

RESELLER AGREEMENT

This RESELLER AGREEMENT (this “**Agreement**”) is made effective as of _____, 2020, by and between BoomCloud, LLC a Utah limited liability company (the “**Company**”), and _____ (the “**Reseller**”). The Company and the Consultant are sometimes hereinafter referred to individually as a “**Party**” and together as the “**Parties.**”

WHEREAS, the Reseller has substantial business knowledge and expertise in the conduct of the Business (as defined in Section 26 below) and the Company desires to procure the knowledge, expertise, network/mutual clients and experience of the Consultant to assist in the sales and customer acquisition tasks of the Company;

WHEREAS, the Reseller acknowledges that in connection with the Reseller’s services, the Reseller will have access to valuable Confidential Information (as defined in Section 6 below), including, but not limited to, the Company’s methods of doing business, business plans, and trade secrets;

WHEREAS, the Reseller has other business obligations and opportunities which Reseller will be pursuing while working for the Company, and is not dependent on the Company for his or her livelihood and nothing herein shall prevent Reseller from providing reseller/sales services to others, and

WHEREAS, all of the foregoing recitals are incorporated into the covenants of this Agreement as if set forth herein at length.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, agree as follows:

1. Agreement Term. The Company hereby hires the Reseller, and the Reseller hereby agrees to provide services for the Company, as an independent contractor, upon the terms and conditions set forth in this Agreement for the period beginning on the date hereof and continuing on a month-to-month basis until terminated as provided in Section 5 hereof (the “**Service Period**”).
2. Services. During the Service Period, the Reseller will provide the Company with the following services (the “**Services**”): Perform BoomCloud demos to potential clients, sign up new clients to BoomCloud and provide checkins with new clients. The Reseller will have discretion as to when the Services are provided and the means and method of providing the Services, consistent with reasonable, prudent and sound business practices. The Reseller will provide his or her own computer, cell phone, and other necessary equipment in providing the Services. The Reseller will perform the duties, responsibilities, and functions set forth herein on behalf of the Company in a diligent, trustworthy, businesslike, and efficient manner.
3. Compensation. During the Service Period, the Reseller will be paid in monthly payments for tasks performed as agreed upon in advance by Company and Reseller. For services provided the Company shall pay Reseller a monthly recurring fee of 15% of revenue collected from clients/users. Each new user/client/customer become The Company’s customer. Reseller is an independent contractor, is not an employee, and will be responsible for the payment of all federal taxes (including, but not limited to, social security, medicare, and self-employment), state taxes, and any required state unemployment or workers’ compensation premiums. Commission Payments will be issued at the end of each month.

4. Termination.

(a) Either party may terminate the Service Period without cause upon providing the other Party ten (10) days prior written notice.

(b) Company may terminate the Service Period immediately for Cause. For purposes of this subsection, “Cause” will mean any of the following: (i) the indictment or conviction or having a civil judgment rendered against the Reseller for a felony or other crime involving moral turpitude, fraud, or breach of fiduciary duty; (ii) providing the Services while under the influence of alcohol; (iii) the use of illegal drugs (whether or not at the workplace) or other conduct, even if not in conjunction with the Reseller’s duties hereunder, which could reasonably be expected to, or which does, cause the Company or any of its affiliates or subsidiaries public disgrace or disrepute or economic harm, in a material way; (iv) repeated material failure to perform the Services; (v) gross negligence or willful misconduct with respect to the Company or any of its affiliates or subsidiaries or in the performance of the Services; or (vi) any other material breach of this Agreement or any other agreement between the Reseller and the Company or any of its affiliates or subsidiaries which, if curable, is not cured to the Company’s reasonable satisfaction within fifteen (15) days after written notice thereof to the Reseller.

(c) Reseller may terminate the Service Period immediately for Cause. For purposes of this subsection, “Cause” will mean: a material breach of this Agreement or any other agreement between the Reseller and the Company or any of its affiliates or subsidiaries which, if curable, is not cured to the Reseller’s reasonable satisfaction within fifteen (15) days after written notice thereof to the Company.

