

Business Services Agreement

1. Preamble

This business services agreement ("Agreement") is between NET FRIENDS, INC., a North Carolina corporation (the "Company"), and the entity who executes the Sales Order with the Company to which this Agreement is attached and incorporated (the "Customer"), hereafter referred to collectively as the "Parties." This Agreement is effective upon the date of execution of the initial Sales Order between the Company and the Customer (this date, the "Effective Date") and shall remain in effect for so long as any Sales Order is in effect.

2. Recitals

The Customer wants the Company to provide business services. This Agreement formally describes the services being provided by the Company and any limitations placed on the actions of the Parties during the term of the Agreement.

3. Definitions

Unless otherwise clear, a stated time of day refers to exactly the stated time, as measured by a commonly accepted standard timekeeper, in the state of North Carolina, adjusted for Daylight Savings Time according to federal and state law.

"Default" means either a Company Default or a Customer Default as required by the context.

"Implementation Date" means the later of (i) the date specified as the implementation date on the Sales Order, if any or (ii) the date on which the applicable Service is ready for the Customer's use.

"Sales Order" means any agreement or document that itemizes the Services and charges for such Services purchased by the Customer.

"Person" means an individual, partnership, corporation, limited liability company, association, joint stock company, trust, joint venture, unincorporated organization, and a governmental entity or any department, agency or political subdivision thereof.

"Reasonable efforts" means, with respect to a given obligation, the efforts that a reasonable person in the promisor's position would use to comply with that obligation as promptly as possible.

"Service Product" means a service, group of services, or combination of goods and services that a Party publishes and sells to customers for a stated per-product rate or charge.

4. Operative Provisions

The Parties agree as follows:

4.1. Services

The Company will provide to the Customer the services described in each applicable Sales Order ("Services"), which may be more fully described in an exhibit, schedule, or amendment to this Agreement. The Parties agree that the Services to be provided shall adhere to a narrow, literal interpretation of the items listed in the Sales Order(s) and any secondary descriptions of services attached to this Agreement. The Company is not obligated to provide any Services to the Customer beyond those listed, except at its discretion and subject to the terms of subsequent Sales Orders.

4.2. Cooperation

The Customer shall cooperate with the Company and the Company's designees and agents to facilitate the Company's performance of Services and shall provide the Company with reasonable access to necessary information (this information, "Customer Information"), to provide the Services described in this Agreement. Customer Information may include the following:

- All QuickBooks accounting files and any add-on software that integrates with QuickBooks
- Tax returns for the Customer for previous three years
- Consolidated financial statements of the Customer's parent or subsidiary companies
- Corporation type and organizational chart
- Detailed description of owner/partner identities and stakes in the Customer
- Desired content and format for reports to be created by the Company
- Detailed description of payroll methodology
- All documentation from any previous audits of the Customer by state or federal departments of Revenue or Labor, including the US Internal Revenue Service
- All documentation from any previous lawsuits against the Customer
- All documentation of any bankruptcy or reorganization proceedings, ongoing or past, in which the Customer is involved, including the contact information for any court-appointed trustees
- Contact information for CPA and legal firms employed or contracted by the Customer at any time

The Customer shall make reasonable efforts to ensure the cooperation of the Customer's third-party vendors in any Company enquiries related to the performance of Services. The Company shall request access to Customer Information only when the information requested is required for satisfactory performance of Services.

4.3. Confidential Information

The Parties agree to hold in confidence, in accordance with this Agreement, all materials and information of each Party (including all Service Products and Intellectual Property Rights), or of third parties obtained through either Party, that are received during the Company's engagement with the Customer and are either marked as confidential or are of a type, or are disclosed under circumstances, such that a reasonable person would expect them to be held in confidence (collectively, the "Confidential Information"). Except as required in the course of the Company's performance of services for the Customer, the Parties will not, without the other Party's prior written consent, reproduce, disclose, or use such Confidential Information at any time, either during or subsequent to the Company's engagement by the Customer. Except as otherwise stated, the Parties' obligations under this paragraph shall continue beyond the termination of this Agreement.

