

## **BREAKGROUND SOFTWARE AS A SERVICE AGREEMENT**

THIS BREAKGROUND SOFTWARE AS A SERVICE AGREEMENT (“**Agreement**”) is entered into this 18 day of September, 2024 (“**Effective Date**”), by and between **Break Ground Technologies, LLC**, an Arkansas limited liability company, with an office located at 28 S Paddock Loop, Fayetteville, AR 72701 (“**BreakGround**”) and the **City of Willard**, a municipal corporation organized under the laws of the State of Missouri, with an office located at 224 W Jackson St, Willard, MO 65781 (“**Client**”). BreakGround and Client may collectively be referred to herein as the “Parties” or individually as a “Party.”

### **RECITALS**

**WHEREAS**, BreakGround, the owner and operator of the Ordinal software platform (“Ordinal”), provides to the Client an AI-powered service that delivers insights, analyses, and references related to the City of Willard's Code of Ordinances and any additional documents specified by the Client (“Designated Documents”). Through Ordinal, these services are made available to users authorized and designated by the Client (“Authorized Users”). The services include, but are not limited to, advanced document search, natural language processing, automated summarization, and other “Artificial Intelligence” tools designed to enhance the understanding and application of the Designated Documents;

**WHEREAS**, Client desires to utilize the Ordinal software for the benefit of its operations;

**NOW THEREFORE**, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

#### **Section 1. Grant of Rights.**

Subject to the terms and conditions of this Agreement, BreakGround hereby grants to Client, a nonexclusive, limited, revocable, right and license to access, use, operate, display, or otherwise interact with via an interface, the software and documentation referred to as Ordinal (collectively, the “**SaaS Solution**”), including multiple versions or releases of the foregoing on multiple operating platforms or devices, if applicable. The rights and licenses set forth in this Section are granted for the Term (as defined below) of this Agreement.

For purposes of clarification and the avoidance of doubt, this is a subscription agreement for use of the SaaS Solution and not an agreement for sale. Except for the licenses granted Client under this Agreement, Client acknowledges and agrees that, as between BreakGround and Client, BreakGround owns all right, title, and interest in and to the SaaS Solution, and all copies and portions thereof.

#### **Section 2. General Restrictions.**

Client shall not: (a) rent, lease, sell, copy, provide access to or sublicense the SaaS Solution to a third party; (b) reverse engineer, decompile, disassemble, decrypt or otherwise seek to obtain the source code to the SaaS Solution; (c) remove or obscure any product identification, proprietary, copyright or other notices contained in the SaaS Solution (including any reports or

9/18/2024

data printed from the SaaS Solution); or (d) reproduce or disclose the SaaS Solution or its user interface to any third party.

**Section 3. Term.**

The term of this Agreement (“**Term**”) shall begin on the Effective Date and shall continue thereafter for six (6) months. The Term may be extended by amendment of this Agreement pursuant to Section 17 below.

**Section 4. Termination.**

**4.1. Termination by Either Party.** Either party may terminate this Agreement at any time by providing thirty (30) days’ prior written notice to the other party.

**4.2. Termination for Cause.** Either party may terminate this Agreement immediately if the other party (a) fails to cure any material breach of the Agreement within five (5) days after written notice; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors’ arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that party (and not dismissed within sixty(60) days thereafter).

**4.3. Effect of Termination.** Upon expiration or termination of the Agreement, all use of the software and services by Client shall cease.

**Section 5. Payment Terms.**

Client will be invoiced electronically at the amount listed below to the email address provided below or to the preferred Accounts Payable contact listed, if applicable. Invoices are due thirty (30) days after receipt and payable via ACH or credit card. Client may be charged a one-time installation fee of \$9,950 for setup and training, subject to any promotional offers provided by BreakGround as listed in the fee summary below. Fees are non-refundable. Payment for Client’s use of the SaaS Solution shall commence on January 1, 2025 (“Payment Commencement Date”). Client shall not use or have access to the software and any services provided by BreakGround until the Payment Commencement Date.

**Fee Summary**

**Billing Frequency: Once**

**Amount: \$4000.00**

**Installation Fee: \$0.00 (New Client Promotional Offer)**

**Client Address:**

**Name:** \_\_\_\_\_

**Email:** \_\_\_\_\_

9/18/2024

**Title:** \_\_\_\_\_

### **Section 6. Confidentiality.**

For purposes of this Agreement, “Confidential Information” means BreakGround’s pricing information, the SaaS Solution, software (regardless of form or media), screen displays, user interfaces, web applications, and client data, and (b) any BreakGround information in relation to which its confidentiality should by its nature be inferred, including, but not limited to, data, designs, drawings, documentation, prototypes, processes, methods, pricing, concepts, research, development, and business activities, whether obtained or disclosed verbally or in writing of BreakGround and Client.

Each party agrees that: (a) it shall keep all Confidential Information of the other party in strict confidence, using such degree of care as is appropriate to avoid unauthorized use or disclosure (but in no event shall either party use less than all diligent and good faith efforts to safeguard the confidentiality of Confidential Information of the other party); (b) it shall not, directly or indirectly, disclose any Confidential Information of the other party to any third party, except with the other party’s prior written consent in each instance; (c) it shall not make use of any Confidential Information of the other party for its own purposes (except as necessary to make use of the SaaS Solution pursuant to the terms and conditions of this Agreement) or for the benefit of anyone other than the other party; and (d) upon the expiration or termination of this Agreement, Client shall no longer access the SaaS Solution. BreakGround shall no longer access client data, and each party shall destroy all memoranda, notes, records, reports, media, and other documents and materials (and all copies thereof) regarding or including any Confidential Information of the other party that it may then possess or have under its control.

### **Section 7. Compliance with Laws.**

Each Party shall comply with all applicable laws, rules, regulations and statutes in connection with its access and use of the Confidential Information of the other party, the SaaS Solution and the performance of its obligations under this Agreement, including, without limitation, any data management, security, privacy, export or import control laws and regulations that are applicable to each Party’s business, obligations and duty to protect the Confidential Information of the other Party.

### **Section 8. Intentionally Deleted**

### **Section 9. Limitation of Liability/Third-Party Reliance.**

(a) BreakGround shall not be liable for any claims, damages, losses, or causes of action of any nature or kind arising out of or related to any decision, opinion, or interpretation made by Client or any third-party that relies upon information or outputs generated by Ordinal. Client acknowledges and agrees that while Ordinal provides valuable insights and information, final decisions, interpretations, and opinions remain the responsibility of Client.

(b) EXCLUDING THE GROSS NEGLIGENCE, WILLFUL MISCONDUCT, AND/OR FRAUD OF A PARTY, (i) IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR

9/18/2024

INCIDENTAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (ii) NEITHER PARTY'S LIABILITY TO THE OTHER PARTY UNDER THIS AGREEMENT WILL EXCEED THE AMOUNTS PAID OR TO BE PAID BY CLIENT TO BREAKGROUND FOR THE PRECEDING TWELVE MONTHS PRIOR TO THE DATE OF THE CLAIM(S).

### **Section 11. Relationship of the Parties**

This Agreement is not intended to create, and does not create, any partnership, joint venture, agency, fiduciary, employment, or other relationship between the Parties, beyond the relationship of independent parties to a commercial contract. Neither Party is, nor will either Party hold itself out to be, vested with any authority to bind the other Party contractually, or to act on behalf of the other Party as a broker, agent, or otherwise.

### **Section 12. Waiver**

The waiver or failure of a Party to exercise any right provided for herein will not be deemed a waiver of any further right hereunder. The rights and remedies of each Party set forth in this Agreement are in addition to any rights or remedies that a Party may otherwise have at law or in equity.

### **Section 13. Severability**

If any provision of this Agreement is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, such provision will be deemed restated, in accordance with applicable law, to reflect as nearly as possible the original intentions of the Parties, and the remainder of the Agreement will remain in full force and effect.

### **Section 14. Headings**

The headings in this Agreement are for convenience of reference only and have no legal effect.

### **Section 15. Survival**

Any and all provisions in this Agreement which would reasonably be expected to be performed after the termination or expiration of this Agreement shall survive and be enforceable after such termination or expiration, including without limitation provisions relating to confidentiality, ownership, representations and warranties, disclaimers, indemnification, limitations of liability, venue, jurisdiction, and governing law.

### **Section 16. Governing Law/Venue/Jurisdiction**

This Agreement and the relationship between the Parties shall be governed by, construed and enforced in accordance with the laws of the State of Missouri, excluding its conflict of law provisions. Each Party agrees to submit to the personal and exclusive jurisdiction of the courts located within Greene County, MO to the exclusion of all other courts, and each Party consents

9/18/2024

to the jurisdiction and venue of any such court and waives any argument that venue in such forum is not convenient. Notwithstanding the preceding sentences, if Client owes BreakGround money for Services provided, BreakGround may pursue legal action against Client in any state or federal court with proper jurisdiction, and Client agrees to reimburse BreakGround for all reasonable, related legal and other fees to collect any and all amounts owed to BreakGround.

**Section 17. Entire Agreement/Modifications**

This Agreement constitutes the complete and exclusive agreement between the Parties relating to the subject matter hereof, and supersede all prior proposals, understandings and all other agreements, oral and written, between the Parties relating to this subject matter. Any modifications or amendments to this Agreement must be in writing and signed by an authorized representative of each Party.

**Section 18. Counterparts; Electronic Signatures**

This Agreement may be executed in counterparts, each of which will constitute an original, and all of which will constitute one agreement. The Parties agree that they will accept signature by electronic transmission in lieu of original signatures and that the Agreement and any amendments hereto entered pursuant to this Agreement will have the same binding and enforceable effect with electronic signatures as they would have with original signatures.

**Section 19. FOIA**


BreakGround is aware that the City is a governmental subdivision subject to the Missouri Freedom of Information Act (FOIA). As such, the requirements set forth in Section 6 are inapplicable and ineffective in the event the City is served with a FOIA request seeking information about this Agreement at any time prior to, during, or subsequent to its term.

**IN WITNESS WHEREOF**, each Party has caused this Agreement to be executed by a duly authorized representative of such Party with the intent this Agreement be effective as of the Effective Date.

**CLIENT**

**BREAKGROUND**

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

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

Name: \_\_\_\_\_

Name: Jacob Herrington

Title: \_\_\_\_\_

Title: Co-Founder

Date: \_\_\_\_\_

Date: 10/2/2024