

**NOTICE: THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, SECTION 15-48-10 ET SEQ. OF THE CODE OF LAWS OF SOUTH CAROLINA**

**Terms and Conditions**

This Agreement (“*Agreement*”) is made effective as of stated purchase date, (the “*Effective Date*”), by and between W8LESS, LLC, a South Carolina limited liability company (“*W8LESS*”), and stated company of purchaser (the “*Client*”).

**RECITALS:**

WHEREAS, W8LESS is in the business of providing website design and development services based on a semi-custom design template (the “*Services*”) that will integrate with certain platform technology of BoomtownROI, LLC (“*Boomtown*”) for clients of Boomtown who are seeking assistance with digital brand, website domain, and lead generation;

WHEREAS, Client desires to engage W8LESS for such Services.

NOW THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Payment Terms. In connection with Client’s account set-up at www.w8lessexpress.com, Client shall select Services, to which this Agreement shall apply. All payment terms, including the amount thereof, shall be established at that time, and depending on the Services selected by Client, may include additional subscription and support fees to occur on a periodic basis. Fees are subject to change at the sole discretion of W8LESS. Any changes to fees shall be effective following thirty (30) days-notice from W8LESS to Client.
2. Term/ Termination. The term of this Agreement will commence on the Effective Date and continue for a period of one month; thereafter, this Agreement will automatically renew on a month-to-month basis until one party provides to the other party thirty (30) days written notice of termination of the Agreement; such termination shall be effective upon the last day of the calendar month immediately following the end of the thirty (30) day written notice period. Those sections which by their nature are intended to survive termination, including payment obligations arising prior to termination and sections 2 and 4 through 11 shall survive the termination of this Agreement, to the extent applicable. **Client is advised that upon termination of this Agreement and/or BoomTown direct Agreement Client shall no longer have access or use to the semi-custom design templated contemplated in the Services.**

3. Intellectual Property and License.

3.1 Intellectual Property Rights.

(a) Client's Ownership of Intellectual Property Rights. Client shall retain all right, title, and interest in and to any and all intellectual property rights contributed by Client in connection with the Services contemplated herein, including any trademark, trade dress, images, and works of authorship ("**Client IP**"). Client grants a limited license to W8LESS for use of the Contributed IP strictly in connection with the activities provided in the Agreement, and Client represents and warrants to W8LESS that Client has the unfettered right to grant such a limited license to W8LESS.

(b) W8LESS's Ownership of Intellectual Property Rights. Client acknowledges that certain Services are provided pursuant to the use of valuable intellectual property rights of W8LESS and/ or its licensors and embodies substantial creative efforts and Confidential Information (defined herein) of W8LESS and/ or its licensors. As between the parties, W8LESS shall retain all right, title and interest in and to such intellectual property rights, including without limitation its semi-custom design templates ("**W8LESS IP**"), subject to the limited license rights (if any) expressly granted to Client as set forth in this Agreement. W8LESS hereby grants to Client, and Client hereby accepts from W8LESS, a non-exclusive license to use W8LESS IP solely for Client's purposes in connection with its business operations during the term of this Agreement, subject to the terms and conditions set forth in this Agreement.

3.3 No Contrary Action. Neither party shall, at any time during or after the term, do anything that may adversely affect the validity or enforceability of any of the intellectual property rights belonging or licensed to the other party.

3.4 Third Party and Open Source Software. The Services may include certain third-party software (including open-source software), which is governed by the applicable license terms thereof ("**Third Party Terms**"). The use of such third-party software and/ or open-source software bundled within the Services is subject to the provisions of such Third Party Terms, and in the event of any contradiction between the provisions of this Agreement and the Third Party Terms, the provisions of the Third Party Terms shall prevail solely with respect to such third party software and/ or open source software.

3.5 W8LESS's Marketing Materials. W8LESS shall be permitted to display Client's project within any of W8LESS's marketing materials upon written consent by Client.

