

Executech.

**NON-SOLICITATION AGREEMENT
BETWEEN
EXECUTECH UTAH, INC.
AND CITY OF BISBEE, AZ**

NON-SOLICITATION & IT SERVICES AGREEMENT

THIS NON-SOLICITATION & IT SERVICES AGREEMENT (the "Agreement"), is effective as of the 13th day of November 2017, between Executech Utah, Inc., a Utah Corporation (the "Company") and City of Bisbee, AZ an organization engaging the services of the Company (the "Undersigned"). Collectively, the Company and the Undersigned will hereinafter be referred to as the "Parties".

RECITALS

WHEREAS, the Undersigned desires to solicit the services of the Company and the Company is willing to offer said services at an agreed upon rate;

WHEREAS, the Company desires to provide certain IT services and other business activities and the Undersigned desires to accept certain IT services and other business activities in accordance with the service agreement (" Proposal") heretofore signed;

WHEREAS, the Proposal is incorporated herein by reference only and the Agreement is not intended to nor does it cause any alteration to the terms of the Proposal unless the Parties agree to a material change and witness such intention;

NOW THEREFORE, in consideration of the mutual covenants contained herein and as an inducement to the Company to offer services to the Undersigned, the Parties hereto do hereby mutually agree and covenant as follows:

AGREEMENT

Article 1. NATURE OF THE RELATIONSHIP BETWEEN THE PARTIES

1.1. **The Company's Business.** As part of its business structure, the Company provides IT and other related business services to its clientele, including the Undersigned. The Company, through its employees, handles both on-site and off-site technical issues of its clientele, including the Undersigned. As contemplated in the Proposal, the Company may send Company employees to the Undersigned's location to diagnose, set up, solve and or implement technical solutions according to the needs of the Undersigned.

1.2. **The Company's Employees.** The Company hires and trains its employees in highly technical areas in order to fulfill a commitment to excellence and maintain its exceptional service obligation. The Company does so through great expense, both monetary and time-labor, and continues on-going training for its employees. The Undersigned hereby acknowledges that process and further accepts the Proposal with the Company because of the expertise of the Company and its employees.

1.3. **Confidential Information.** The Undersigned expressly acknowledges that the Company now possesses or will possess information of a confidential or secret nature in both written and unwritten form that has unique commercial value ("Confidential Information"). For purposes of this Agreement, Confidential Information includes, without limitation, trade secrets, processes, methods, computer programs or databases, data, know-how, inventions, improvements, techniques, marketing plans, product plans, strategies, and forecasts. The Undersigned expressly acknowledge that the Undersigned's relationship with the Company creates a relationship of trust and confidence between the Undersigned and the Company with respect to the Confidential Information and covenants not to use, disclose, disseminate, re-brand or solicit the use of said Confidential Information without the prior written consent of the Company.

1.4. **Obligations upon Termination of Relationship.** As per the terms of the Proposal, the relationship between the Parties may one day be terminated. At said time of termination the terms of this Agreement remain and all obligations regarding non-disclosure and non-solicitation will remain valid for as long as the Company remains in business. Further, should the Undersigned elect to start a new venture the Undersigned hereby expressly acknowledges that this Agreement will follow him/her personally and survives the termination/expansion of any business venture undertaken.

Article 2. NON-SOLICITATION OF COMPANY'S EMPLOYEES

The Undersigned hereby expressly recognizes the expertise of the Company's employees and covenants to not solicit any of the Company's employees for work not contemplated in the Proposal, including but not limited to private use of the employee by the Undersigned or its affiliate; making offers to the employee in an attempt to lead said employee from the Company and to the Undersigned; requesting any information regarding the Company or its employees that is not contemplated by the Proposal and/or has not been authorized by the Company; attempting to engage the employee in "side work" or "moonlighting prospects" in which the employee would do work for the Undersigned, or one of its affiliates, outside of the scope of the Proposal regardless of whether the employee would or would not receive additional compensation not expressly stated in the Proposal; any and all attempts to disenfranchise the employee from his/her employment relationship with the Company; making any attempt whatsoever, in any degree, to solicit work from the Company employee, either on a contractual basis, as party to a competitor of the company, or through full-time employment.

