

# Service Agreement

This service agreement ("**AGREEMENT**") is a binding AGREEMENT between the signing business ("**BUSINESS**" or "**YOU**" as indicated via the information provided at point of registering for services) and BJC Branding LLC (DBA MyReviewDashboard), a Massachusetts corporation with a mailing address of 18 Owl Drive, Sharon, MA 02067 ("**PROVIDER**"). By going through the online registration process and entering this AGREEMENT YOU, the individual registering BUSINESS, represents and warrants that YOU have the right to bind BUSINESS to this AGREEMENT.

1. **Purpose.** PROVIDER has put together a suite of digital services as listed in Exhibit A (the "**SERVICES**"), that it makes available to businesses. In exchange for performing SERVICES, PROVIDER will charge BUSINESS a recurring subscription fee ("FEE" or "FEES"). The SERVICES made available to BUSINESS shall be subject to this AGREEMENT.

1. **Services.**

1. **Designated Services.** Subject to the TERM of this AGREEMENT, and the payment of all FEES due, PROVIDER will make the Services available to BUSINESS during the TERM of this AGREEMENT (the "**TERM**"). Specific terms and conditions applicable to each SERVICE are set forth in Exhibit A, which is hereby incorporated by reference.
2. **Trademark License.**
  - i. In order to assist PROVIDER in providing certain Services, BUSINESS may provide PROVIDER with BUSINESS's trademarks, service marks, trade names, logos, company names, or other similar designations (the "**BUSINESS MARKS**"). By providing the BUSINESS MARKS to PROVIDER, BUSINESS hereby grants PROVIDER a limited, non-exclusive, sub licensable, irrevocable (during the TERM of this AGREEMENT), royalty-free license to use, copy, modify, display, and distribute the BUSINESS Marks for the purpose of providing the SERVICES. PROVIDER may modify how the BUSINESS Marks appear in the SERVICES in its sole discretion.
3. **Modifications and Suspension of Services.** PROVIDER may add, modify, or remove any features and functionalities of the SERVICES at any time. PROVIDER may also suspend or discontinue any of the SERVICES, in whole or in part, at any time. BUSINESS will receive a 30 day notice prior to any material changes to, or discontinuance of, SERVICES by PROVIDER.
4. **Privacy and Communications with End-Users.** Certain Services may enable BUSINESS to communicate directly with end users. BUSINESS acknowledges that SERVICES are not currently designed with the security or encryption necessary for sending confidential or health information, and should not be used to communicate confidential or Protected Health Information (as that term is defined in the Health Insurance Portability and Accountability Act). Both parties agree not to share with, or solicit from the other party, any individually identifiable information obtained pursuant to the Services, if any. BUSINESS is solely responsible for any communications sent via the SERVICES and shall indemnify, defend, and hold harmless PROVIDER from and against all third-party claims arising out of BUSINESS' communications through the SERVICES.

1. **Fees and Payment.**

1. **FEES.** PROVIDER will charge BUSINESS the monthly FEES (the "**FEES**") associated with their corresponding SERVICES as detailed on the registration page and in the receipts(s) received by BUSINESS. If PROVIDER offers BUSINESS a promotional

discount, coupon, or incentive, BUSINESS acknowledge that the FEES will return to the amounts set forth on the registration page. PROVIDER reserves the right to change the FEES at any time with 30 days written notice to BUSINESS. Changes to FEES will be effective on the renewal date of this AGREEMENT.

2. **Payment.** BUSINESS will pay the FEES for SERVICES on a monthly basis. PROVIDER will charge BUSINESS' credit card on file for the FEES and BUSINESS is responsible for ensuring that the credit card information on file with PROVIDER is current at all times. Missed billing cycles, for any reason, may result in loss or interruption of service from PROVIDER. **All FEES paid are nonrefundable even if BUSINESS cancels the SERVICES prior to the end of the then-current billing cycle.**
  
1. **Limited Warranty and Disclaimer of Warranties.** PROVIDER represents and warrants that it will provide the SERVICES in a good and workmanlike manner. Except for the foregoing limited warranty, the SERVICES are provided "as is" and without warranty of any kind. PROVIDER expressly disclaims all other warranties, whether expressed, implied, statutory, or otherwise, under this agreement, including all implied warranties of merchantability, fitness for a particular purpose, titles and non-infringement. PROVIDER does not warrant, guarantee, or make any representations regarding the use of or results of the use of the SERVICES. BUSINESS' sole remedy for any breach of the foregoing limited warranty is for PROVIDER to reperform the SERVICES.
  
