

## **MASTER SOFTWARE AS A SERVICE LICENSE AGREEMENT**

THIS MASTER SOFTWARE AS A SERVICE LICENSE AGREEMENT, by and between Agilix Labs, Inc., a Delaware corporation (“Agilix”) and Warren County School District Virtual Academy (“Customer”), is effective as of the 1<sup>st</sup> day of July, 2021 (the “Effective Date”).

### **BACKGROUND**

- A. Agilix has developed and is willing to provide to Customer access to the Buzz Personalized Learning System (“Buzz”) software as a service for use by Customer.
- B. Customer desires to license access to Buzz for use by the faculty, administration, staff, and students enrolled by Customer.

### **AGREEMENT**

#### **ARTICLE 1 DEFINITIONS**

1.1 “Affiliate” means, with respect to a party, any entity that controls, is controlled by, or is under common control with that party (provided such entity is treated as an Affiliate only for the period for which such control exists), where “control” means the actual power, either directly or indirectly through one or more intermediaries, to direct or cause the direction of the management and policies of such entity, whether by the ownership of more than fifty percent (50%) of the voting stock of such entity, by contract or otherwise.

1.2 “Authorized End Users” means faculty, administration, staff and students who enroll in classes offered by Customer.

1.3 “Content” means content, information or materials (including without limitation course materials).

1.4 “Documentation” means the electronic materials provided along with the Buzz Software that describe how to use the Buzz Software.

1.5 “Buzz Software” means the object code form of the Agilix software product branded as “Buzz.”

1.6 “Marketing and Promotional Materials” means such marketing and promotional materials developed by Agilix and provided to Customer to be used in the marketing and promotion of the Buzz Software, including any partnering contributions by Agilix in research and writing of white papers for use at educational conferences or marketing events.

1.7 “Teacher” means an Authorized End User of Buzz designated with a Teacher or Teaching Assistant role in any Course (or Section) offered by Customer in Buzz.

1.8 “Student” means an Authorized End User of Buzz designated with a Student role in any Course (or Section) offered by Customer in Buzz.

1.9 “Enrollment” means any and all instances of an Authorized End User’s designation as a Student in any Course (or Section) offered by Customer in Buzz.

## **ARTICLE 2 LICENSE**

2.1 *License.* Subject to all of the terms and conditions of this Agreement, Agilix grants to Customer a non-exclusive, non-transferable, revocable license (“License”) (a) to access and use the Buzz Software and all related Documentation and provide access to the same to Authorized End Users, and (b) to use the Marketing and Promotional Materials, including all trademarks, servicemarks, logos, and other marks or information contained therein, in conjunction with the access and use of the Buzz Software as provided herein.

2.2 Customer will only provide access to the Buzz Software to Authorized End Users subject to the terms and conditions of such End User License Agreements as Agilix may reasonably require such Authorized End Users to enter into from time to time in connection with their use of the Buzz Software (a current example of which is attached hereto as Exhibit C). Customer will make such End User License Agreements available to the Authorized End Users and will only provide Authorized End Users who agree to comply with the End User License Agreement with the necessary access codes to use the Buzz Software. Providing access to the Buzz Software to Authorized End Users will be done by Customer and Agilix.

2.3 *Other Restrictions.* Except as expressly authorized by this Agreement or as is reasonably necessary to access and use the Buzz Software (subject to the advanced approval by Agilix of all such items), Customer may not (a) incorporate or permit incorporation of any Buzz Software into any other software or hardware product, (b) create derivative works from the Buzz Software; (c) disassemble, decompile or otherwise reverse engineer the Buzz Software or otherwise attempt to learn the source code, structure, algorithms or ideas underlying the Buzz Software; or (d) use, copy, modify, re-license, sublicense, sell, assign, convey, or transfer the Buzz Software or access thereto, or otherwise permit any third party to do any of the foregoing.

2.4 *Agilix’ use of Personal Information.* Customer shall be solely responsible for providing or procuring appropriate notice, consent, parental consent, opt-in and opt-out mechanisms as and to the extent required by data protection laws for the use of the Buzz Software by the end users and for the processing of Personal Information of end users by Agilix and any sub-processors it may use, in connection with the provision of the Buzz Software, including without limitation the transfer of such Personal Information to the United States for processing.

Customer represents and warrants that its use of the Buzz Software, and that of its Authorized End Users, will comply with all applicable laws and regulations, including without limitation, laws governing the use of Personal Information. As used herein, the term "Personal Information" means any information relating to an identified or identifiable natural person collected, accessed, used, processed, stored or generated by Agilix or by third parties having authorized access to the records of Agilix.