5. Confidential Information. The Reseller recognizes and acknowledges that the continued success of the Company and its affiliates and their subsidiaries depends upon the use and protection of a large body of confidential and proprietary information and that the Reseller will have access to certain Confidential Information of the Company, its affiliates and their subsidiaries and corporations with which the Company and its affiliates and their subsidiaries do business, and that such Confidential Information constitutes valuable, special, and unique property of the Company, its affiliates, and their subsidiaries and such other corporations. “**Confidential Information**” will be interpreted to include all information of any sort (whether merely remembered or embodied in a tangible or intangible form) that is (a) related to the Company’s or its affiliates’ current or potential business and (b) not generally or publicly known. Confidential Information includes, without limitation, the information, observations, and data obtained by the Reseller while providing the Services to the Company and its affiliates and their subsidiaries (or any of their predecessors) concerning the business or affairs of the Company or any of its affiliates and their subsidiaries, including information concerning acquisition opportunities in or reasonably related to the Company’s or its affiliates’ business or industry, the identities of the current, former, or prospective employees, suppliers, and customers of the Company or its affiliates, software, development, transition, methods, and processes, operating procedures, methods of doing business, products, formulations, strategic, marketing, and expansion plans, financial and business plans, financial data, pricing information, employee lists and telephone numbers, locations of sales representatives, new and existing customer or supplier programs and services, customer terms, and customer service and integration processes, requirements, and costs of providing service, support, and equipment. The Reseller will use the Confidential Information only as necessary and only in connection with the performance of the Services. The Reseller agrees that both during and after the Service Period the Consultant will not disclose to any unauthorized Person or use for the Reseller’s own or any other purposes (except as described in the immediately preceding sentence) any Confidential Information without the prior written consent of the Company, unless and to the extent that (i) the Confidential Information becomes generally known to and available for use by the public other than as a result of the Reseller’s acts or omissions or (ii) the Consultant is required by law, court order or

regulation to disclose Confidential Information; provided, however, that in such circumstance the Reseller must (1) provide prompt written notice of such order to the Company and (2) cooperate with the Company when revealing such Confidential Information to such court.

6. Return of Corporate Property. The Reseller acknowledges and agrees that all notes, electronic data of any kind, records, reports, sketches, plans, unpublished memoranda, or other documents, whether in paper, electronic, or other form (and all copies thereof), held by the Reseller concerning any information relating to the business of the Company or any of its affiliates or their subsidiaries, whether confidential or not, are the property of the Company. The Reseller will deliver to the Company, at the Company's sole expense, at the termination or expiration of the Service Period, or at any other time the Company may request, all equipment, files, property, memoranda, notes, plans, records, reports, computer tapes, printouts, software, and other documents and data (and all electronic, paper, or other copies thereof) belonging to the Company or any of its affiliates or their subsidiaries which includes, but is not limited to, any materials that contain, embody, or relate to the Confidential Information, Work Product (as defined in Section 8 below), or the business of the Company or any of its affiliates or their subsidiaries, which the Reseller may then possess or have under the Reseller's control. The Reseller will take any and all actions reasonably deemed necessary or appropriate by the Company from time to time, in its sole discretion, to ensure the continued confidentiality and protection of the Confidential Information. The Reseller will notify the Company promptly and in writing of any circumstances of which the Reseller has knowledge relating to any possession or use of any Confidential Information by any Person other than those authorized by the terms of this Agreement. Notwithstanding the foregoing, Reseller shall be entitled to retain one copy of Confidential Information for archival purposes

7. Intellectual Property Rights. The Reseller acknowledges and agrees that all inventions, technology, processes, innovations, ideas, improvements, developments, methods, designs, analyses, trademarks, service marks, and other indicia of origin, writings, audiovisual works, concepts, drawings, reports, and all similar, related, or derivative information or works (whether or not patentable or subject to copyright), including but not limited to all patents, copyrights, copyright registrations, trademarks, and trademark registrations in and to any of the foregoing, along with the right to practice, employ, exploit, use, develop, reproduce, copy, distribute copies, publish, license, or create works derivative of any of the foregoing, and the right to choose not to do or permit any of the aforementioned actions, which relate to the Company's or any of its affiliates' or their subsidiaries' actual or anticipated business, research, and development or existing or future products or services and which are conceived, developed, or made by the Reseller while providing the Services to the Company and its affiliates or their subsidiaries (collectively, the "**Work Product**") belong to the Company or such Affiliate or their Subsidiary. All Work Product created by the Reseller while providing the Services will be considered "work made for hire," and as such, the Company is the sole owner of all rights, title, and interests therein. All other rights to any new Work Product and all rights to any existing Work Product, including but not limited to all of the Reseller's rights to any copyrights or copyright registrations related thereto, are conveyed, assigned, and transferred to the Company pursuant to this Agreement. The Reseller will promptly disclose and deliver such Work Product to the Company and, at the Company's sole expense, perform all actions reasonably requested by the Company (whether during or after the Service Period) to establish, confirm, and protect such ownership (including, without limitation, the execution of assignments, copyright registrations, consents, licenses, powers of attorney, and other instruments).

