

**BLACK HILLS BUSINESS DEVELOPMENT CENTER  
SERVICES AGREEMENT**

This Services Agreement (the “Agreement”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 200\_\_ (the “Effective Date”), between BLACK HILLS BUSINESS DEVELOPMENT CENTER, a South Dakota nonprofit corporation (“BHBDC”) and \_\_\_\_\_ (the “CLIENT”).

RECITALS:

WHEREAS, it is the purpose of BHBDC to diversify and expand the regional economy by providing “best practices” incubator services and networking opportunities to qualified new and early-stage technology-based companies; and

WHEREAS, CLIENT has applied for, and has been granted, acceptance as a CLIENT of BHBDC on the basis of the suitability of CLIENT to take advantage of the resources and services of BHBDC in contributing to the fulfillment of the BHBDC purpose set forth above; and

WHEREAS, in furtherance of such purpose, BHBDC has constructed a facility located at 525 University Loop, Rapid City ,South Dakota 57701 (the “Building”) located on the South Dakota School of Mines & Technology Campus with a ground lease from the South Dakota Board of Regents; and

WHEREAS, in conjunction with the execution of this Services Agreement, CLIENT and BHBDC are also entering into a Lease Agreement, dated as of the Effective Date (the “Lease Agreement”).

NOW, THEREFORE, in consideration of the premises and the mutual promises made herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Programs and Services of BHBDC; Payment.

- 1.1 BHBDC agrees to make available to CLIENT those services (the “Services”) set forth in Exhibit A attached hereto which have been attested to by CLIENT and BHBDC. CLIENT agrees to pay BHBDC for such Services at the rates set forth in Exhibit A in the manner set forth in Section 1.4. CLIENT agrees that BHBDC may amend rates for Services in Exhibit A from time to time upon thirty (30) days written notice and by providing a revised Exhibit A to CLIENT. CLIENT agrees to either accept such amended rates by initialing Exhibit A within ten (10) days of receipt or terminate any or all Services within such ten (10) day period. If CLIENT fails to either initial the amended Exhibit A or terminate any or all Services within ten (10) days of receipt of an amended Exhibit A, CLIENT shall be deemed to have accepted the amended rates.

- 1.2 Any charges and costs incurred in connection with CLIENT's use of such Services shall be at the then current rates charged to other clients of BHBDC. CLIENT may, upon thirty (30) days written notice to BHBDC, terminate any and all of the Services elected on Exhibit A.
- 1.3 CLIENT will pay (or reimburse BHBDC) all taxes resulting from this Agreement, exclusive of real and personal property taxes on BHBDC owned building and equipment and income taxes.
- 1.4 BHBDC shall provide CLIENT an invoice for Services charges and taxes on or about the first (1<sup>st</sup>) day of each month. CLIENT shall make available all information necessary and authorize BHBDC to debit CLIENT's banking account for all Services charges and taxes due hereunder on the fifteenth (15<sup>th</sup>) day of such month.
- 1.5 CLIENT recognizes and acknowledges that the business venture to be undertaken by the CLIENT under the Lease Agreement and this Agreement depends upon the ability of the CLIENT as an independent business person, as well as other factors, such as market and economic conditions beyond the control of BHBDC and CLIENT. CLIENT acknowledges that the success or failure of CLIENT's business enterprise will depend upon the business acumen and diligence of CLIENT. CLIENT agrees that success or failure of CLIENT's business will not depend upon the Services provided by BHBDC under this Agreement and that BHBDC makes no representations or warranties as to the success of CLIENT's business.

## Section 2. Term and Termination

Subject to the provisions of Sections 1.2 and 7, the term of this Agreement shall begin and end on the same dates on which the Lease Term under the Lease Agreement begins and ends.

## Section 3. CLIENT Responsibilities

CLIENT agrees to the standards and requirements regarding use of BHBDC Services that are set forth in Client Manuel provided by separate document. CLIENT agrees that BHBDC may amend such standards and requirements from time to time upon ten (10) days written notice and providing CLIENT with an amended version of Client Manuel.

## Section 4. Disclaimer of Warranty and Limitation of Remedies.

CLIENT UNDERSTANDS AND AGREES AS FOLLOWS:

- A. THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF

MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH OTHER WARRANTIES ARE HERBY DISCLAIMED AND EXCLUDED BY BHBDC.

- B. BHBDC SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY DELAY IN FURNISHING SERVICES OR ANY OTHER PERFORMANCE UNDER OR PURSUANT TO THIS AGREEMENT.
- C. BHBDC SHALL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY LOSS OF CLIENT DATA, ERRORS IN SOFTWARE OR DATA INPUT ERRORS.
- D. IN NO EVENT SHALL BHBDC'S LIABILITY OF ANY KIND INCLUDE ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, EVEN IF BHBDC SHALL HAVE KNOWLEDGE OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.
- E. IF BHBDC FAILS TO FULFILL ITS OBLIGATIONS TO PROVIDE SERVICES UNDER THIS AGREEMENT, CLIENT'S SOLE AND EXCLUSIVE REMEDY IS THE RIGHT TO RECOVER AN EQUITABLE AMOUNT NOT TO EXCEED CHARGES PAID TO BHBDC FOR THE PARTICULAR SERVICES ORDER IN QUESTION.