## **ARTICLE 3 TERM AND TERMINATION**

3.1 *Term.* The term of this Agreement (the “Term”) will begin on the Effective Date and will expire on the contract anniversary based upon the terms in Exhibit A, unless earlier

terminated pursuant to the terms of this Agreement. This Agreement will automatically renew for successive one (1) year periods unless either party provides written notice to the other stating its intention to not renew the Agreement at least thirty (30) days prior to the renewal date.

3.2 *Termination.* This Agreement may be terminated upon the following terms and conditions:

(a) The License will terminate automatically upon any non-compliance by Customer with any of the restrictions in subsections 2.2 and 2.3 above.

(b) Either party may terminate this Agreement at any time should the other party default on any of its material obligations under this Agreement if, within thirty (30) days after written notice, such other party has failed to begin good faith efforts to cure the default. To be effective, such written notice must specify the default and state the intention to terminate if the default is not cured.

(c) Either party may terminate this Agreement at any time if (i) the other party is declared insolvent or bankrupt, (ii) if a petition is filed in any court and not dismissed in ninety (90) days to declare one of the parties bankrupt or for a reorganization under the bankruptcy laws or similar statutes; or (iii) if a trustee in bankruptcy or receiver or other similar entity is appointed for one of the parties.

3.3 *Post-Termination Obligations.* Upon termination of this Agreement for any reason other than those terms specified in 3.2(c) above, (a) Customer will immediately return to Agilix any Documentation in Customer's possession, and (b) Customer will delete or return any portions of the Buzz Software that Customer has in its possession and cease access and use of the Buzz Software. Upon the request of Agilix, Customer will certify to Agilix that it has complied with the requirements of the previous sentence.

3.4 *Survival of Certain Obligations.* In the event of termination or expiration of this Agreement, the parties' warranties, indemnification obligations and confidentiality obligations will survive.

#### **ARTICLE 4 FEES; PAYMENT TERMS**

As full consideration for the License and other rights granted in this Agreement to Customer, Customer will pay to Agilix the fees as set forth on Exhibit A in accordance with the payment terms also set forth therein. Any invoices unpaid and past due will be subject to a service charge on the unpaid balance at an interest rate equal to the lesser of twelve percent (12%) per annum or the maximum allowable interest rate under applicable law, and Customer will be responsible for all expenses incurred by Agilix in collection, including reasonable attorneys' fees.

#### **ARTICLE 5 WARRANTIES; LIMITATION OF LIABILITY**

5.1 Agilix warrants to Customer as follows:

Agilix warrants that it has full title to and ownership of the Buzz Software. Agilix warrants that it has the full power and authority to grant the license granted by this Agreement to Customer. Agilix warrants that all educational records stored and accessed at facilities used by Agilix to offer hosting services described in section 6.1 herein will be maintained by Agilix in a manner to conform with the requirements of the Family Educational Rights and Privacy Act (FERPA) and similar state laws.

5.2 Customer agrees to indemnify and hold Agilix harmless from and against all claims, damages, losses, and expenses (including reasonable legal fees and costs), including without limitation claims of intellectual property infringement, resulting or arising from Customer's or any of Customer's Authorized End Users' access or use of the Buzz Software or other actions under this Agreement, including without limitation the processing of Personal Information of Customer's Authorized End Users by Agilix where such processing is in accordance with the provisions of this Agreement, and the submission of or use of Customer-Provided Content or Third Party Content, as described in Section 7.2.

5.3 EXCEPT FOR THE WARRANTIES SET FORTH ABOVE IN THIS SECTION 5, AGILIX MAKES NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

5.4 UNDER NO CIRCUMSTANCES WILL AGILIX BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR OTHER SPECIAL DAMAGES ARISING OUT OF THE USE, THE RESULTS OF THE USE, OR ANY FAILURE OF OR DEFECTS IN THE BUZZ SOFTWARE, OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, OR FOR ANY CLAIM BY ANY THIRD PARTY, EVEN IF SUCH PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR CLAIM. THE LIABILITY OF AGILIX FOR ACTUAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT WILL BE LIMITED TO THE TOTAL LICENSE FEES PAID TO AGILIX BY CUSTOMER UNDER THIS AGREEMENT.

## **ARTICLE 6 SUPPORT SERVICES**

6.1 *Hosting.* Upon the terms set forth in Exhibit A, Agilix will host the Buzz Software for Customer as designated on Exhibit A, including the bandwidth, storage, and access to the Buzz Software required to deliver learning materials to Authorized End Users. Agilix reserves the right to limit bandwidth available to a Customer or to an Authorized End User; and to remove or deactivate any Authorized End User who violates any provision of this Agreement or the applicable End User License Agreement, or whose use or access of the Dawn Software affects the security, stability, or performance thereof.

