

SPARKPLUG APPLICATIONS, INC.

ACCESS AGREEMENT (RETAIL)

THIS ACCESS AGREEMENT (“Agreement”) is dated upon the execution date (the **“Effective Date”**) of the Service Order Quote attached hereto (**“Service Order”**), between **SPARKPLUG APPLICATIONS, INC.**, a Delaware corporation (the **“Company”**) and the company referred to in the Service Order and sets forth the terms and conditions under which the Company agrees to provide access to the Company’s proprietary software based service (the **“Service”**) The parties agree as follows:

1. ACCESS TO SERVICE.

1.1 Access. Subject to the terms and conditions of this Agreement, during the Term (as defined below) the Company will provide Customer and the number of Customer’s Authorized Users (as defined below) set forth on the Service Order a non-exclusive and non-transferrable right to remotely access and use the Service through the Company’s technology infrastructure (including software applications, websites, and application programming interfaces (**“APIs”**)) made available to Customer to provide access to the Service (the **“Platform”**), solely for Customer’s internal business purposes. Key features of the Service are accessible only through the internet, and Customer is solely responsible for acquiring, installing, and maintaining all connectivity equipment, internet, and network connections, hardware, software and other equipment necessary to access and use the Service. Further requirements for use of and access to the Service may be set forth in the specifications and functional requirements published by the Company for the Service or provided to Customer in electronic, online, or hard-copy formats, but specifically excluding any marketing, promotional, or similar materials (collectively, **“Documentation”**).

1.2 Authorized Users. Each employee, contractor, or other agent of Customer to whom Customer provides access to the Service or who is otherwise authorized to use the Service (each an **“Authorized User”**) may access and use the Service using the credentials generated and provided to Customer through the Platform (**“Credentials”**) and managed by Customer or its Authorized Users who have been granted administrative rights. Customer shall be responsible for ensuring the security and confidentiality of all Credentials. Credentials may not be shared with any person other than the specific Authorized User to whom the Credentials are assigned. Customer will use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service, and will notify the Company promptly of any such unauthorized use. Customer is solely responsible for all activity by Customer, any Authorized User, or any third party under any Credentials, whether or not such activity is authorized by Customer. Prior to accessing or using the Service, each Authorized User may be required to register through the Platform and provide such information as may be required by the Company in order to provide the Services. Customer acknowledges that the Company may update the Service and/or the Platform from time to time, and that such updates may impact or modify, without limitation, such registration requirements.

1.3 Support. The Company may, in its sole discretion, provide Customer with certain support and consultation concerning the Services to assist in the evaluation activities of

Customer under this Agreement (“**Support Services**”). If Customer wishes to obtain additional Support Services, such services shall be provided as set forth on the Service Order, or if not set forth therein, then on a time and materials basis at the Company’s then-current rates.

1.4 Feedback. Periodically and at the Company’s request, Customer shall use reasonable efforts to provide the Company comments, criticisms, suggested improvements, and other feedback, about the use, operation, functionality and features of the Service (collectively, “**Feedback**”), including, without limitation, any information about operating results, known or suspected bugs, errors or compatibility problems, user-desired features and the results of any and all benchmark or similar testing conducted during the Term. In addition, Customer shall report to Company any unusual, unplanned, or out-of-the-ordinary performance of the Service observed by any of Customer’s personnel. Customer agrees that Company has the unrestricted right to use the Feedback at its sole discretion, without notice to, payment of, or consent from Customer, in each case provided that the Company’s use of Feedback complies with the nondisclosure obligations provided in Section 7 below.

1.5 Updates to Service and Platform. Customer acknowledges and agrees that the Company may update the Service and/or the Platform from time to time, without notice, and that such updates may impact, without limitation, features, user registration requirements.