Article 3. REMEDIES FOR BREACH

3.1. **Liquidated Damages.** If the Undersigned breaches its obligation as referenced in this Agreement and reincorporated by reference herein, the Undersigned shall pay the amount equivalent to: 1) two (2) years' worth of the attached proposal or 2) two (2) years' worth of the labor portion of the most recent invoice received by the client or 3) the total amount of all labor charges to client over the past two (2) years. (whichever of the three is greater).

The Parties agree that quantifying losses arising from a breach of this Agreement is inherently difficult insofar as it is not commercially reasonable or feasible to assign an employee's value to the Company given the expense, both monetary and time-labor, to train and present the employee as ready to represent the Company to the clientele, including the Undersigned. Further, the Company is extraordinarily detailed in its training so as to fulfill an excellent service commitment for its customers and any solicitation to draw away employees from the Company, whether successful or not, damages the Company's reputation and may require the Company to provide non-monetary concessions to future clients.

The Parties stipulate that the agreed upon sum is not a penalty, but rather a reasonable measure of damages based upon the Company's expertise in the I.T. services industry and given the nature of the damage that may result from breach of this Agreement.

Article 4. GENERAL PROVISIONS

The following provisions are integral parts of this Agreement:

4.1. **Binding Agreement.** This Agreement shall be binding upon and shall inure to the benefit of the successors, assigns, personal representatives, heirs, and legatees of the respective parties hereto, and any entities resulting from the reorganization, consolidation, or merger of any party hereto.

4.2. **Captions.** The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or effect in any way the meaning, scope, or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

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- 4.3. **Gender.** As used herein, all pronouns shall include the masculine, feminine, neuter, singular, and plural thereof, wherever the context and facts require such construction.
- 4.4. **Entire Agreement.** This Agreement constitutes the final and entire agreement with respect to the subject matter hereof and supersedes any prior written or oral agreements pertaining to the subject matter of this Agreement.
- 4.5. **Survival.** This Agreement shall survive the termination of the relationship between Company and Undersigned.
- 4.6. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original but all of which shall together constitute one and the same instrument. Digital copies of this agreement are considered acceptable.
- 4.7. **Severability.** The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable, or invalid, such void, voidable, unenforceable, or invalid provision shall not affect any other provision in this Agreement.
- 4.8. **Waiver of Breach.** Any waiver by any other party hereto or any breach of any kind or character whatsoever by the other party or parties, whether such be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of this Agreement on the part of the other party or parties.
- 4.9. **Cumulative Remedies.** The several rights and remedies herein expressly reserved to each of the parties shall be construed as cumulative; and none of them shall be exclusive of, or in lieu or limitation of, any other right, remedy, or priority allowed by law.
- 4.10. **Modifications.** This Agreement may not be amended nor may any rights hereunder be waived except by written agreement of the parties.
- 4.11. **Time of Essence.** The parties agree that time is of the essence in the performance of all duties herein.
- 4.12. **Attorneys' Fees.** The parties agree that should either party be determined by a court of competent jurisdiction to have been in breach of this Agreement, the non-breaching party is entitled to recover all costs and expenses, including reasonable attorneys' and expert witness fees incurred by the party.
- 4.13. **Notices.** All notices required or permitted to be given hereunder shall be duly given if delivered or mailed by registered or certified mail, postage prepaid, addressed to the addressee as follows:

COMPANY:
 Executech Utah, Inc.
 10813 South Riverfront Parkway, #410
 South Jordan, UT 84095

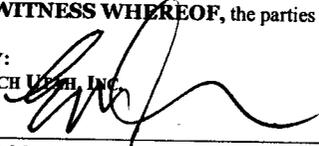
UNDERSIGNED:
 Name: City of Bisbee
 Address: 1415 Melody Lane Bldg. G
 City, State, Zip: Bisbee, AZ 85603

Any party shall have the right to specify in writing in the manner above provided another address to which subsequent notices shall be given. Any notice given hereunder shall be duly given as of the date hand delivered or mailed.