4.4. Commencement of Monthly Billing

The Customer's payment obligations for Services shall begin on the Implementation Date, unless otherwise specified in a Sales Order and regardless of whether the Customer has commenced use of the Services. Except for the Customer's initial payment, if any, the Company will invoice the Customer for all non-recurring charges, and the monthly recurring charges for the then-current month (pro-rated) and the following month, including the initial setup fee.

4.5. Charges

All fees and charges for the Services are exclusive of any sales or use taxes and other federal, state, municipal, or other governmental taxes or levies applicable to the sale or use of Services hereunder ("Taxes") now in force or enacted in the future, all of which the Customer will be responsible for and will pay in full. The Customer will be fully responsible for any charges, costs, expenses (other than those included in the Services), and third-party claims that may result from its use of, or access to, the Services. Unless otherwise set forth in the applicable Sales Order, billing and payment terms for Services shall be as set forth in this Agreement.

4.6. Billing and Payment Terms

The Company will invoice recurring fees 1 month in advance and varying or usage-based Services monthly in arrears. The Customer shall pay all fees within 30 calendar days after the date of each invoice. Any payment that is not paid in accordance with this Agreement will accrue interest at the rate of 1.5% per month. In addition to all of its other rights at law or in equity, if the Customer is late in any payments hereunder, the Company may, upon written notice to the Customer, require a Security Deposit or other assurances from the Customer that the Company deems necessary to secure the Customer's future payment obligations. The Customer shall pay the Company's costs of collection of payments due under this Agreement, including collection, agency fees, reasonable attorneys' fees and court costs.

4.7. Disputed Invoices.

All invoice dispute claims must be delivered in writing to the Company within 30 calendar days after the invoice date. The Customer waives the right to dispute any invoices not disputed within the time frame set forth herein. All amounts payable by the Customer under this Agreement shall be made without setoff or counterclaim and without deduction.

4.8. Credit Approval; Security Deposit

The Customer shall provide the Company with credit information as requested, and delivery of Services is subject to credit approval by the Company. If the Customer is required to pay the Company a security deposit, the Company may, without further notice to the Customer and without prejudice to the Company's other remedies, apply part or all of the security deposit toward the cure of any Customer default. In such event, the Customer shall, within 5 business days after written demand, pay the Company an amount equal to the amount so applied to restore the security deposit to its original amount. The Company may deposit the security deposit in an account with its own funds. The Customer shall not be entitled to receive interest on the security deposit. Any part of the security deposit not used by the Company shall be returned to the Customer within 60 calendar days after this Agreement terminates, after the Company applies the security deposit to any outstanding amounts due and payable to the Company.

4.9. Restrictions on Use

The Customer shall not, and shall not permit others including its employees and agents to, reproduce, reverse engineer, de-compile, disassemble, alter, translate, modify, adapt, market, resell, or sublease any Products or Services, unless expressly permitted by this Agreement. Other than as specified in this Agreement, no license, title, or right is granted or transferred to the Customer in or to any service marks, trademarks, copyrights, patents, trade secrets, or any other intellectual property rights of the Company ("Proprietary Information"), and the Customer shall not have any right to use any Proprietary Information, or any Company software or hardware. The Company reserves the right to take any action necessary to prevent harm to the Services, Company space, personnel, or the Company's property (and that of its affiliates, vendors and customers) or other persons.

4.10. Customer Warranties

The Customer represents and warrants that (i) the Customer is duly organized and has the authority to enter into this Agreement and to perform its obligations hereunder, (ii) the person signing the Sales Order and any other documents on behalf of the Customer is authorized to do so, and upon the Customer signing a Sales Order, this Agreement is legally binding on the Customer, (iii) the Customer's and the Customer's end users' use of the Services does not, as of the Implementation Date, and will not, during the Term, violate applicable laws or regulations or infringe the rights of any third-parties, and (iv) all information provided to the Company is accurate and complete.

4.11. Company Warranties

The Company represents and warrants that (i) the Company has the legal right and authority to provide the Services, (ii) the Company is duly organized and has the authority to enter into this Agreement and to perform its obligations hereunder, (iii) the person signing the Sales Order and other documents that comprise this Agreement on behalf of the Company is authorized to do so, and (iv) the Services supplied to the Customer under this Agreement do not, as of the Implementation Date, and will not, during the Term, violate applicable laws or regulations.