2. RESTRICTIONS ON USE. Except as expressly permitted in this Agreement or as otherwise authorized by the Company in writing, Customer will not, and will not permit any of its Authorized Users, employees, contractors, agents, or any third party, to: (a) modify, adapt, alter, translate, or create derivative works of the Service or the Platform; (b) sublicense, lease, rent, loan, sell, distribute, make available, or otherwise transfer or attempt to transfer the Service or the Platform (or any component or element thereof) or access to the Service or the Platform, to any third party; (c) reverse engineer, decrypt, or otherwise derive the design, internal logic, structure, or inner workings (including algorithms and source code) of the Service or the Platform, or any software, hardware, model, prototype, or other item provided or made accessible by the Company; (d) interfere in any manner with the operation of the Service or the Platform or the Company’s performance and delivery of the Services; (e) remove, alter, or obscure any proprietary notices (including copyright or patent notices) of the Company or its licensors displayed in or on any element of the Service or the Platform or displayed in connection with the Services; or (f) otherwise access or use the Service or the Platform except as expressly permitted under this Agreement.

3. PROPRIETARY RIGHTS.

3.1 Definitions.

a) **Intellectual Property.** As used in this Agreement, “**Intellectual Property**” means all algorithms, APIs, audiovisual components and objects, data, databases, data collections, designs, diagrams, documentation, drawings, flow charts, formulae, images, mask works, models, net lists, network configurations and architectures, schematics, software and firmware code (in any form, including source code and object code), specifications, subroutines, test vectors, uniform resource identifiers including uniform resource locaters (“**URLs**”), user

interfaces, web sites (and associated internet domain names), works of authorship, marks (including brand names, Service names, logos, and slogans), business forecasts and strategies, customer and supplier lists, financial data, know-how, materials, marketing and development plans, personnel information, procedures, processes, protocols, technical information, tools, trade secrets, apparatuses, concepts, developments, discoveries, ideas and inventions (whether or not patentable or reduced to practice), methods, techniques, and all other forms of technology.

b) **Intellectual Property Rights.** As used in this Agreement, “**Intellectual Property Rights**” means all past, present, and future rights in or relating to the Purchased Assets that may exist or be created under the laws of any jurisdiction in the world (including all rights accruing by virtue of treaties and conventions), including: all (i) copyrights, exclusive exploitation rights, moral rights (including all rights of paternity, integrity, disclosure, and withdrawal), mask work rights, and other rights associated with works of authorship (including software, firmware, data, databases, and other data collections); (ii) trademark, service mark, trade dress, trade name rights, and internet domain name registrations, together with the goodwill of the business connected with the use of, and symbolized by, the foregoing; (iii) trade secret rights; (iv) patent and industrial property rights; (v) all other proprietary rights in or relating to, or forms of protection of, intellectual property (whether registered or unregistered); (vi) all rights in or relating to applications for, and registrations, reissues, renewals, extensions, combinations, continuations (including continuations-in-part), reversions, restorations, recordations, and divisions embodiments of, any of the rights referred to in clauses (i) through (v) of this sentence; and (vii) all claims or other rights in or relating to past, present, and future income, royalties, damages, and payments due with respect to any of the foregoing, including rights to damages and payments for past, present, or future infringements, dilution, misappropriations or other violations thereof.

3.2 Ownership. Customer acknowledges and agrees that all aspects of the Service, the Company’s technology infrastructure (including software applications, websites, and application programming interfaces (“**APIs**”)) made available to Customer to provide access to the Service (the “**Platform**”), and the look and feel and layout of any reports or deliverables generated by the Service, including all **Intellectual Property [as defined in Addendum A]** incorporated into any of the foregoing and all **Intellectual Property Rights [as defined in Addendum A]** therein, are the exclusive property of the Company and its licensors. All rights in and to the Service, the Platform, and any of the foregoing not expressly granted to Customer in this Agreement are reserved by Company.