Section 5. Confidentiality.

BHBDC agrees that all confidential information conspicuously marked confidential by CLIENT ("Confidential Information") and communicated to BHBDC with respect to the Services, including any Confidential Information gained by BHBDC or its representatives by reason of association with CLIENT or its associates, is confidential. CLIENT shall be solely responsible to mark as confidential any materials to be protected pursuant to this section 5. SDTBC agrees that it shall not intentionally disclose any Confidential Information to any other person unless specifically authorized in writing by CLIENT to do so, except to the extent disclosure is required by subpoena or an order from a court of competent jurisdiction. BHBDC shall use its best efforts to prevent inadvertent disclosure of any Confidential Information to any third party.

Section 6. Indemnification

CLIENT agrees to defend, indemnify and hold harmless BHBDC, its members, directors, officers, employees, agents, representatives and contractors, from all costs, expenses (including attorney's fees), liabilities, obligations, damages and claims (including any claims for injury to the person or property of any other tenant or client of the Building and claims by any governmental authority) arising, directly or indirectly, from the negligence, misconduct or breach of any provision of this Agreement by CLIENT or any other person participating in or using BHBDC's Services by the express or implied invitation of CLIENT.

## Section 7. Default of Client

The following events shall constitute defaults by CLIENT under this Agreement:

- A. CLIENT fails to pay any amount required to be paid by CLIENT under this Agreement at the time and place when and where due;
- B. CLIENT fails to comply with any other provision of this Agreement; or
- C. Any event occurs which constitutes a default of CLIENT under the Lease Agreement, or which would become such a default with the giving of notice or the passage of time, or both.

Upon the occurrence of an event specified in this Section 7, BHBDC shall have the option to terminate this Agreement and/or to proceed according to any remedies available at law or in equity.

## Section 8. Independent Contractor Relationship.

The parties agree that BHBDC shall be an independent contractor and under no circumstances shall BHBDC or its officers, directors, employees, or agents be considered employees or agents of CLIENT. BHBDC shall have sole responsibility for paying any compensation due to its employees or agents and any taxes payable in connection therewith. The parties further agree and acknowledge that the relationship hereunder shall not be considered or deemed to be a partnership, joint venture, or similar relationship.

## Section 9. Miscellaneous Provisions.

- A. Benefit. This Agreement shall bind the parties hereto and shall inure to and be binding upon their respective legal representatives, successors, heirs and assigns.
- B. Entire Agreement; Amendment; and Waiver. This instrument contains the entire agreement of the parties. It may not be changed orally but only by an agreement in writing signed by the party against whom the enforcement of any waiver, change, modification, extension or discharge is sought. A waiver of any term or provision shall not be construed as a waiver of any other term or provision or as a waiver of subsequent performance of the same provision of this Agreement.
- C. Severability. The parties agree that if any part, term, paragraph or provision of this Agreement is in any manner held to be invalid, illegal, void or in any manner unenforceable, or to be in conflict with any law of the State of South Dakota, then the validity of the remaining portions or provisions of this Agreement shall not be affected, and such part, term, paragraph or provision shall be construed and enforced in a manner designed to effectuate the intent expressed in this Agreement to the maximum extent permitted by law.

- D. Assignment. Except as otherwise provided in this Agreement, this Agreement is made for the personal benefit of the parties hereto, and neither party may assign this Agreement, or any part thereof, or delegate any duty or obligation imposed by this Agreement without the express written consent of the other party hereto.
  
- E. Captions. The captions and titles utilized in this Agreement are for convenience of reference only, and shall not be deemed to define or limit any of the terms, conditions or provisions of this Agreement.
  
- F. Governing Law; Forum. This Agreement and all obligations created hereunder or required to be created hereby shall be governed by and construed and enforced in accordance with the laws of the State of South Dakota, and the parties hereby agree that the State Circuit Court situated in Pennington County, South Dakota, shall be the exclusive jurisdiction and venue of any disputes relating to this Agreement and each of the parties hereto consents to personal jurisdiction in said Court.
  
- G. Notices. All notices required to be given by this Agreement shall be made in writing either by (i) personal delivery to the party requiring notice and securing a written receipt; or (ii) mailing notice in the United States mail to the last known address of the party requiring notice, by certified mail, return receipt requested. The effective date of the notice shall be the date of the written receipt or the date of the return receipt, as applicable. The refusal of a party to accept a certified mail letter shall be treated as the delivery of the letter as of the date of refusal. All notices shall be addressed as indicated below unless notified in writing of a change in address by the other party:

To BHBDC	Black Hills Business Development Center 525 University Loop Rapid City, SD 57701 ATTN: <u>CEO</u>
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To CLIENT:	_____
	_____
	_____
	ATTN: _____

- H. Expenses. Each party hereto shall pay its own expenses incurred in connection with this Agreement, whether or not consummated, including, without limitation, accounting and attorneys' fees.
  
- I. Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same Agreement, and shall become effective when one or more such counterparts have been signed by each party and delivered to the other party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

Black Hills Business Development Center

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

CLIENT