1. **Limitation of Liability.** In no event will PROVIDER or any of its subsidiaries or affiliates be liable for any indirect, special, incidental, punitive, or consequential damages, including, but without limitation, loss of business, or loss of profits damages, even if advised of the possibility thereof. PROVIDER'S liability arising out of or relating to this agreement, the SERVICES, arising under any theory of law (including claims of breach, tort (including negligence), strict liability, or otherwise), shall not exceed the greater of (I) the FEES paid to PROVIDER by BUSINESS during the six-month period preceeding the date on which the claim arose, or (II) \$50 (USD). BUSINESS acknowledges that this represents a reasonable allocation of risk between the parties and that PROVIDER would not make the SERVICES available for the FEES charged but for this allocation of risk.
  
1. **Term and Termination.**
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    1. The TERM of this AGREEMENT, as defined on registration page, begins when BUSINESS completes the registration process and shall continue until terminated as permitted below. Either party may terminate this AGREEMENT by providing written notice of termination if the other party materially breaches this AGREEMENT and fails to cure the breach within thirty days of receiving written notice that describes the breach in reasonable detail. Either party may terminate this AGREEMENT for convenience by providing the other party with written notice of termination at least 30 days prior to the specified date of termination. Upon any termination of this AGREEMENT, PROVIDER may stop providing BUSINESS with SERVICES. PROVIDER may stop providing BUSINESS with SERVICES if the original developer terminates SERVICES entirely. In this case, PROVIDER will pro-rate refund based on FEES paid for SERVICES not rendered during AGREEMENT TERM.

2. Upon any termination of this AGREEMENT within the first twelve (12) months of SERVICES, BUSINESS may purchase its custom domain for \$25 (USD). BUSINESS acknowledges that this represents a reasonable FEE.
2. Effect of Termination. BUSINESS will continue to receive applicable SERVICES for the remainder of their most recent AGREEMENT TERM (billing cycle), and will continue paying FEES through the TERM of the current AGREEMENT. All other effects of termination other than what is detailed above, specific to BUSINESS, will be sent via email to BUSINESS.

1. **Miscellaneous.**

1. Relationship of Parties. The relationship between the parties is that of independent contractors. Nothing contained in this AGREEMENT shall be construed as creating any agency, partnership, joint venture, Business Associate (as defined in HIPAA section 160.103), 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.
2. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and addressed as follows: (i) if to PROVIDER, at 18 Owl Drive, Sharon, MA 02067, and (ii) if to BUSINESS, at the physical address or the email address provided upon registration. BUSINESS is responsible for updating PROVIDER of any changes in BUSINESS's email address, and for ensuring that BUSINESS's email address is able to receive emails from PROVIDER. Notices shall be deemed effectively given: (a) when received, if delivered by hand, sent by a nationally recognized overnight courier; (b) when sent, if sent via email to BUSINESS; or (c) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.
3. Amendment and Modification. PROVIDER reserves the right to modify this AGREEMENT at any time. Any such changes will be effective immediately upon PROVIDER sending notice of the change to the email address provided upon registration, and will be considered acknowledged by BUSINESS continuing to use SERVICES related to this AGREEMENT. If BUSINESS does not wish to be bound by the AGREEMENT as modified, then BUSINESS can terminate this AGREEMENT by providing written notice of termination to PROVIDER within 30 days of receiving notice of the change. Any termination under this Section 7.3 will be effective upon PROVIDER's processing of the termination and discontinuation of the SERVICES. All modifications to this AGREEMENT, including but not limited to, adding or removing SERVICES, changes to AGREEMENT TERM, and changes to BUSINESS information, will be communicated via email. If modifications are made by PROVIDER, PROVIDER will notify BUSINESS via email using the contact information provided. BUSINESS acknowledges that modifications to AGREEMENT communicated via email are considered legally binding and effective as of the date the email was sent.
4. Entire Agreement. This AGREEMENT constitutes the sole and entire AGREEMENT of the parties with respect to the subject matter of this AGREEMENT and supersedes all prior and contemporaneous understandings, AGREEMENTs, representations, and warranties, both written and oral, with respect to such subject matter. The headings in this AGREEMENT are for reference only and do not affect the interpretation of this AGREEMENT. The word "including" in this AGREEMENT shall be construed without limitation as "including, but not limited to." This AGREEMENT is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this AGREEMENT.

