

**BARK TECHNOLOGIES, INC.**  
**MARKETING AFFILIATE AGREEMENT**

THIS MARKETING AFFILIATE AGREEMENT (the “Agreement”) is entered into as of July 1, 2016 (the “Effective Date”) by and between BARK TECHNOLOGIES, INC., a Delaware corporation (“Bark”) and Affiliate (“Marketing Affiliate”). Bark and Marketing Affiliate are each referred to herein as a “Party” and collectively as the “Parties”.

WHEREAS Bark has developed the proprietary application described on Exhibit A hereto (the “Solution”) for use by families;

WHEREAS Marketing Affiliate desires to promote the Solution to families subject to the terms and conditions set forth herein; and

WHEREAS, with respect to families referred to Bark by Marketing Affiliate Bark desires to provide the parent and/or or legal guardian of such families (approved by Bark) with access to the Solution under Bark’s standard end user terms (each such subscriber of the Solution, an “End User”).

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and intending to be legally bound hereby, the Parties hereby agree as follows:

**1. MARKETING.**

**1.1 Authorization.** Subject to the terms and conditions of this Agreement, Bark hereby grants to Marketing Affiliate a non-exclusive, non-transferable, and non-assignable right to promote and market the Solution to End Users.

**1.2 Promotional Efforts.** Any efforts by or on behalf of Marketing Affiliate to promote the Solution will be at Marketing Affiliate’s own expense. Without limiting the foregoing, Marketing Affiliate will conduct all of its promotional activities of the Solution in a professional and competent manner, and in a manner that maintains the good name and reputation of Bark and the Solution. Bark shall provide information and materials for the Marketing Affiliate to use in its promotional efforts. In the event the Marketing Affiliate produces any materials to be used for the promotion of the Solution (including but not limited to information or materials posted on the Marketing

Affiliate’s website), such materials shall be approved by Bark in advance of their dissemination or publication.

**1.3 Marketing Affiliate Disclosures.** The Marketing Affiliate shall clearly and conspicuously disclose that it is being compensated by Bark for its promotion of the Solution. In performing the promotional activities hereunder, Marketing Affiliate shall not engage in any false, deceptive, or illegal acts or practices, and shall not make any representations, warranties or guarantees regarding the Solution which are inconsistent with any written materials provided by Bark to Marketing Affiliate that describe the Solution.

**1.4 Exclusivity.** Notwithstanding anything to the contrary in this Agreement, during the Term and for one year thereafter, Marketing Affiliate shall not market any third-party or proprietary application, technology, or service that is similar to or competitive with the Solution.

**1.5 End User Terms.** Marketing Affiliate shall advise each prospective End User that his or her access to the Solution will be subject to Bark’s standard end user terms, an electronic copy of which will be made available to such user for acceptance by such End User.

**1.6 Access by End Users.** Subject in each case to Bark’s then-current end user terms for the Solution and approval by Bark, Bark will provide the right to access and use the Solution to each End User referred to Bark by Marketing Affiliate. End Users will subscribe to the Solution directly with Bark. The End-User’s right of access will be determined by the subscription terms.

**2. COMPENSATION.**

**2.1 Revenue Share.** In full consideration for any and all efforts to promote the Solution performed by Marketing Affiliate hereunder, Marketing Affiliate shall receive fifteen percent (15%) of the Net Revenues generated during the Term of this Agreement. As used herein, “Net Revenues” shall mean all subscription payments actually received by Bark for access to the Solution during the Term by End Users who are referred to Bark in writing by Marketing Affiliate, net of payment processing fees; *provided, however*, that if any such End User has not been referred to Bark by another school Marketing Affiliate or other third party. As between the Parties, Bark shall be responsible for

collecting all subscription payments for access to the Solution by End Users referred by Marketing Affiliate, and shall exercise its best efforts to collect all such subscription payments generated during the Term of this Agreement.

**2.2 Payment Terms.** Bark will pay Marketing Affiliate on a quarterly basis all revenue share amounts accrued under Section 2.1 for the applicable calendar quarter during the Term. Each such payment shall be made on the 5th of the month following the end of the applicable calendar quarter and will be delivered with a report detailing the Net Revenues accrued for Marketing Affiliate.

**2.3 Taxes.** Each Party shall be solely and independently responsible for complying with their respective tax obligations (if any) arising from this Agreement.

### **3. SUPPORT.**

**3.1 Promotional Support.** Bark will provide marketing materials to Marketing Affiliate in support of Marketing Affiliate's promotional activities, and will update such materials upon Marketing Affiliate's request, if needed.

**3.2 Technical Support.** Bark will provide reasonable technical support to Marketing Affiliate and the End Users, via telephone and email, Monday through Friday (excluding holidays) and during the hours of 9:00 a.m. to 6:00 p.m. Eastern Time. Bark may be contacted for such technical support at [help@bark.us](mailto:help@bark.us).