4.12. No Other Warranties

The Company does not make, and hereby disclaims, any and all other express or implied warranties, including warranties of merchantability, fitness for a particular purpose, non-infringement and title, and any warranties arising from a course of dealing, usage, or trade practice. The Company does not warrant that the services will function as described, will be uninterrupted, error-free, or completely secure. The Customer is solely responsible for the suitability of the services chosen. Neither party shall make any representations or warranties on the other party's behalf. The Company makes no warranty concerning compatibility of software or equipment or any results to be achieved therefrom.

4.13. Disclaimer of Consequential Damages

Neither party shall be liable to the other party for any incidental, consequential, exemplary, punitive, indirect, or special damages or costs (including lost profits, lost revenues, lost data, loss of security, loss of privacy, costs of recreating lost data, cost of procuring or transitioning to substitute services, or loss of use) resulting from any claim or cause of action based on breach of warranty, breach of contract, negligence (including strict liability), or any other legal theory, even if either or both of them knew, or should have known, of the possibility thereof.

4.14. Cap on Direct Damages

Neither party shall be liable to the other party or to any other person or entity for an amount of damages in excess of the fees paid by the Customer to the Company for the affected services that gives rise to the claim in the 6 full calendar months immediately preceding the month in which the event giving rise to the claim occurred.

4.15. Unauthorized Access or Use

The Company shall have no liability to the Customer for any unauthorized access or use, corruption, deletion, destruction, or loss of any data or applications. The Company is not responsible for any defects or damages to equipment, any data center, or services resulting from (i) the Customer's, the Customer's agents', or the Customer's employees' mishandling, abuse, misuse, or accident, (ii) force majeure, or (iii) the Customer's use or provisioning of Customer equipment electrically or mechanically incompatible with services or of inferior quality. Under no circumstances shall the Company be responsible for any third-party equipment or third-party software or damages that arise as a result of defects or issues related to the third-party equipment or software.

4.16. Offsets

At the Company's discretion, the Company may offset any amounts that the Company owes to the Customer against any amounts owed by the Customer to the Company.

4.17. Statute of Limitations

No claim may be asserted by either party against the other party with respect to any event, act, or omission for which a claim accrued more than 2 years prior to such claim being asserted. The Parties hereby waive any right under any statute of limitations to bring any claim after that time.

4.18. Term

This Agreement shall remain in effect for so long as any Sales Order is in effect. The term of a Sales Order begins on the Implementation Date described in the Sales Order and shall continue during the Initial Term set forth on the Sales Order (the "Initial Term"), unless earlier terminated as provided herein.

4.19. Termination

This Agreement may be terminated by either Party at any time, provided that the Party wishing to terminate the Agreement provides written notice to the other Party in accordance with Section 5.12, *Notices*, at least 30 days in advance of the date on which the Party wishes to terminate the agreement (this date, the "Termination Date"). If the Customer terminates the Agreement, the Customer agrees to pay in full all monies due to the Company.

4.20. Default and Remedies

“Company Default” means (i) the Company fails to perform a material obligation under this Agreement after receiving 15 calendar days advance written notice from the Customer of such failure, (ii) the Company’s insolvency or liquidation as a result of which the Company ceases to do business, or (iii) the material breach of any representation or warranty made by the Company in this Agreement, except to the extent such breach is susceptible to cure, in which case there shall be no Company Default unless such breach is not cured by the Company within 15 calendar days after receiving written notice from the Customer of such breach.

“Customer Default” means (i) the Customer fails to pay, when due, any fees or charges owed to Company under this Agreement, provided that the first such nonpayment or late payment in any calendar year shall not be a Customer Default unless Customer fails to pay such amount within 3 business days after written notice from the Company of such nonpayment or late payment; (ii) the Customer fails to promptly pay (or repay) any or all of a security deposit and does not cure such failure within 5 business days after written notice thereof; (iii) the material breach of any representation or warranty made by the Customer in this Agreement, except to the extent such breach is susceptible to cure, in which case there shall be no Customer Default unless such breach is not cured by the Customer within 5 calendar days after receiving written notice from the Company of such breach; (iv) the Customer fails to comply with any material obligations under this Agreement (other than payment or security deposit obligations) after receiving 15 calendar days advance written notice from the Company of such failure; (v) the Customer’s insolvency or liquidation as a result of which the Customer ceases to do business or if the Company has a reasonably held belief that the Customer may be unable to pay its debts as they become due; (vi) the Customer’s filing for bankruptcy, reorganization, or failure to discharge an involuntary bankruptcy petition within 60 calendar days; or (vii) there occurs an event (including an attack on or unauthorized access to Customer Equipment or data by a third-party) for which the Company reasonably believes that the suspension of Services is necessary to protect the Company or the Company’s other customers, in which case the Company will provide advance notice of 12 hours unless the Company determines in its reasonable judgment that shorter or contemporaneous notice is necessary to protect the Company or its other customers from imminent and significant operational or security risk.

