with ORS Chapter 656, if Service Provider employs "subject workers".
- b. **Comprehensive General Liability.** Service Provider will carry Comprehensive General Liability insurance applicable to the services provided to CUSTOMER, with a combined single limit, or the equivalent, of not less than \$2,000,000 each occurrence for Bodily Injury, Personal Injury, and Property Damage, including contractual liability coverage applicable to the indemnity provided under this contract.
- c. **Automobile Liability.** Service Provider will carry Automobile Liability insurance applicable to the operation of Service Provider's trucks or automobiles with a combined single limit of not less than \$2,000,000 each accident for Bodily Injury and Property Damage, including coverage for owned, non-owned, and hired vehicles, as applicable.
- d. **Notice of Cancellation or Change.** There shall be no cancellation, material change, reduction of limits without 30 days prior written notice from the Service Provider or its insurer(s) to CUSTOMER.
- e. **Certificates of Insurance.** As evidence of the insurance coverages required by this contract, the Service Provider shall provide acceptable insurance certificates to CUSTOMER as soon as practicable upon written request by CUSTOMER. If requested, complete copies of insurance policies, shall be provided to CUSTOMER.

12. OTHER TERMS.

- a. **Entire Agreement and Changes.** This agreement and each SOW constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. No representation, promise, or inducement not included in this agreement is binding. Any amendment or change must be in a writing of the parties. If there is a conflict between the terms of a SOW and this agreement, the SOW prevails. No failure by either party in exercising any right will operate as a waiver.

- b. **Enforceability and Force Majeure.** If any provision of this agreement is held to be unenforceable, the remaining provisions will remain enforceable. Neither party is liable for events beyond its reasonable control, including, without limitation, force majeure events.

- c. **No Assignment.** Neither party may assign or transfer this agreement to any third party, except for assignments to successor entities in the event of a sale of substantially all the assets of a party, by merger, or to parent entities or majority-owned subsidiaries.

- d. **Independent Contractors.** Service Provider shall perform the required services as an independent contractor and not as an "officer, employee, or agent" of CUSTOMER as those terms are used in ORS 30.260 through 30.300. Although CUSTOMER reserves the right to evaluate the quality of the service provided by Service Provider, CUSTOMER will not control the means or manner of Service Provider's performance.

- d. **Money Damages Insufficient.** Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach of this agreement.

- e. **Export Compliance.** All parties must comply with all applicable export control laws of the United States, foreign jurisdictions, and other applicable laws and regulations.

LVSYS Corp dba Buildable (Service Provider)	Tillamook County (CUSTOMER)
Signature: <i>Max de Lavenne</i>	Signature:
Printed Name: Max de Lavenne	Printed Name:
Title: President	Title:
Date: 2/24/2022	Date: