



**SERVICES AGREEMENT**

This Services Agreement (“Agreement”) is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2018 (the “Effective Date”) between OmniByte Technology, Inc., a North Dakota corporation whose address is 1854 NDSU Research Circle North, Fargo, ND 58102-5706 (“Company”), and the Customer / City listed below (“Customer”).

**OmniByte Technology, Inc.:**

**Customer:**

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

City: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Signature: \_\_\_\_\_

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

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

**TERMS AND CONDITIONS**

**1. SERVICES AND SUPPORT**

1.1 Company shall provide to Customer the following services (the “Services”):

- Company shall provide the Customer access to an online portal, accessible through the rTown website, through which the Customer may upload content regarding a designated municipality (the “Customer Town”).
- Company shall continue to develop, maintain and distribute the mobile software known as the “rTown app,” which allows end users the ability to access the content submitted by Customer about the Customer Town.

Subject to the terms of this Agreement, Company will use commercially reasonable efforts to provide Customer the Services during the Term. As part of the registration process, Customer will identify an administrative user name and password for Customer’s account. Company shall offer the rTown App on at least one mobile market of Company’s choice, provided that the Company shall have no obligation to develop for any particular market or operating system.

1.2 Subject to the terms hereof, Company will provide Customer with reasonable technical support via telephone and electronic mail during the hours of 8:00 am through 5:00 pm Central time, with the exclusion of weekends or Federal Holidays (“Support Hours”).

**2. RESTRICTIONS AND RESPONSIBILITIES**

2.1 Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services (“Software”); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by

Company or authorized within the Services); use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels.

2.2 Customer represents, covenants, and warrants that Customer will use the Services only in compliance with this Agreement, the Company’s Terms of Use and Privacy Policies for the Services then in effect (the “Policy”), and all applicable laws and regulations. Customer hereby agrees to indemnify and hold harmless Company against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys’ fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Customer’s participation in or use of the Services, including without limitation any actions by end users of the rTown App or other third parties. Although Company has no obligation to monitor Customer’s use of the Services, Company may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

2.3 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, “Equipment”). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer’s knowledge or consent.

**3. CONFIDENTIALITY; PROPRIETARY RIGHTS**

3.1 Each party (the “Receiving Party”) understands that the other party (the “Disclosing Party”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as “Proprietary Information” of the Disclosing Party). Proprietary Information of Company includes non-public information regarding features,



functionality and performance of the Service. Proprietary Information of Customer includes non-public data provided by Customer to Company to enable the provision of the Services (“Customer Data”). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

3.2 Company shall own and retain all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Implementation Services or support, and (c) all intellectual property rights related to any of the foregoing.

3.3 Notwithstanding anything to the contrary, Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and Company will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

#### 4. CUSTOMER CONTENT

4.1 The Services permit the submission of Content at the direction of Customer (“Customer Content”) and include the hosting, sharing, and/or publishing of such Customer Content. Customer is solely responsible for Customer Content and the consequences of Company’s posting or publishing such Customer Content, and Company does not control, endorse, or verify Customer Content or any opinion, recommendation, or advice expressed therein and expressly disclaims any and all liability with regard to such Customer Content.

4.2 By submitting any Customer Content, Customer affirms, represents, and/or warrants that: (i) Customer owns or has the necessary licenses, rights, consents, and permissions to use and authorize Company to use all patent, trademark, trade secret, copyright or other proprietary rights in and to any and all Customer Content to enable inclusion and use of the Customer Content in the manner contemplated by the Services and this Agreement; and (ii) Customer has the express consent, release, and/or permission

of each and every identifiable individual person in the Customer Content to use the name or likeness of each and every such identifiable individual person to enable inclusion and use of the Customer Content in the manner contemplated by the Services and this Agreement. By submitting the Customer Content to us, Customer hereby grants OmniByte a perpetual, worldwide, non-exclusive, royalty-free, sublicenseable and transferable license to use, reproduce, distribute, prepare derivative works of, modify, display, translate, and perform all or any portion of the Customer Content in connection with Company’s operation of the Services, whether during the term or after, and Company’s (and Company’s successors’) business, including without limitation for promoting and redistributing part or all of the Services (and derivative works thereof) in any media formats and through any media channels now known or hereafter devised, for any purpose .

4.3 In connection with Customer Content, Customer further agrees that Customer will not: (i) post, submit, or publish material that is copyrighted, protected by patent, trademark, trade secret or otherwise subject to third-party proprietary rights, including privacy and publicity rights, unless Customer is the owner of such rights or have permission from their rightful owner to post the material and to grant OmniByte all of the license rights granted herein; (ii) post, submit or publish falsehoods or misrepresentations that could damage OmniByte or any third party; (iii) post, submit or publish material that is unlawful, obscene, lewd, defamatory, libelous, threatening, pornographic, harassing, fraudulent, abusive, hateful, inflammatory, racially or ethnically offensive, or encourages conduct that would be considered a criminal offense, give rise to civil liability, violate any law, or is otherwise inappropriate; (iv) impersonate another person, (v) post, submit or publish private information of any third parties, including but not limited to phone numbers, addresses, email addresses, financial information, or other personally identifiable information, (vi) post, submit, upload or transmit viruses, malware, corrupted data, computer code or programs, or other destructive files, or (vii) post, submit or publish any material that is objectionable to OmniByte in any way, in its sole discretion, or may expose OmniByte, its affiliates, partners, and its users harm or liability.

#### 5. PAYMENT OF FEES

5.1 Customer will pay Company \$\_\_\_\_\_ [monthly / annually] during the Initial Service Term (the “Fees”). Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or then current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email). If no change in costs or Fees is provided to Customer, the Fees shall remain the same as the Initial Service Term. If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than 30 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company’s customer support department.

5.2 Company may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be



received by Company thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Company's net income.

## **6. TERM AND TERMINATION**

6.1 Subject to earlier termination as provided below, this Agreement is for \_\_\_\_\_ years (the "Initial Service Term"), and shall be automatically renewed for additional periods of the same duration as the Initial Service Term (collectively, the "Term"), unless either party requests termination at least thirty (30) days prior to the end of the then-current term.

6.2 In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement. Customer will pay in full for the Services up to and including the last month during which the Services are provided, but never than less the entire Initial Term. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

## **7. WARRANTY AND DISCLAIMER**

Company shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Implementation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. HOWEVER, COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES AND IMPLEMENTATION SERVICES ARE PROVIDED "AS IS" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY, COMPANY, THE COMPANY'S OFFICERS, AND THE COMPANY'S EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO COMPANY FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **8. MISCELLANEOUS**

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with Company's prior written consent. Company may transfer and assign any of its rights and obligations under this Agreement without consent. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of North Dakota without regard to its conflict of laws provisions.