If a party commits a Default, the non-defaulting party will be entitled to exercise any one or more of the following remedies, as applicable, then or at any time thereafter: (a) to exercise any remedy for such Default set forth elsewhere in this Agreement; or (b) to immediately terminate this Agreement or any Sales Orders. In the event of a Customer Default, in addition to and without waiving any other remedies for Default available to the Company hereunder, the Company may, without liability and without notice beyond the initial notice required for the Customer Default suspend or discontinue Services or the Company’s performance under this Agreement and collect liquidated damages as set forth in this Agreement. Notwithstanding the foregoing, all of the Customer’s rights with respect to the Services shall be terminated during any period of suspension following a Customer Default. Each remedy of the non-defaulting party as provided for in this Agreement, or now or hereafter existing at law or in equity, or by statute or otherwise, shall be cumulative and concurrent and shall be in addition to every other remedy (i) provided for in this Agreement, and (ii) except as otherwise limited in this Agreement, now or hereafter existing at law or in equity, or by statute or otherwise, and the exercise or beginning of the exercise by the non-defaulting party of any one or more of such remedies shall not preclude the simultaneous or later exercise by the non-defaulting party of any or all such other remedies.

4.21. Liquidated Damages

The Customer acknowledges that the amount of the monthly recurring fee for Services is based on the Customer’s agreement to pay the monthly recurring fees for the entire Term of each Sales Order. The Customer acknowledges that the Company’s damages from any termination of a Sales Order prior to the end of the Term are difficult to ascertain. For that reason, notwithstanding any termination of any Sales Order, the Company and the Customer acknowledge and agree that upon any early termination of a Sales Order (including termination by the the Company associated with a Customer Default), the Customer shall pay 100% of the remaining monthly recurring charges and any charges due and payable under any applicable Sales Orders that would otherwise have been payable for the remainder of the then-current Term. The Customer also agrees to pay 100% of any third-party termination or

cancellation charges that the Company incurs as a result of the Customer's early termination of any Sales Order. Both parties acknowledge and agree that this provision establishes liquidated damages and is not intended as a penalty. Other than as set forth herein, this liquidated damages provision does not waive or alter any remedies available to the Company under this Agreement for the Customer's Default or early termination of this Agreement or any Sales Order.

5. Standard Provisions

5.1. Severability

The Parties intend as follows:

- (a) That if any provision of this Agreement is held to be unenforceable, then that provision will be modified to the minimum extent necessary to make it enforceable, unless that modification is not permitted by law, in which case that provision will be disregarded;
- (b) That if an unenforceable provision is modified or disregarded, the rest of this Agreement is to remain in effect as written; and
- (c) That any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable.