6.2 *Professional Development.* At Customer's request, and upon the terms set forth in Exhibit A, Agilix will provide Professional Development services designated on Exhibit A to Customer.

6.3 *Upgrades.* This Agreement and the License contained herein pertain to the Buzz Software and any standard bug fixes, regular maintenance, and product service releases during

the term of this Agreement. Agilix reserves the right to release regular product service upgrades during the term of this Agreement.

6.4 *Professional Services.* Agilix shall provide non-recurring engineering (NRE) and other professional services to Customer as separately negotiated in individual statements of work. Fees for such services are designated on Exhibit A.

6.5 *Support.* For the purposes of this Agreement, “First-tier Support” shall mean direct support service provided by Customer’s support personnel to Authorized End Users in response to inquiries submitted to Customer’s support personnel directly (whether such Customer support is provided in-house or sub-contracted to a third party) regarding Buzz Software operation generally or which identifies and documents any suspected errors, bugs, or defects in the Buzz Software; “Second-tier Support” shall mean the service provided by Agilix support personnel to pre-designated Customer personnel (as indicated in Exhibit A) to attempt to fix or provide a workable solution to any error, bug or defect reported to Agilix by Customer, provided that Customer includes steps to reproduce the error, bug or defect, or after Customer has determined by analysis that the error, bug or defect is not reproducible. Agilix makes no guarantees as to the quality or likelihood of providing fixes or workarounds to submitted support inquiries. Agilix will provide Second-tier Support to pre-designated Customer personnel only. Customer is responsible for providing First-tier support to Authorized End Users in connection with their use of the Buzz Software. All Second-tier support requests shall be submitted via email or web-based ticketing system, as directed by Agilix.

## **ARTICLE 7 PROPRIETARY RIGHTS**

7.1 *Agilix Materials.* Customer acknowledges and agrees that the Buzz Software, the Documentation, the Marketing and Promotional Materials, and all other items licensed hereunder, and all copies thereof, constitute valuable trade secrets of Agilix or proprietary or confidential materials of Agilix, and that title thereto remains in Agilix. All applicable copyrights, trade secrets, patents, and other intellectual property rights and other property rights in the Buzz Software, the Documentation, the Marketing and Promotional Materials, and all other items licensed hereunder remain the sole and exclusive property of Agilix. All other aspects of the Buzz Software, the Documentation, the Marketing and Promotional Materials, and all other proprietary items licensed hereunder, including without limitation, programs, methods of processing, specific design and structure of individual programs and their interaction and unique programming techniques employed therein shall remain the sole and exclusive property of Agilix and may not be sold, revealed, disclosed or otherwise communicated, directly or indirectly, by Customer to any person, company or institution whatsoever other than for the purposes set forth herein. All improvements to the Buzz Software, the Documentation, the Marketing and Promotional Materials, any other items licensed hereunder, and all intellectual property and other rights to such improvements, shall be the sole and exclusive property of Agilix, regardless of whether developed solely by Agilix or by suggestion of or with the assistance of any other party. Notwithstanding anything herein to the contrary, the parties acknowledge and agree that any materials or information which Agilix discloses to Customer and claims as proprietary and confidential shall not be considered proprietary and confidential if such information: (a) is already in the public domain or becomes available to the public through no breach of this Agreement by Customer; (b) was lawfully in Customer’s possession prior to receipt from Agilix; (c) is received independently from a third party free to lawfully disclose such information to Customer; or (d) is subsequently independently developed by Customer. No information shall be considered to be in the public domain merely because a portion thereof is in the public domain. It

is expressly understood that no title to or ownership interest in the Buzz Software, the Documentation, the Marketing and Promotional Materials, or any part of any of the foregoing, is hereby transferred to Customer.

7.2 *Customer Content; Third Party Materials.* The Buzz Software may allow Customer to (i) access certain third party Content (“Third Party Content”) and/or (ii) upload or otherwise post or provide Content (“Customer-Provided Content”). Customer expressly represents, warrants, and agrees that (i) unless otherwise agreed in writing by Agilix, Customer (and not Agilix) is solely responsible for any Third Party Content that Customer accesses through the Buzz Software, (ii) Customer has obtained all licenses and rights that are necessary to allow Customer’s access to and other use of all Third Party Content, (iii) Customer owns all Customer-Provided Content, or has otherwise obtained all licenses and rights that are necessary to allow Customer to upload, post, and otherwise provide the Customer-Provided Content to Agilix for use as contemplated herein, (iv) Customer’s access to any use of Third-Party materials will not infringe, misappropriate, or violate any third party right, and (v) none of the Customer-Provided content infringes, misappropriates or violates any third party right. Agilix reserves the right to remove (or disable access to) any Third Party Content or Customer-Provided Content from the Buzz Software that is alleged to infringe, violate, or misappropriate any third party rights. Customer hereby grants Agilix a non-exclusive, sublicensable, transferable, worldwide, royalty-free license during the Term to use, make available, and distribute Customer-Provided Content as reasonably necessary for Agilix to perform its obligations hereunder.

## **ARTICLE 8 COPYRIGHTS, TRADEMARKS, LOGOS AND TRADENAMES**

8.1 *Copyrights.* Agilix will retain title and copyrights to the Buzz Software, the Documentation, and the Marketing and Promotional Materials. Appropriate copyright notices will be placed by Agilix on the Documentation, the Marketing and Promotional Materials, and media and will be embedded in the Buzz Software code. Customer agrees to inform Agilix promptly of any copyright infringements of the Buzz Software, the Documentation, or the Marketing and Promotional Materials that come to Customer’s attention. Furthermore, Customer will cooperate in all reasonable ways with Agilix in proceeding against any infringers of the Buzz Software, the Documentation, or the Marketing and Promotional Materials to the extent requested by Agilix.

8.2 *Display of Trademarks.* Customer will have the right to promote access to the Buzz Software under Agilix’s corresponding trademarks, logos and tradenames (“Trademarks”) in accordance with the access and use of the Buzz Software as contemplated by this Agreement. For purposes of clarification, the parties to this Agreement acknowledge and agree that Customer shall be under no affirmative obligation to actively promote or otherwise assist Agilix in the marketing, promotion or commercial distribution of access to the Buzz Software or any other Agilix products or services. Agilix may apply in its own name for trademark or tradename registration of any of its Trademarks, as Agilix deems appropriate in its sole discretion.

8.3 *Ownership of Trademarks.* Whether or not Agilix applies for registration of the Trademarks and whether or not Agilix succeeds in obtaining registration of any or all of the Trademarks, Customer acknowledges Agilix’s ownership of or other right to use the Trademarks, will display them only in accordance with the reasonable instructions received from Agilix, and will do nothing at any time, during or after the term of this Agreement, which could adversely

affect the validity and enforceability of the Trademarks. Upon any termination or expiration of this Agreement, Customer will promptly discontinue use of the Trademarks and will remove and dispose of any signs or other indicia relating Customer to the marketing and promotion of the Buzz Software and the use of the Trademarks.

## **ARTICLE 9 GENERAL**

9.1 *Assignment.* Customer may not assign this Agreement to any third party without the prior written consent of Agilix.

9.2 *Notices.* Any notice or communication required or permitted to be given under this Agreement must be in writing and will be deemed to have been properly given when delivered by hand or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case properly addressed to the address of the party to whom the notice is to be given indicated on the signature page of the Agreement, or at such other address as may subsequently be furnished in writing by either party to the other party in accordance with this subsection 9.2.

9.3 *Governing Law.* This Agreement will be governed and construed in accordance with the laws of the State of Utah, as applicable to Agreements made and wholly performed in Utah. Customer agrees to submit to the jurisdiction of the state and federal courts located in Utah for the purpose of litigating any claims arising under this Agreement.

9.4 *Force Majeure.* Neither party shall be in breach of its obligations under this Agreement or incur any liability to the other party for any losses or damages incurred or suffered by that other (otherwise than under any express indemnity in this Agreement) if and to the extent that it is prevented from carrying out those obligations by, or such losses or damages are caused by, a force majeure event except to the extent that the relevant breach of its obligations would have occurred, or the relevant losses or damages would have arisen, even if the force majeure event had not occurred.

9.5 *Independent Contractors.* The only relationship between Agilix and Customer that the parties intend to create by this Agreement is that of licensor and licensee, and neither party will be nor represent itself to be, an agent, employee, partner or joint venturer of the other, nor will either party transact any business in the name of the other, nor on the other's behalf, nor in any manner or form make promises, representations or warranties or incur any liability, direct or indirect, contingent or fixed, for or on behalf of the other party.

9.6 *Waiver.* No waiver, consent or discharge in conjunction with this Agreement or any of its provisions will be binding upon either party unless in writing and signed by the party sought to be charged with the same.