### **4. OTHER TERMS AND CONDITIONS.**

**4.1 Non-Exclusive Marketing Affiliate.** Marketing Affiliate acknowledges that Bark reserves the right to arrange for other Marketing Affiliates, and other third parties to promote the Solution, in Bark's sole discretion.

**4.2 Testimonials.** Upon Bark's request, Marketing Affiliate will provide Bark with a testimonial regarding the Solution, and Bark may use such testimonial, along with Marketing Affiliate's name in connection with such testimonial, on Bark's websites and in other marketing materials. Such testimonial may be placed on the Marketing Affiliate's website and shall indicate clearly and conspicuously that the Marketing Affiliate is being compensated for promoting the Solution,

**4.3 Representations and Warranties.** Marketing Affiliate represents and warrants to Bark that:

a. Marketing Affiliate has the full power and authority to enter into this Agreement, and to perform under this Agreement;

b. Marketing Affiliate has no outstanding agreement or obligation that would interfere with or preclude Company from complying with the provisions hereof, and will not enter into any such conflicting agreement during the term of this Agreement;

c. Marketing Affiliate has all rights, licenses, and consents necessary to perform under this Agreement, and will not perform any activities for which Marketing Affiliate does not have all necessary rights, licenses, or consents; and

d. Marketing Affiliate will comply with all applicable laws, rules and regulations in in connection with performing under this Agreement.

### **5. TERM AND TERMINATION.**

**5.1 Term.** The term of this Agreement, along with the licenses and access rights granted hereunder, shall commence on the Effective Date and shall continue in full force and effect until June 30, 2022 (the "Term").

**5.2 Termination.** Either Party may terminate this Agreement prior to the end of the Term if the other Party has committed any material breach of this Agreement and failed to cure such material breach within 30 days after receiving written notice of the breach from the non-breaching Party. Either Party may terminate this Agreement upon 60 days prior written notice to the other Party.

**5.3 Effects of Termination.** Upon the expiration of the Term or earlier termination of this Agreement, Marketing Affiliate shall remove all references to the Bark Solution from its website and return all promotional materials to Bark. .

**5.4 Survival.** Upon expiration or termination of this Agreement, the rights and obligations of the Parties will cease, except for the rights and obligations in all provisions of this Agreement which by their nature contemplate performance or applicability after the expiration or termination hereof.

## 6. INTELLECTUAL PROPERTY.

**6.1 Reservation of Rights.** All rights to the Solution or the Bark Marks as defined below not expressly granted herein are reserved by Bark. Nothing in this Agreement is intended by the Parties to constitute a sale of any software or documentation associated with the Solution, or any derivations thereof. Bark reserves the right to modify the Solution at any time in Bark's discretion.

**6.2 Title.** The Solution is the valuable proprietary and trade secret information and property of Bark. Title, ownership and intellectual property rights, including without limitation all copyright rights, in and to the Solution, and all derivatives thereof, shall remain with Bark and its licensors. Marketing Affiliate acknowledges the ownership and intellectual property rights of Bark in the Solution, and will not take any action to jeopardize, limit or interfere in any manner with such ownership or other rights.

**6.3 Trademarks.** Bark retains all right, title, and interest to all trademarks, service marks, and trade names associated with Bark and/or the Solution, whether registered or unregistered (collectively, the "Bark Marks"). Bark hereby grants to Marketing Affiliate a limited, non-transferable, royalty-free, revocable, non-exclusive license to use, reproduce, have reproduced, and display the Bark Marks solely in connection with Marketing Affiliate's promotion of the Solution under this Agreement. All use by Marketing Affiliate of the Bark Marks, including any goodwill associated therewith, shall inure to the benefit of, conform to the standards set by, and be under the control of, Bark. Marketing Affiliate shall not use any of the Bark Marks in connection with any product or service or in any manner that is likely to cause confusion, and shall not copy, imitate, or use any such marks, in whole or in part, without the prior written permission of Bark. As between the Parties, Bark will have the sole right and discretion to determine whether any use of the Bark Marks in connection with the promotional activities hereunder complies with the requirements of this Agreement.

**6.4 Feedback.** Although Marketing Affiliate will remain the owner of any feedback provided to Bark regarding the Solution, Marketing Affiliate hereby grants Bark a non-exclusive, royalty-free, fully paid up, perpetual, irrevocable, transferable, unlimited, worldwide right to use and otherwise commercially exploit any feedback, ideas or other suggestions communicated by Marketing Affiliate to Bark.

## 7. CONFIDENTIALITY.

**7.1 Protection of Confidential Information.** Except as expressly permitted hereunder, each Party shall hold in confidence and not use or disclose any materials or other information received from the other Party that is designated, or which may be reasonably regarded, as confidential or proprietary to such other Party ("Confidential Information"). Bark's Confidential Information shall include the Solution and all information related thereto. Each Party shall treat the other Party's Confidential Information with at least the same degree of care it uses to prevent unauthorized disclosure or use of its own confidential information, but in no event less than reasonable care. A Party's Confidential Information will not include any information that the receiving Party can prove (a) is or later becomes, through no act or failure to act on the part of the receiving Party, generally known or available to the public; (b) is already known by the receiving Party at the time of disclosure as evidenced by its records; (c) is furnished to the receiving Party by a third party, as a matter of right and without restriction on disclosure; or (d) is independently developed by the receiving Party without any breach of this Agreement. The obligations under this Section 7 shall not apply to information that is required by law, government order or court-ordered request to be disclosed.