5.2. Indemnification

- (a) For purposes of this Agreement, the following definitions apply:
 - **"Representative"** means, with respect to an entity, any of that entity's directors, officers, employees, agents, consultants, advisors, and other representatives.
 - **"Company Indemnitee"** means Company, any Affiliate of Company, each Representative of any of the foregoing, and each of the heirs, executors, successors, and assignees of any of the foregoing.
 - **"Indemnifiable Losses"** means the aggregate of Losses and Litigation Expenses.
 - **"Litigation Expense"** means any out-of-pocket expense incurred in defending a Proceeding or in any related investigation or negotiation, including court filing fees, court costs, arbitration fees, witness fees, and attorneys' and other professionals' fees and disbursements.
 - **"Loss"** means any amount awarded in, or paid in settlement of, any Proceeding, including any interest but excluding any Litigation Expenses.
 - **"Proceeding"** means any judicial, administrative, or arbitration action, suit, claim, investigation, or proceeding.
- (b) With respect to any Proceeding brought by someone other than the Customer, or someone other than one or more Company Indemnites, against one or more Company Indemnites, arising out of this Agreement (each, a "Nonparty Claim"), the Customer shall indemnify those Company Indemnites against all Indemnifiable Losses arising out of that Proceeding, except to the extent that Company negligently or intentionally caused those Indemnifiable Losses.
- (c) To be entitled to indemnification under paragraph (b), a Company Indemnitee subject to any Nonparty Claim must promptly (and in any event no later than ten days after the Company Indemnitee first knew of that Nonparty Claim) notify the Customer of that Nonparty Claim and deliver to the Customer a copy of all legal pleadings with respect to the Nonparty Claim. If the Company Indemnitee fails to timely notify the Customer of a Nonparty Claim, the Customer will be relieved of its indemnification obligations with respect to that Nonparty Claim to the extent that the Customer was prejudiced by that failure and the Customer will not be required to reimburse the Company Indemnitee for any Litigation Expenses the Company Indemnitee incurred during the period in which the Company Indemnitee failed to notify the Customer.
- (d) To assume the defense of a Nonparty Claim, the Customer must notify the Company Indemnitee that it is doing so. Promptly thereafter, the Customer shall retain to represent it in the Nonparty Claim independent legal counsel that is reasonably acceptable to the Company Indemnitee.

- (e) A Company Indemnitee is entitled to participate in the defense of a Nonparty Claim. A Company Indemnitee may defend a Nonparty Claim with counsel of its own choosing and without the Customer participating if (1) the Customer notifies the Company Indemnitee that it does not wish to defend the Nonparty Claim, (2) by midnight at the end of the tenth day after the Company Indemnitee notifies the Customer of the Nonparty Claim the Customer fails to notify the Company Indemnitee that it wishes to defend the Nonparty Claim, or (3) representation of the Customer and the Company Indemnitee by the same counsel would, in the opinion of that counsel, constitute a conflict of interest.
- (f) The Customer shall pay any Litigation Expenses that an Company Indemnitee incurs in connection with defense of the Nonparty Claim before the Customer assumes the defense of that Nonparty Claim, except with respect to any period during which the Company Indemnitee fails to timely notify the Customer of that Nonparty Claim. The Customer will not be liable for any Litigation Expenses that a Company Indemnitee incurs in connection with defense of a Nonparty Claim after the Customer assumes the defense of that Nonparty Claim, other than Litigation Expenses that the Company Indemnitee incurs in employing counsel in accordance with paragraph (e), which Litigation Expenses the Customer shall pay promptly as they are incurred.
- (g) After the Customer assumes the defense of a Nonparty Claim, the Customer may contest, pay, or settle the Nonparty Claim without the consent of the Company Indemnitee only if that settlement (1) does not entail any admission on the part of the Company Indemnitee that it violated any law or infringed the rights of any Person, (2) has no effect on any other claim against the Company Indemnitee, (3) provides as the claimant's sole relief monetary damages that are paid in full by the Customer, and (4) requires that the claimant release the Company Indemnitee from all liability alleged in the Nonparty Claim.

5.3. Force Majeure

- (a) For purposes of this Agreement, "Force Majeure Event" means, with respect to a party, any event or circumstance, whether or not foreseeable, that was not caused by that party (other than a strike or other labor unrest that affects only that party, an increase in prices or other change in general economic conditions, a Change in Law, or an event or circumstance that results in that party's not having sufficient funds to comply with an obligation to pay money) and any consequences of that event or circumstance.
- (b) If a Force Majeure Event prevents a party from complying with one or more obligations under this Agreement, that inability to comply will not constitute breach if (1) that party uses reasonable efforts to perform those obligations, (2) that party's inability to perform those obligations is not due to its failure to (A) take reasonable measures to protect itself against events or circumstances of the same type as that Force Majeure Event or (B) develop and maintain a reasonable contingency plan to respond to events or circumstances of the same type as that Force Majeure Event, and (3) that party complies with its obligations under paragraph (c) following.
- (c) If a Force Majeure Event occurs, the noncomplying party shall promptly notify the other party of the occurrence of that Force Majeure Event, its effect on performance, and how long the noncomplying party expects it to last. Thereafter the noncomplying party shall update that information as reasonably necessary. During a Force Majeure Event, the noncomplying party shall use reasonable efforts to limit damages to the other party and to resume its performance under this Agreement.