3.3 Customer Data. Customer acknowledges and agrees that the Company requires access to certain data and content from the Customer in order to provide the Service (“**Customer Data**”). Customer Data includes all information provided by Customer or any employee, contractor, or other agent of Customer (each an “**Authorized User**”), including software systems and software providers, to whom Customer provides access to the Service, who is otherwise authorized to use the Service, or who is otherwise authorized to provide data to the Company through the Platform. Customer hereby grants to the Company a non-exclusive, fully paid, royalty-free, irrevocable, perpetual, worldwide right and license (with rights to sublicense through multiple tiers of sublicensees) to use, reproduce, prepare derivative works of Customer

Data, **in each case solely**: (a) for the limited purpose of performing the Company's obligations in providing the Service (outlined in the full **Retail Access Agreement**) for the benefit of Customer; (b) to make Customer Data available and accessible in a limited capacity to third parties explicitly approved by the Customer, typically to comprise vendors providing retail products for sale to the Customer ("**Brands**"); and (c) in order to test, evaluate, improve, and commercialize the Services (or any successor Services or services), provided that the Company's use of such Customer Data complies with the nondisclosure obligations provided in Section 7 below. Subject to the rights granted in this Agreement, as between the parties, Customer and its licensors retain all right, title and interest in and to the Customer Data, and Company acknowledges that it neither owns nor acquires any additional rights in or to the Customer Data not expressly granted by this Agreement. Notwithstanding the foregoing, Customer acknowledges and agrees that Company may aggregate and anonymize data, including Customer Data, made available to Company in connection with the Services ("**Anonymous Market Data**") and may use such Anonymous Market Data for its own lawful purposes including, in order to improve the Services and Company's other Services and services, to better understand and predict market trends, and to provide anonymized case studies to demonstrate the efficacy of the Service. In no case will the Company use or disclose any Anonymous Market Data in any way that could identify Customer, an Authorized User, or any third party. Nothing in this Section 3.3 shall be deemed to limit Company's right to access or use, for any lawful purpose, any Customer Data that is made generally available to the public.

4. FEES AND PAYMENT.

4.1 Fees. Customer will pay to Company the fees set forth on the Service Order ("**Fees**") for use of the Service under this Agreement.

4.2 Payment Terms. Company will invoice Customer for Fees pursuant to the Service Order, and Customer will pay all Fees hereunder with thirty days after receipt of the applicable invoice. All payments must be made in U.S. dollars. All Fees due hereunder are exclusive of, and Customer shall pay, all sales, use and other taxes, export and import fees, customs duties and similar charges applicable to the transactions contemplated by this Agreement, except for taxes based upon the Company's net income.

5. WARRANTY DISCLAIMER. THE PARTIES ACKNOWLEDGE THAT THE SERVICES PROVIDED BY THE COMPANY HEREUNDER, INCLUDING THE SERVICE, ARE EXPERIMENTAL IN NATURE AND ARE MADE AVAILABLE "AS-IS" WITHOUT ANY WARRANTY OF ANY KIND. THE COMPANY HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY REGARDING THE SERVICES PROVIDED HEREUNDER, INCLUDING THE SERVICE AND THE SUPPORT SERVICES, IN EACH CASE INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

6. LIMITATION OF LIABILITY. EXCEPT WITH RESPECT TO BREACHES OF SECTION 7, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL,

INDIRECT, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA AND LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE COMPANY'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT OR THE SERVICE, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID TO COMPANY HEREUNDER DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY.

7. CONFIDENTIALITY.

7.1 Confidential Information. Each party (the "**Recipient**") acknowledges that it will have access to and will be exposed to Confidential Information of the other party (the "**Disclosing Party**"). As used in this Agreement, "**Confidential Information**" means any and all data, documents, materials, and other information, whether in tangible or intangible form, that relates to the business of Discloser or any of Discloser's affiliates or representatives and is identified or referred to as "confidential" or "proprietary" (or any equivalent term) or that Recipient otherwise knows or would reasonably be expected to know (due to the nature of the subject matter or the circumstances surrounding such information's disclosure) that Discloser or any of Discloser's affiliates or representatives considers to be proprietary or confidential; including, without limitation, (a) Customer Data (solely with respect to the Company as the Recipient); (b) information regarding the Service or the Platform not available on the Company's website, including any evaluation thereof (solely with respect to the Customer as the Recipient); and (c) and all notes, analyses, compilations, reports, forecasts, studies, samples, data, statistics, summaries, interpretations and other materials prepared by or for Recipient or its affiliates or representatives that contain, are based on, or otherwise reflect or are derived from any Confidential Information, in whole or in part.