**7.2 Return of Confidential Information.** Within 30 days of the expiration of the Term or termination of this Agreement, each Party shall return to the other Party or destroy (as requested by the other Party) all Confidential Information of such other Party received hereunder.

## 8. DISCLAIMERS AND LIMITATIONS OF LIABILITY.

**8.1 Disclaimer.** THE SOLUTION IS PROVIDED TO END USERS ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. BARK DOES NOT GUARANTEE ANY SPECIFIC RESULT FROM USE OF THE SOLUTION, AND DOES NOT REPRESENT OR WARRANT THAT THE SOLUTION WILL BE ERROR-FREE OR WILL PROVIDE ACCURATE, COMPLETE, RELIABLE, OR CURRENT INFORMATION.

**8.2 Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOST PROFITS, LOST DATA, LOSS OF BUSINESS, GOODWILL OR REPUTATION, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL OR SPECIAL DAMAGES OF ANY KIND, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL BARK'S TOTAL CUMULATIVE LIABILITY UNDER THIS AGREEMENT FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING TORT, CONTRACT, NEGLIGENCE AND STRICT LIABILITY, EXCEED THE AMOUNTS PAID BY BARK TO MARKETING AFFILIATE HEREUNDER. The Parties acknowledge and agree that the foregoing limitations are essential elements of the bargain and that in the absence of such limitations, the financial and other terms of this Agreement would be substantially different.

## **9. MISCELLANEOUS.**

**9.1 Governing Law.** This Agreement shall be governed by the laws of the State of New York, without reference to the choice of law or conflicts of law principles thereof. The relationship among the Parties, including all rights and responsibilities among the Parties, and all claims relating to or arising out of this Agreement, the breach of this Agreement, or the relationship of the Parties, shall likewise be governed by the laws of the State of New York without reference to the choice of law or conflicts of law principles thereof.

**9.2 Disputes.** Bark and Marketing Affiliate agree that all disputes, controversies or claims which arise out of or relate in any way to the Solution or this Agreement shall be finally resolved in the State or Federal Court located in New York County, New York.

**9.3 Assignment.** Neither Party may assign or otherwise transfer this Agreement or any rights granted under this Agreement without the prior written consent of the other Party, and any purported assignment without such prior written consent shall be void, except that either Party may assign this Agreement pursuant to a merger, consolidation or in connection with the sale or transfer of all or substantially all of its assets. Subject to the foregoing, this Agreement will bind and benefit the Parties and their respective successors and assigns.

**9.4 No Implied Licenses.** No other rights, immunities or licenses are granted under this Agreement by either Party, either expressly or by

implication, estoppel or otherwise, except as expressly set forth in this Agreement.

**9.5 Compliance with Law.** Bark and Marketing Affiliate each expressly acknowledge that it is committed to compliance with all applicable laws and regulations (including without limited to email, telephone and text message marketing regulations), and to conducting its activities according to the highest standards of integrity. Each Party shall perform under or pursuant to this Agreement in accordance with such applicable laws and regulations. Each Party will furnish the other Party in a timely manner, all information in its possession reasonably requested in order to comply with the foregoing.

**9.6 No Waiver.** The waiver by either Party of any right hereunder or the failure to perform or of a breach by another Party shall not be deemed a waiver of any other right hereunder or of any other breach or failure by said other Party whether of a similar nature or otherwise.

**9.7 Severability.** In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction (or arbitration panel) to be illegal, unenforceable or void, this Agreement shall continue in full force and effect to the fullest extent permitted by law without said provision, and the Parties shall amend this Agreement to the extent feasible to lawfully include the substance of the excluded term to as fully as possible realize the intent of the Parties and their commercial bargain under this Agreement.

**9.8 Independent Contractors.** The relationship of the Parties is intended to be that of independent contractors. Neither Bark nor Marketing Affiliate shall be deemed to be an agent, partner or joint venturer of the other for any purpose as a result of this Agreement or the transactions contemplated by this Agreement.

**9.9 Notices.** Any notice or consent required or permitted to be given under this Agreement shall be in writing, and shall be deemed to have been given when delivered personally, or sent via a nationally recognized overnight courier or registered mail return receipt requested, to the other Party's address specified in the preamble of this Agreement (to the attention of such Party's General Counsel).

**9.10 Complete Agreement.** This Agreement constitutes the entire agreement, both written and oral, between the Parties with respect to the subject matter hereof, and all prior agreements and understandings

respecting the subject matter hereof, either written or oral, express or implied, shall be abrogated, canceled

and are null and void and of no effect.

**Exhibit A**

**Description of the Solution**