5.4. Irreparable Harm

The Customer acknowledges that breach by the Customer of any of its collective or respective obligations will likely cause the Company to suffer irreparable harm, namely harm for which damages would be an inadequate remedy. The Customer acknowledges that requiring, as a condition to obtaining an injunction, a restraining order, or any other equitable remedy with respect to such a breach, the Company to demonstrate that the Company would suffer irreparable harm will likely cause delay that results in the Company's suffering irreparable harm before any equitable remedy is granted. Therefore, if the Customer breaches any of its respective or collective obligations, then, for purposes of determining whether a court should grant an equitable remedy in respect of that breach, any court should assume that that breach would cause the Company irreparable harm.

5.5. Limitation of Liability

In no event shall the Company or its employees, affiliates, contractors, or agents be liable for any indirect, incidental, special, punitive, or consequential damages or for any lost or imputed profits, revenue, data, or use, regardless of the legal theory under which such liability is asserted, including, without limitation, legal theories of contract, tort, or strict liability, even if the Company has been advised of the possibility of such damages. In addition, in no event shall the Company's liability for any damages exceed the actual dollar amount paid by the Customer to the Company, pursuant to any Sales Orders to which this Agreement is attached, during the six month period prior to the date the damages occurred or the cause of action arose.

5.6. Recovery of Expenses

In any adversarial proceedings between the Parties arising out of this Agreement, the prevailing party will be entitled to recover from the other party, in addition to any other relief awarded, all expenses that the prevailing party incurs in those proceedings, including legal fees and expenses.

5.7. Entire Agreement

This Agreement constitutes the entire understanding between the Parties as to the subject matter of this Agreement and supersedes all other agreements, whether written or oral, between the Parties.

5.8. Construction and Forum Selection

The laws of the state of North Carolina, without giving effect to its principles of conflicts of law, govern all adversarial proceedings arising out of this Agreement. If either party brings against the other party any proceeding arising out of this Agreement, that party may bring that proceeding only in the United States District Court for the Middle District of North Carolina or, only if there is no federal subject matter jurisdiction, in any state court of North Carolina sitting in Durham, and each party hereby submits to the exclusive jurisdiction of those courts for purposes of any such proceeding. Each party hereby waives any claim that any proceeding brought in accordance with this Agreement has been brought in an inconvenient forum or that the venue of that proceeding is improper. Each Party waives its right to a jury trial for any action arising out of this Agreement, including contract claims, tort claims, and all other claims.

5.9. Successors and Assigns

Except as otherwise stated, this Agreement will be binding upon and inures to the benefit of, the Parties and their respective successors and assigns.

5.10. Waiver

No waiver of satisfaction of a condition or nonperformance of an obligation under this Agreement will be effective unless it is in writing and signed by the Party granting the waiver.

5.11. Amendments

No amendment to this Agreement will be effective unless it is in writing and signed by both Parties.

5.12. Notices

For a notice or other communication under this Agreement to be valid, it must be in writing and delivered by email. A valid notice or other communication under this Agreement will be effective when received by the party to which it is addressed. It will be deemed to have been received as follows: if it is delivered by email, when the party to which the email is addressed acknowledges having received that email, with an automatic "read receipt" not constituting acknowledgment of an email; and if the party to which it is addressed rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which no notice was given, then upon that rejection, refusal, or inability to deliver. If a notice or other communication addressed to a party is received after 5:30 p.m. on a business day at the location specified in the address for that party, or on a day that is not a business day, then the notice will be deemed received at 8:30 a.m. on the next business day.

For a notice or other communication to a party under this Agreement to be valid, it must be addressed using the information specified below for that party or any other information specified by that party in a valid notice.

To the Company: Net Friends, Inc.

Attn: Chief Financial Officer

Email: tom.vipperman@netfriends.com

To the Customer: (see attached Sales Order for contact information)

6. AGREEMENT

Accepted and Approved for:

Accepted for:

Net Friends, Inc.

327 W Main St

Durham, NC 27701

Signature

Signature

Name (print)

Name (print)

Title

Title

Date

Date