9.7 *Severability.* If any provision in this Agreement is held to be invalid or unenforceable under any applicable statute or rule of law, such provision will be ineffective to the extent of such invalidity or unenforceability, but the validity or enforceability of the remainder of this Agreement will not be affected thereby.

9.8 *Entire Agreement and Modifications.* This Agreement, which includes the exhibits attached to this Agreement, embodies the entire agreement between the parties with respect to the Buzz Software and supersedes all prior oral and written, and all contemporaneous

oral, agreements, proposals, representations and understandings of the parties concerning the Buzz Software. This Agreement may not be amended or modified except by a writing signed by both parties.

9.9 *Counterparts.* This Agreement may be executed in counterparts, all of which will be considered one and the same agreement.

9.10 *Privacy Policy.* Agilix will take commercially reasonable precautions to ensure the privacy and confidentiality of any information or data of Customer or Authorized End Users obtained as a result of entering into this Agreement and will, as a minimum standard, adhere to Agilix's posted privacy policy, as updated from time to time and made available on Agilix's website, a current example of which is attached hereto as Exhibit B.

9.11 *Publicity.* Customer hereby grants to Agilix a license to include Customer's trademarks and service marks in Marketing and Promotional Materials and on that portion of Agilix's websites that reference Agilix customers. Agilix is under no obligation to include or maintain the display of any such marks. Agilix may issue press releases from time to time pertaining to the relationship created by the parties hereunder.

9.12 *Miscellaneous.* Agilix reserves all rights not specifically granted under this Agreement.

{signature page follows}



IN WITNESS WHEREOF, Agilix and Customer have caused this Agreement to be executed by their duly authorized representatives.

**Customer:**

Customer: Warren County School  
District Virtual Academy

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

Name: Donna Zariczny

Title: Board President

ATTEST: \_\_\_\_\_

Address for Notices:

Customer: WCSD Virtual Academy

Attn: Misty Weber

6820 Market Street

Russell, Pennsylvania 16345

Fax: \_\_\_\_\_

**AGILIX:**

Agilix Labs, Inc

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

Name: Dave McGinn

Title: President

Address for Notices:

Agilix Labs, Inc

Attn: Dave McGinn

733 E. Technology Ave., Bldg. E

Orem, UT 84097

Fax: (801) 932-1220

**EXHIBIT A**

**Term:** The Term of this Agreement will be for three (3) years from the Effective Date.

The contract anniversary and renewal date for purposes of section 3.1 herein shall be the anniversary of the Effective Date following the Term, unless otherwise indicated.

Fees from the Effective Date of this contract extending to the Effective Date 2022 have already been invoiced.

**Setup Fee (Required):** Customer agrees to pay the following initial setup fee upon execution of this Agreement.

        \$0         **Total Setup Fee (non-recurring)**

**License Fees (Required):** Customer agrees to pay the following annual License Fees. Applicable License Fee billing model(s) and initial price band(s) to be followed under this Agreement are indicated by “▶” or “X” below.

Option #1: Per Teacher Pricing for Blended Learning Organizations

TEACHER PRICING – Blended Learning	
Teachers	Annual Fee
1-25	\$3,215
26-50	\$5,785
51-100	\$10,270
101-150	\$13,455
> 150	\$76/each

                                 **Total Number of Teachers**

        N/A         **Total Annual Fee for Blended Learning (annual)**

Option #2: Per Student Pricing for Virtual Organizations

STUDENT PRICING – Virtual Learning		
Students (unlimited enrollments)	Annual Base Fee	Additional Students (per student in same band)
500	\$19,500	\$26.00
1,000	\$26,000	\$19.50
2,000	\$39,000	\$15.60
▶ 4,000	\$62,400	\$13.00
7,000	\$91,000	\$11.05
10,000	\$110,500	\$9.43
15,000	\$141,375	\$7.80

        5,000         **Total Number of Students**

\$75,400     **Total Annual Fee for Virtual Learning (annual)**

Option #3: Per Enrollment Pricing for Virtual Organizations

ENROLLMENT PRICING – Virtual Learning			
	Enrollments (unlimited students)	Annual Base Fee	Additional Enrollments (per enrollment in same band)
	< 2,500	\$5,000 + \$6 per Enrollment	
	2,500	\$19,500	\$7.80
	5,000	\$26,000	\$5.20
	10,000	\$39,000	\$3.90
	20,000	\$62,400	\$3.12
	35,000	\$91,000	\$2.60
	50,000	\$110,500	\$2.21
	72,500	\$141,375	\$1.95

                     **Total Number of Enrollments**

    N/A     **Total Annual Fee for Virtual Learning (annual)**

**Hosting Fees:** Agilix shall provide hosting services for Authorized End Users of the Buzz Software including equipment, server access, data storage, redundancy, backups, and related services. The fee for these services is included as part of the License Fees described herein.