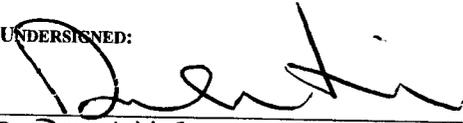
- 4.14. **Exhibits.** Each exhibit that may be attached hereto shall be incorporated into and be a part of this Agreement.
- 4.15. **Recitals.** The recitals and party identifications are incorporated into and shall be a part of this Agreement.
- 4.16. **No Presumption.** Should any provision of this Agreement require judicial interpretation, the Court interpreting or consulting the same should not apply a presumption that the terms hereof shall be more strictly construed against one party, by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agents prepared the same, it being acknowledged that all parties have participated in the preparation hereof and that each party acknowledges that he or she has had an adequate opportunity to read and study this Agreement, to consider it, and to consult with attorneys if he or she so desired.
- 4.17. **Governing Law and Jurisdiction.** This Agreement, and the application or interpretation thereof, shall be governed exclusively by its terms and by the laws of the State of Utah. The parties agree that in the event any action relating to or arising from this Agreement occurs, said state is hereby designated as jurisdiction and venue to hear such action. The parties hereby agree to bring any such action before the Courts of said state and, in addition, to submit themselves to the jurisdiction of the Courts of said state.
- 4.18. **Further Assurances.** Each party will do such acts, and execute and deliver to any other party such additional documents or instruments as may be reasonably requested in order to effect the purposes of this Agreement and to better assure and confirm to the requesting party its rights, powers and remedies under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written.

COMPANY:
 EXECUTECH UTAH, INC.

By: 
 Its: President

UNDERSIGNED:

By: 
 Its: Mayor, City of Bisbee

STANDARD CONTRACT ADDENDUM

The following terms are added to and form a part of the Non-Solicitation Agreement between the City of Bisbee, Arizona ("City") and Executech Utah, Inc. ("Contractor"):

1. **NON-DISCRIMINATION:** The parties shall comply with all applicable state and federal statutes and regulations governing Equal Employment Opportunity, Non-Discrimination, and Immigration.
2. **CONFLICT OF INTEREST:** This Contract is subject to cancellation pursuant to the provisions of A.R.S. § 38-511 regarding Conflict of Interest.
3. **INSPECTION AND AUDIT:** The Contractor agrees to keep all books, accounts, reports, files and other records relating to this Contract for five (5) years after completion of this contract. In addition, the Contractor agrees that such books, accounts, reports, files and other records shall be subject to audit pursuant to A.R.S. § 35-214.
4. **ARBITRATION:** The parties agree that any dispute arising under this Contract involving the sum of \$50,000 or less in money damages only shall be resolved by arbitration pursuant to A.R.S. § 12-1501 et. seq. The decision of the arbitrator(s) shall be final.
5. **INDEMNIFICATION AND HOLD-HARMLESS CLAUSES:** Each party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable court-awarded attorney's fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.
6. **PUBLIC RECORDS LAWS:** Notwithstanding any confidentiality provisions in this Contract to the contrary, disclosure of any documents or records are subject to the public records provisions of Arizona law, A.R.S. § 39-121 et. seq.
7. **JURISDICTION AND LAW:** Notwithstanding any provision in this Contract to the contrary, the Contract shall be governed by Arizona law and jurisdiction shall be in Arizona courts with venue in Cochise County, Arizona.
8. **BOYCOTT OF ISRAEL:** In accordance with ARS § 35-393.01, Contractor certifies that the Contractor is currently not engaged in, and for the duration of this Agreement agrees not to engage in, a boycott of Israel.

Executech Utah, Inc.

City of Bisbee



By: Eric C. Montague, President

11/15/2017

Date



David Smith, Mayor

11/27/17

Date