5. Assignment. BUSINESS may not assign this AGREEMENT, or otherwise transfer any of its rights or obligations under this AGREEMENT, whether by operation of law or otherwise, without PROVIDER's prior written consent. This AGREEMENT is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.
6. Waiver. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this AGREEMENT, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this AGREEMENT shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other, or further exercise thereof, or the exercise of any other right, remedy, power, or privilege.
7. Severability. If any term or provision of this AGREEMENT is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other TERM or provision of this AGREEMENT or invalidate or render unenforceable such TERM or provision in any other jurisdiction.
8. Governing Law; Submission to Jurisdiction. This AGREEMENT shall be governed by and construed in accordance with the internal laws of the Commonwealth of Massachusetts without giving effect to any choice or conflict of law provision. Any legal suit, action, or proceeding arising out of or related to this AGREEMENT shall be instituted exclusively in the state and federal courts of Boston, Massachusetts, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.
9. Arbitration. Any dispute, claim, or controversy arising out of or relating to this AGREEMENT or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this AGREEMENT to arbitrate, shall be determined by arbitration before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. The location of the arbitration shall be in Boston, Massachusetts. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration or PROVIDER's right to seek injunctive relief from a court of appropriate jurisdiction. Neither BUSINESS nor PROVIDER will have the right to litigate any claim subject to arbitration under this AGREEMENT in court or have a jury trial on the claim, or to engage in pre-arbitration discovery except as provided in the code or procedures of JAMS. Further, BUSINESS will not have the right to participate in a representative capacity or as a member of any class of claimants pertaining to any claim subject to arbitration. The arbitrator's decision will be final and binding. Note that other rights that BUSINESS would have if it went to court may also not be available in arbitration.

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### **Exhibit A** **SERVICE Descriptions**

**Overview:** BUSINESS acknowledges that PROVIDER is only responsible for delivering the SERVICE(S) BUSINESS registered for as detailed on both registration page and ongoing receipts received by BUSINESS, which may include one or more of the services listed below. BUSINESS acknowledges that some of the SERVICES listed below may not be a part of what BUSINESS registered for.

#### **Review Generation and Reporting**

- PROVIDER will supply business with Review Generation tool configured to connect BUSINESS' customers to specific review listing pages\*.
- PROVIDER will supply BUSINESS with regular reports of online reviews pertaining to BUSINESS

- BUSINESS acknowledges that PROVIDER is not responsible for responding to online reviews of BUSINESS
- BUSINESS acknowledges that services includes 200 SMS text messages per month.
- Additional SMS text messages will be automatically billed to BUSINESS' credit card on file at a rate of \$5.00 per 100 SMS text messages, with a minimum purchase of 100 SMS text messages at a time.

\*Please note that soliciting online reviews from Yelp may be construed as a violation of the “[Content Guidelines](#)” in their terms of service. BUSINESS may opt to solicit reviews for Yelp, but PROVIDER suggests against it and will not be held liable for repercussions.

### **Domain**

- BUSINESS may choose to use an existing domain name that BUSINESS currently owns.
- If BUSINESS does not own a domain name, BUSINESS will choose one (1) domain name for PROVIDER to purchase and set up on behalf of BUSINESS for an annual fee of \$15.
  - Additional domain names will be billed to the BUSINESS at \$25 per domain name per year.
  - PROVIDER owns BUSINESS's domain name until BUSINESS requests a domain name transfer

### **Technical Support**

- For the fastest response, BUSINESS is entitled to unlimited priority email support by emailing [help@MyReviewDashboard.com](mailto:help@MyReviewDashboard.com)
  - All email support requests will be responded to within 24 business hours of submission