**Customer Contact Information (Required):**

	Primary	Billing	Technical
Name:	Misty Weber	Same as Primary	Neal Kent
Email:	WeberMD@wcsdpa.org		<a href="mailto:kentn@wcsdpa.org">kentn@wcsdpa.org</a>
Phone:	(814) 723-0574 Ext. 1315		(814) 723-0574 Ext. 1317
Job Title:	VA Administrator		On-line Coordinator

**Buzz Domain Name (Required):**

1<sup>st</sup> choice: wcsdvirtualacademy .agilixbuzz.com  
2<sup>nd</sup> choice: \_\_\_\_\_ .agilixbuzz.com

**Branding (Optional):**

**[\$500]** – Full customization of the Buzz interface to fit your brand.  
Custom branding includes styling of text, colors and logos on:

- Welcome and Login pages
- Administration Interface
- Teacher and Student Interface

*Note: Customer will provide logos as “.png” files with a transparent background and specify colors scheme (borders, background, headers, text, etc.). Graphic design assistance to create logos or define a color scheme is available for an additional charge.*

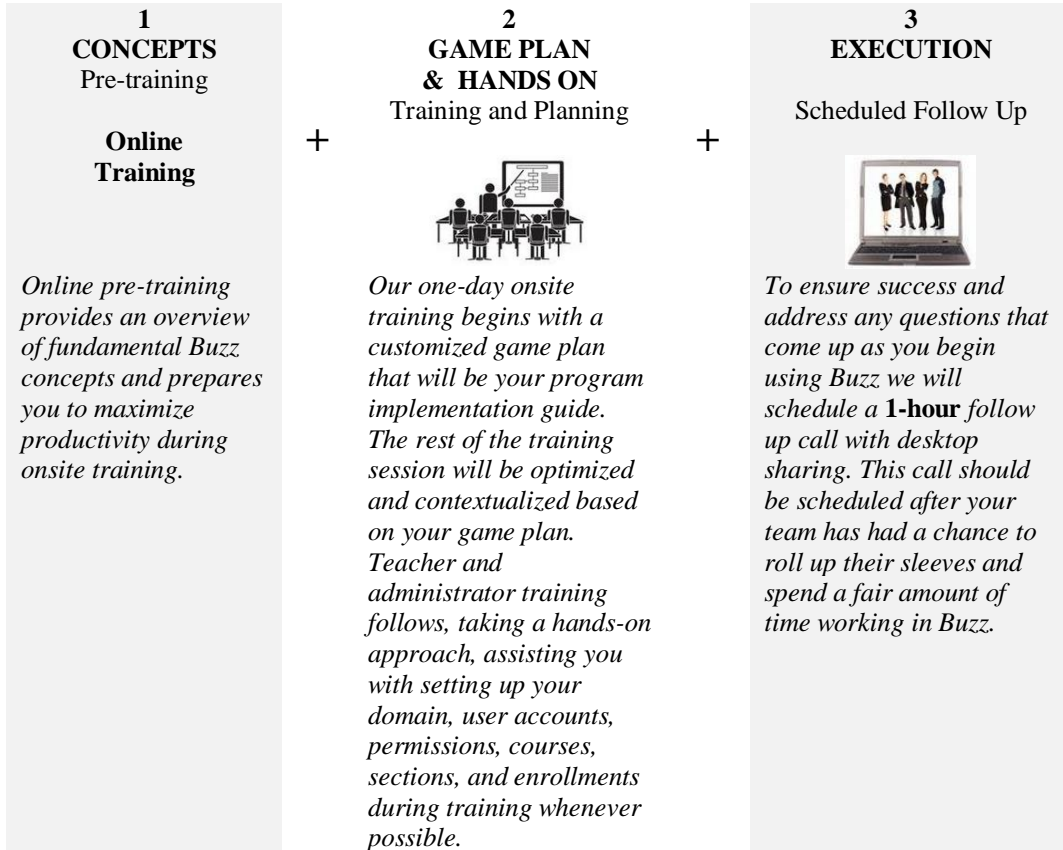
No, thanks.

\_\_\_\_\_ \$0 **Total Branding (non-recurring)**

**Training (Required):** The specific dates of training will be mutually determined by Agilix and Customer and will expire on the first anniversary of the Effective Date of this Agreement.