7.2 Exclusions. "Confidential Information" does not include information that Recipient can demonstrate by clear and convincing documented evidence: (a) was publicly available at the time it was communicated to Recipient; (b) becomes publicly available after it was communicated to Recipient through no breach of this Agreement by Recipient (or of any other agreement between Discloser and Recipient); (c) was in Recipient's possession without any restrictions on use or disclosure prior to Recipient's receipt of such information directly or indirectly from or on behalf of Discloser or its affiliates or representatives; (d) was previously, or is subsequently, independently developed by Recipient or Recipient's employees or independent contractors without access or reference to, or use of, any Confidential Information; or (e) is subsequently received by Recipient from a third party that was not, at the time, under any obligation to Discloser or its affiliates or representatives, to maintain the confidentiality of such information.

7.3 Non-Disclosure; Limitations on Use. Recipient will, at all times and notwithstanding any termination or expiration of this Agreement: (a) not disclose, communicate, or make available (or permit to be disclosed, communicated, or made available) to any person or entity any of Discloser's Confidential Information without Discloser's prior written consent;

except to those Recipient employees, agents, or representatives with a need to know and which have signed written confidentiality Agreements containing, or are otherwise bound by, confidentiality obligations at least as restrictive as those contained herein; (b) not use Discloser's Confidential Information, except to the extent expressly authorized by this Agreement or necessary to exercise Recipient's rights or to perform its obligations under this Agreement; (c) protect and prevent the unauthorized disclosure or misuse of the Confidential Information by measures at least as restrictive as the measures it uses to protect its own Confidential Information, but with no less than a reasonable standard of care; and (d) immediately notify Discloser upon discovery of any loss or unauthorized access to or disclosure of Discloser's Confidential Information. Recipient shall be responsible and liable for any breach of this section by Recipient's or Recipient's affiliates' employees, agents, or representatives.

7.4 Permitted Disclosures. Notwithstanding the foregoing, Recipient may disclose Confidential Information without Discloser's prior written consent to the extent: (a) necessary for Recipient to enforce its rights hereunder; or (b) required by applicable law or regulation or pursuant to a valid order of a court of competent jurisdiction or an authorized government agency; *provided*, that such disclosure does not exceed the minimum scope of disclosure required by such law, regulation, or order; and *provided further*, that, unless required otherwise by such law or regulation or court order, as reasonably advised by counsel, Recipient provides at least five business days' prior written notice of any such required disclosure to Discloser stating nature and scope of the required disclosure, the reasons that such disclosure is required by law, and the time and place that such disclosure will be made, and in any event with sufficient prior notice to permit Discloser to contest the order or seek confidentiality protections, as determined in Discloser's sole discretion.

7.5 Injunctive Relief. The parties acknowledge the unique and trade secret nature of Discloser's Confidential Information and Discloser's valuable intellectual property rights and other proprietary interest therein. The parties understand and agree that monetary damages, and Discloser's other remedies at law, may be inadequate, and that Discloser shall accordingly be entitled to seek injunctive and other equitable relief in any courts of competent jurisdiction to restrain the breach or threatened breach of, or otherwise to specifically enforce, any of the terms of this section, without the requirement of posting bond, and in addition to all other remedies available to Discloser at law, in equity, or hereunder.

8. TERM; TERMINATION.

8.1 Term. The initial term of this Agreement will begin on the Effective Date and will continue for the "Evaluation Term" set forth on the Service Order ("**Initial Term**"), unless earlier terminated as provided herein. Following the Initial Term this Agreement and the Service Order will automatically renew for additional periods (each, an "**Renewal Term**," and together with the Initial Term, the "**Term**") equal to the duration of the Initial Term (or such other different Renewal Term as may be set forth on the Service Order), unless a party has given the other party written notice of its intent to not renew at least thirty (30) days' prior to the end of the Initial Term or the then-current Renewal Term.