#### 4. Confidentiality.

4.1 Company and Client agree not to disclose or communicate the terms of this Agreement nor any other information deemed confidential by either Company or Client, in any manner, either during or after the term of this Agreement. Company and Client agree not to use any Confidential Information (defined below) of the other party for any purpose except to conduct and complete the Services. Neither party shall disclose, or permit the disclosure of, the other party's Confidential Information to its employees, except that Company may disclose Confidential Information to those Company employees who are required to have the Confidential Information in order to conduct and complete the Services. For purposes of this section, the party receiving Confidential Information shall be the "Receiving Party" and the party disclosing Confidential Information shall be the "Disclosing Party."

4.2 "**Confidential Information**" includes, but is not limited to, all sketches, mock-ups, designs, illustrations, fonts, graphics, strategic information, formulations, procedures, business records and plans, concepts, prototypes, products, product design information, product plans, services, research, marketing plans, pricing structure, costs, service marks, trademarks, copyrights and other intellectual property and any or all other information which may be disclosed by either party in the course of performance of the terms of this Agreement. Confidential Information shall not, however, include any information that the Receiving Party can establish: (i) was publicly known or made generally available without a duty of confidentiality prior to the time of Disclosing Party's disclosure to the Receiving Party; (ii) becomes publicly known or made generally available without a duty of confidentiality after the Disclosing Party's disclosure to the Receiving Party through no action or inaction of the Receiving Party; or (iii) is in the rightful possession of the Receiving Party without confidentiality obligations at the time of the Disclosing Party's disclosure to the Receiving Party, as shown by the Receiving Party's then-contemporaneous written files and records kept in the ordinary course of business; provided that any combination of individual items of information shall not be deemed to be within any of the foregoing exceptions merely because one or more of the individual items are within such exception, unless the combination as a whole is within such exception.

4.3 If the Receiving Party becomes legally compelled to disclose any Confidential Information, other than pursuant to a confidentiality agreement, the Receiving Party will provide the Disclosing Party prompt written notice of such disclosure and will assist the Disclosing Party in seeking a protective order or another appropriate remedy. If the Disclosing Party waives the Receiving Party's compliance with this Agreement or fails to obtain a protective order or other appropriate remedy, the Receiving Party will furnish only that portion of the Confidential Information that is legally required to be disclosed; provided that any Confidential Information so disclosed shall maintain its confidentiality protection for all purposes other than such legally compelled disclosure.

4.4 Equitable Relief. Each party acknowledges that the unauthorized use or disclosure of the Disclosing Party's Confidential Information may cause the Disclosing Party to incur irreparable harm and significant damages, the degree of which may be difficult to ascertain. Accordingly, each party agrees that the Disclosing Party will have the right to seek immediate equitable relief to enjoin any unauthorized use or disclosure of its Confidential Information, in addition to any other rights and remedies that it may have at law or otherwise.

5. Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, W8LESS MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND WITH RESPECT TO THE SERVICES AND THE W8LESS IP, AND EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, DESIGN, COMPATIBILITY WITH CLIENT SYSTEMS, NON-INFRINGEMENT, AND UNINTERRUPTED SERVICE. THERE SHALL BE NO REPRESENTATION OR WARRANTY MADE BY W8LESS OR ANY OF ITS EMPLOYEES, OFFICERS, AGENTS OR REPRESENTATIVES, ORAL OR OTHERWISE, REGARDING THE SERVICES AND THE W8LESS IP OTHER THAN THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT.

6. LIMITATION OF LIABILITY. WITH THE EXCEPTION OF THE INDEMNIFICATION IN SECTION 7, WHICH SHALL NEITHER BE CAPPED NOR LIMITED, IN NO EVENT SHALL ONE PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR USE, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL ONE PARTY'S AGGREGATE LIABILITY FOR DAMAGES UNDER THIS AGREEMENT EXCEED THE AMOUNT OF FEES PAID OR PAYABLE BY THE CLIENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENTS GIVING RISE TO THE CLAIM.