[\$1750 plus travel expenses]                      **OR**                       [\$3000 travel expenses included]

Our three-part training program is based on a proven success model:



The baseline of training outlined above, has been designed to meet most customer needs. Some customers will benefit from additional training. Add-on sessions are available at the following prices:

  1   additional days on location [**\$1500/day** plus expenses / **\$2200/day** expenses included]  
 \_\_\_\_\_ additional 2-hr WebEx sessions [**\$500/session**]

      \$5,200          **Total Additional Training**

      \$5,200          **Total All Training (non-recurring)**

**Standard Support (Required):** Agilix provides a standard support package, included at no extra charge, with all license agreements. One designated support account is provided with the standard package. Additional support accounts may be added. Our standard support package includes:

- online issue tracking with email notifications
- online documentation
- 1 support account

Individual assigned to support account (if different than Technical Contact):

Name:	
Email:	
Phone:	
Job Title:	

Additional support accounts, so that more than one person in your organization can log and track support issues, may be purchased at the following annual rates (select one):

- 1 additional [\$599/yr]
- 2 additional [\$799/yr]
- 3 additional [\$999/yr]
- No additional

\_\_\_\_\_ \$0 **Total Standard Support**

**Priority or Guaranteed Service Levels (Optional):** Customers may also elect to pay for priority or guaranteed service levels (select one):

<input type="checkbox"/> <b>Priority 24</b> [\$2400/yr]  Standard support PLUS: <ul style="list-style-type: none"> <li>• 24-hr response time guarantee*</li> </ul>	<input type="checkbox"/> <b>Executive</b> [10% or \$15,000/yr min.]  Standard support PLUS: <ul style="list-style-type: none"> <li>• Guaranteed severity level response times**</li> <li>• Call-back phone support (5 calls/month, \$275 each add.)</li> <li>• 5 support accounts</li> </ul>	<input type="checkbox"/> <b>Enterprise</b> [15% or \$50,000/yr min.]  Standard support PLUS: <ul style="list-style-type: none"> <li>• Guaranteed severity level response times**</li> <li>• Direct line, unlimited 24x7 phone support</li> <li>• 10 support accounts</li> </ul>
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\* During business hours: M-F, 9:00am-5:00pm, Mountain Time, excluding holidays.

\*\* Sev. I – immediate, no greater than 2 hrs; Sev. II, III, and IV – no greater than 24 hrs

No thanks.

\_\_\_\_\_ **Total Service Level**

\_\_\_\_\_ **Total All Support and Service Level (annual)**

**Advisory and Consulting Services / Professional Services and Development Fees (Optional):**

Agilix shall provide professional development services upon request on an hourly or cost per project basis. Advisory and consulting services are available to assist customers with services such as:

- Advanced domain or course organization and setup
- Content migration and conversion
- Single sign on integration
- Student information system integration
- Custom DLAP API scripting\*
- Custom user interface development\*
- Content authoring

*\$250/hr or project quote*

*\* Minimum project charge for custom programming is \$5,000.*

      N/A       **Estimated Total Professional Services**

List any work to be performed:

**Payments Due:** The Setup Fee and License Fees described above and any Support Fees, Training Fees, or any other fee-based options selected, included, or indicated herein shall be due and payable upon execution of this Agreement and subsequently upon the annual anniversary dates of the Effective Date during the Term of the Agreement, unless otherwise specified by this Agreement.

Agilix reserves the right to audit Customer usage to ensure compliance with the above selected billing model(s) and related price band(s). If Customer usage exceeds the limits indicated above, Agilix may, at its discretion, invoice Customer for any overages.

All invoices are payable upon **net 30** day terms.

<u>\$2,500</u>	YEAR ONE LICENSE FEES DUE NOW
<u>\$0</u>	YEAR ONE INTEGRATION FEE DUE NOW
<u>\$5,200</u>	NON-RECURRING FEES DUE NOW - TRAINING
<u>\$7,700</u>	<b>TOTAL DUE NOW</b>
<u>\$13,400</u>	ANTICIPATED RECURRING ANNUAL LICENSE FEES*
<u>\$0</u>	ANTICIPATED RECURRING ANNUAL SUPPORT AND SERVICE LEVEL FEES*
<u>\$13,400</u>	<b>ANTICIPATED TOTAL RECURRING ANNUAL LICENSES AND FEES*</b>

\* Additional Fees may apply if Customer requests additional licenses or support services throughout the Term of this Agreement. Requests must be made in writing. Prices indicated herein apply, unless otherwise agreed to by Agilix.