8. Non-Solicitation.

(a) In further consideration of the compensation to be paid to the Reseller hereunder, the Reseller acknowledges that in the course of the Reseller's providing the Services to the Company and its affiliates and their subsidiaries (and their predecessors) the Reseller will become

familiar with the Company's and its affiliates and their subsidiaries' trade secrets, methods of doing business, business plans, and other valuable Confidential Information concerning the Company, its affiliates, and their subsidiaries, and each of their customers and suppliers.

(b) During the term of this Agreement and continuing for 24 months after termination for any reason, the Reseller will not, directly or indirectly, in any manner (whether on the Reseller's own account, as an owner, operator, officer, director, partner, manager, employee, agent, contractor, consultant, or otherwise): (i) recruit, solicit, or otherwise attempt to employ or retain or enter into any business relationship with any current employee or former employee (who was employed by the Company within the twenty four (24) month period prior to such recruitment, solicitation, or other attempt to employ) of or Reseller to the Company or any of its affiliates or any of their subsidiaries; (ii) induce or attempt to induce any current or former employee of, or reseller to, the Company or any of its affiliates or any of their subsidiaries, to leave the employ of the Company or any such Subsidiary, or in any way interfere with the relationship between the Company or any of its affiliates or their subsidiaries and any of their employees or consultants (in the case of (i) or (ii), a "**Solicitation**"); or (iii) employ or retain or enter into any business relationship with any Person who was at any time within the twenty four (24) month period prior to such relationship an employee of or consultant to the Company or any of its affiliates or any of their subsidiaries.

10. The Reseller's Representations. The Reseller hereby represents and warrants to the Company that (a) the Reseller has entered into this Agreement of the Reseller's own free will for no consideration other than as referred to herein, (b) the execution, delivery, and performance of this Agreement by the Reseller does not and will not breach, violate, or cause a default under any contract, agreement, instrument, order, judgment, or decree to which the Reseller is a party or by which the Reseller is bound, (c) the Reseller is not a party to or bound by any employment, non-competition, confidentiality, or other similar agreement with any other Person in breach of this Agreement, and (d) upon the execution and delivery of this Agreement by the Company, this Agreement will be the valid and binding obligation of the Reseller, enforceable in accordance with its terms. The Reseller hereby acknowledges and represents that the Reseller has had the opportunity to consult with independent legal counsel regarding the Reseller's rights and obligations under this Agreement and that the Reseller fully understands the terms and conditions contained herein.

11. Survival. Sections 3 through 22 will survive and continue in full force in accordance with their terms notwithstanding the termination of the Service Period.

12. Notices. Any notice provided for in this Agreement will be in writing and will be either personally delivered, sent by reputable overnight courier service, by e-mail (with hard copy to follow by regular mail), or mailed by first-class mail, return receipt requested, to the recipient at the address below indicated:

Notices to the Reseller:

(NAME)
E-mail

Notices to the Company:

BoomCloud, LLC

E-mail: [Jordon@boomcloudapps.com]

Copy to:

Parsons Behle & Latimer
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111
Attention: J.D. Kesler
Email: jkesler@parsonsbehle.com

or such other address or to the attention of such other person as the recipient Party will have specified by prior written notice to the sending Party. Any notice under this Agreement will be deemed to have been given when so delivered, sent, or mailed.

13. Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision or any action in any other jurisdiction, but this Agreement will be reformed, construed, and enforced in such jurisdiction as if such invalid, illegal, or unenforceable provision had never been contained herein.

14. Complete Agreement. This Agreement embodies the complete agreement and understanding among the Parties and supersedes and preempts any prior understandings, agreements, or representations by or among the Parties, written or oral, which may have related to the subject matter hereof in any way. The Reseller and Company hereby release and waive any claims or rights either may have under any prior agreement or understanding the Reseller or Company may have with one another or any of Company's subsidiaries, affiliates, or predecessors, including, but not limited to, any claim for severance or other benefits.