7. Indemnification. Client agrees to indemnify, defend, and hold harmless W8LESS, Boomtown, and their respective members, directors, officers, agents, and employees from and against any and all claims, demands, liabilities, damages, losses and expenses (including reasonable attorneys' fees) arising out of or related to Client's (i) negligence or willful misconduct; (ii) breach of this Agreement (including sections 3 or 4); or (iii) violation of any law, rule, or regulation.

8. Relationship Between the Parties. The relationship between the parties is that of independent contractors. Nothing contained herein shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

9. Notices. All notices required or permitted to be given hereunder shall be in writing and shall be (i) personally delivered to the party, (ii) sent by certified mail, postage prepaid, (iii) sent by electronic mail to the email address of record, or (iv) sent by prepaid overnight nationally recognized courier, properly addressed to a party at the address set forth below its signature hereto or at such other address as shall be designated by such party in a written notice to the other party. All such notices and communications shall be effective (i) if personally delivered, when delivered, (ii) if sent by certified mail, three days after having been deposited in the mail, postage prepaid, (iii) if sent by electronic mail, upon delivery of the email, or (iv) if sent by overnight courier, one business day after having been given to such courier.

10. Miscellaneous. Apart from the pricing as contemplated in Section 2, this Agreement may not be amended, changed, or modified except by in writing signed by duly authorized representatives of the parties hereto. Neither party shall assign this Agreement, in whole or in part, without the prior written consent of the other party, except that either party may assign this Agreement in the event of a change in control of such party, by merger or otherwise, or a sale of all or substantially all of such party's assets. This Agreement constitutes the entire agreement of the parties hereto respecting the subject matter hereof and shall supersede and replace all prior and contemporaneous agreements and understandings between the parties hereto concerning the subject matter hereof. This Agreement is made and entered into for the sole benefit of the parties hereto, their successors and permitted assigns, and no other person shall be a direct or indirect beneficiary of or have any direct or indirect cause of action or claim under or in connection with this Agreement. The provisions of this Agreement shall be deemed to be independent and several in that the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof, and this Agreement shall be construed as if such unenforceable provision had not been contained herein. The waiver of any breach of this Agreement by any party hereto shall not constitute a continuing waiver, or a waiver of any other breach, of the same or any other provision of this Agreement.

11. Governing Law/ Dispute Resolution. The Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina without regard to its conflict or choice of law provisions. Except for Client's violation or threatened violation of Sections 3 or 4, for which W8LESS may pursue in court, in the event of a dispute over the Agreement (each a "*Dispute*"), the party initiating the Dispute shall provide written notice to the other party, and such notice shall separately identify each and every issue in dispute, the amount which is disputed (if any) and the amounts not subject to the Dispute (if any), and the specific reasons for the Dispute alleged by the disputing party. Both parties shall negotiate in good faith to resolve such Dispute within thirty (30) days after the date of written notice from a party notifying the other party of the Dispute. If the parties are unable to reach a resolution of the Dispute after following the above procedure, or if either party fails to participate when requested, then either party may pursue arbitration as provided herein. Except for Client's violation or threatened violation of Sections 3 or 4, for which W8LESS may pursue in court, any Dispute arising out of or relating to the Agreement or the breach thereof shall be resolved through arbitration in accordance with the South Carolina Uniform Arbitration Act, Title 15, Chapter 48 of the Code of Laws of South Carolina. The decision of the arbitrator shall be binding and conclusive upon each

party. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Each party shall bear its own costs and expenses, including but not limited to attorneys' fees, associated with such arbitration, and the fees and costs for the arbitrator shall be borne as determined by the arbitrator.

12. Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and all such counterparts collectively will be deemed an original of this Agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission or signature (e.g., DocuSign) shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

The parties have made this Agreement effective as of the Effective Date.

Please send all inquiries to the following email address:

**W8LESS, LLC**

General Questions: [BoomTown@gow8less.com](mailto:BoomTown@gow8less.com)

Payment Questions: [Billing@gow8less.com](mailto:Billing@gow8less.com)

Termination Notice: [Boomtown@gow8less.com](mailto:Boomtown@gow8less.com)