8.2 Termination. Either party may terminate this Agreement if the other party breaches any material provision of this Agreement and does not cure such breach within thirty (30) days after receiving written notice thereof. In addition, Customer may terminate this Agreement at any time for its convenience by providing Company with at least thirty (30) days prior written notice.

8.3 Effects of Termination. Upon termination or expiration of this Agreement for any reason, any amounts owed to Company under this Agreement before such termination or expiration will be immediately due and payable, all rights granted by Company to Customer in this Agreement will immediately cease and Customer shall immediately discontinue all access to and use of the Service and return to Company or destroy all copies of Company Confidential Information in Customer's possession or control. Sections 2 (Restrictions on Use), 3 (Proprietary Rights), 5 (Warranty Disclaimer), 6 (Limitation of Liability), 7 (Confidentiality), 8.3 (Effects of Termination), and 9 (General), together with any accrued payment obligations, will survive expiration or termination of this Agreement for any reason.

9. GENERAL.

9.1 Governing Law. This Agreement and any claim (whether in contract, tort or otherwise) or other matter arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, without giving effect to any choice or conflict of law principle or rule (whether of the State of Colorado or any other jurisdiction).

9.2 Severability. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable ("**Invalid**") in any jurisdiction, then such term or provision will be changed and interpreted to accomplish the objectives of such term or provision to the greatest extent possible under applicable law; *provided* that the Invalid term or provision shall not affect any other term or provision of this Agreement or cause the term or provision to be Invalid in any other jurisdiction.

9.3 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the recipient; (b) when sent by confirmed facsimile or electronic mail during normal business hours of the recipient, and if not sent during normal business hours of the recipient, then on the next business day; (c) five calendar days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) one business day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the recipient at the recipient's address set forth on the signature page hereof, or to such other address or to such other address or to the attention of such other person as the recipient has specified by ten days' prior written notice to the sender.

9.4 Amendment and Modification; Waiver. No amendment to, or modification or rescission of, this Agreement (including the Service Order) is effective unless it is in writing and signed by each party. No waiver of any provision of this Agreement is effective unless it is in writing, identified as a waiver to this Agreement, and is signed by the party waiving its right; and

no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial waiver or exercise of any right, remedy, power, or privilege hereunder preclude or limit any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

9.5 Assignment; Successors and Assigns. No party may assign, delegate, or transfer, by operation of law or otherwise, this Agreement or any of its rights or obligations hereunder without the other party's prior written consent, which will not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, the Company may assign this Agreement and its rights and obligations hereunder to any affiliate or successor (whether by merger, sale of all or substantially all of its assets, or otherwise). Except as otherwise expressly provided herein, this Agreement shall inure to the benefit of and be binding upon the parties' respective successors and assigns. Any attempted assignment or delegation in violation of this provision shall be void and without effect.

9.6 Entire Agreement. This Agreement, including the Service Order, which is incorporated herein, collectively constitute the entire agreement between the parties with respect to the subject matter hereof, and supersede and merge all prior and contemporaneous agreements, understandings, or representations, whether written or oral.

9.7 Interpretation. The headings used in this Agreement are for informational purposes and convenience only and in no way define, limit, construe, or describe the scope of the sections. Unless the context otherwise requires, (a) each term stated in either the singular or the plural shall include the singular and the plural, (b) the words "herein," "hereof," or any variation thereof refer to this Agreement as a whole and not merely to any subdivision hereof, and (c) the word "including" or any variation thereof means "including, without limitation" and shall not be construed to limit any preceding general statement. The parties have participated jointly in the negotiation and drafting of this Agreement, and in the event an ambiguity or question of intent or interpretation arise, no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

9.8 Counterparts; Electronic Delivery. This Agreement may be executed in one or more counterpart(s), each of which shall constitute an original and all of which shall constitute one and the same instrument. Delivery of an executed counterpart to this Agreement, or a copy thereof, by facsimile or electronic transmission shall be as effective as delivery of a manually executed counterpart to this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]