15. Counterparts. This Agreement may be executed in separate counterparts (including by electronic signature pages), each of which is deemed to be an original and all of which taken together constitute one and the same agreement.

16. No Strict Construction. The Parties hereto jointly participated in the negotiation and drafting of this Agreement. The language used in this Agreement will be deemed to be the language chosen by the Parties hereto to express their collective mutual intent, this Agreement will be construed as if drafted jointly by the Parties hereto, and no rule of strict construction will be applied against any Person.

17. Successors and Assigns. This Agreement is intended to bind and inure to the benefit of and be enforceable by the Reseller, the Company and their respective heirs, successors, and assigns. The Reseller may not assign the Reseller's rights or delegate the Reseller's duties or obligations hereunder without the prior written consent of the Company. The Company may assign its rights and obligations hereunder, with the written consent of the Reseller which shall not be unreasonably withheld, to any of the Company's affiliates or any Subsidiary of the Company or to any Person that acquires the Company or any portion of its business or its assets, in which case all references to the Company will refer to such assignee.

18. Choice of Law. THIS AGREEMENT, AND ALL ISSUES AND QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, ENFORCEMENT, AND

INTERPRETATION OF THIS AGREEMENT, WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF UTAH, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICT OF LAW RULES OR PROVISIONS (WHETHER OF THE STATE OF UTAH OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF UTAH.

19. Mutual Waiver of Jury Trial. THE COMPANY AND THE RESELLER EACH WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT IN ANY ACTION, PROCEEDING, OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR ANY AFFILIATE OF ANY OTHER SUCH PARTY, WHETHER WITH RESPECT TO STATUTORY, CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. THE COMPANY AND THE RESELLER EACH AGREE THAT ANY SUCH CLAIM OR CAUSE OF ACTION WILL BE TRIED BY A COURT WITHOUT A JURY.

20. Business Days. If any time period for giving notice or taking action hereunder expires on a day which is a Saturday, Sunday, or legal holiday in the state in which the Company's chief Consultant office is located, the time period shall automatically be extended to the business day immediately following such Saturday, Sunday, or legal holiday.

21. Amendment and Waiver. The provisions of this Agreement may be amended or waived only with the prior written consent of the Company and the Reseller, and no course of conduct or course of dealing or failure or delay by any Party hereto in enforcing or exercising any of the provisions of this Agreement will affect the validity, binding effect, or enforceability of this Agreement or be deemed to be an implied waiver of any provision of this Agreement.

22. Limitation of Liability; Indemnification. Reseller's liability to the Company for any breach of this Agreement shall be limited to the total amounts paid to Reseller by the Company hereunder, except for liability arising from Reseller's willful malfeasance, bad faith or gross negligence. The Company shall indemnify and hold harmless Reseller and its employees, members, agents, officers and directors ("Reseller Indemnitees") from losses, liabilities, damages, claims, payments, liens, judgments, demands, costs and expenses (including reasonable attorneys' fees) (all of the foregoing, "Claims") asserted against the Reseller Indemnitees or any of them by a third person arising out of or related to (i) Reseller's provision of services to the Company under this Agreement, or (ii) the Company's use or disclosure of any services provided to the Company by Reseller under this Agreement, provided, however, that the Company shall not be required to indemnify Reseller Indemnitees hereunder for any Claims arising out of or resulting from the (i) willful malfeasance, bad faith or gross negligence of a Reseller Indemnitee or (ii) any breach of this Agreement by Reseller.

23. Prevailing Party Fees and Expenses. If the Company or any of its subsidiaries, on the one hand, or the Reseller, on the other hand, (i) brings any action or proceeding to enforce any provision of this Agreement or to obtain damages as a result of a breach of this Agreement or to enjoin any breach of this Agreement and (ii) prevails in such action or proceeding, then the non-prevailing party will, in addition to any other rights and remedies available, reimburse the prevailing party for any and all reasonable costs and expenses (including attorneys' fees, expert witness fees, paralegal fees, and deposition transcription fees) incurred by the prevailing party in connection with such action or proceeding

.[Signatures follow on separate page(s).]

IN WITNESS WHEREOF, the Parties hereto have executed this Reseller Agreement effective as of the date first written above.

COMPANY:

BoomCloud, LLC
a Utah limited liability company

By: _____
Jordon Comstock

Reseller:

NAME

By: _____
(Name)