Reviewed / submitted by: <u>Thomas Collette</u> (Agilix Sales Representative)
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## **EXHIBIT B**

### **Privacy Policy**

#### **PRIVACY POLICY**

Agilix has created this privacy policy to demonstrate our commitment to our visitor and customer privacy. Privacy on the Agilix web sites, software, technology, and systems (the "Sites") is of great importance to us. Because we gather important information from our visitors and for our customers, we have established this policy as a means to communicate our information gathering and dissemination practices. This privacy statement also explains the use of data collection practices of Agilix software.

By using this Site, you are agreeing to the terms of our Privacy Policy. We reserve the right to change our Privacy Policy. If we revise our Privacy Policy we will post a notice of change thirty days prior to material changes. Any modifications to this statement will only apply to data collected subsequent to its effective date. Your continued use of this site following the posting of changes to these terms will mean that you accept these changes.

In addition, please note that all educational records are protected by Agilix as required by the Family Educational Rights and Privacy Act (FERPA) and similar state laws. You may learn more about FERPA at <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>.

#### **HOW IS CHILDREN'S PERSONAL INFORMATION TREATED?**

If you are not of legal age to form a binding contract (in many jurisdictions, this age is 18), you may only use the Sites and disclose information to us with your parent's or guardian's express consent. Review this Privacy Policy with your parent or guardian and make sure you understand it, and do the same with the privacy policies of all websites you visit or mobile applications you use.

We only collect personal information through the Sites from a child under 13 where that student's school, district, and/or teacher has agreed to obtain parental consent for that child to use the Sites and disclose personal information to us, for the use and benefit of the learning environment. If you are a student under 13, please do not send any personal information about yourself to us if your school, district, and/or teacher has not obtained this prior consent from your parent or guardian, and please do not send any personal information other than what we request from you in connection with the Sites. If we learn we have collected personal information from a student under 13 without parental consent being obtained by his or her school, district, and/or teacher, or if we learn a student under 13 has provided us personal information beyond what we request from him or her, we will delete that information as quickly as possible. If you believe that a student under 13 may have provided us personal information in violation of this paragraph, please contact us at [support@agilix.com](mailto:support@agilix.com).

#### **COLLECTED INFORMATION**

##### Anonymous Information

You can visit the Site to read information about our company, products, and services without telling us who you are and without revealing any personal information. To improve the usefulness of our site, Agilix does track and analyze non-identifying, aggregate usage, and volume statistical information from our visitors and customers to administer our Site, to constantly improve the quality of our service and site performance. Information gathered will include the following, but not limited to, the activity of the user's browser when user is viewing the site, the site path of visitors, and the time visitors come to our site. Agilix reserves the right to use this anonymous, aggregate summary information regarding its site visitors for internal purposes. Please note that this is not personal information, only general summaries of our visitors.

##### Personally Identifiable Information

When we need information that personally identifies you or allows us to contact you, we will explicitly ask you for it. For example, if you choose to register your software, we will collect your name, address, telephone number, education institution or business name, and e-mail address. The personal information we collect from you will be used by Agilix to provide the service(s) or carry out the transaction(s) you have requested or authorized, and may also be used to request additional information on feedback that you provide about the product or service that you are using; to provide critical updates and notifications; to improve the product or service, or to tell you about new product releases.

Except as described in this statement, personal information you provide will not be transferred to third parties without your consent. We occasionally hire other companies to provide limited services on our

behalf, such as sending and delivering purchases and other mailings, and answering customer questions about products or services. We will only provide those companies the personal information they need to deliver the service, and they are prohibited from using that information for any other purpose.

Site visitors may wish to request information about our products and services, or to download specific documents on the Site. Agilix visitors will be requested to provide information, such as, but not limited to, name, company or education institution, title, phone number, e-mail address and address.

Agilix uses the information that we collect on the Site to provide requested services and to contact visitors to further discuss their interest in our company, our services, and to send information regarding our company or partners, such as marketing promotions, and to improve the services we provide you. The information is collected and stored in a manner appropriate to the nature of the data and is used to fulfill your request and is not provided to third parties for their use. Agilix uses secured server areas and advanced firewall technology to minimize the risk of individually identifiable information being compromised. Agilix also takes every effort to ensure that the information users provide is correct and current. Though we make every effort to preserve user privacy, we may need to disclose personal information when required by law, wherein we have a good-faith belief that such action is necessary to comply with a current judicial proceeding, a court order, or legal process served on our Web site.

#### Collection and Use of Information About Your Computer

Agilix software contains features that automatically: a) check for version of software you are running with the latest version available from Agilix for purposes of notifying you of updates, and b) collects information from your Agilix application and sends it to Agilix. This computer information is not personally identifiable. These features are turned on by default, so that we can collect enough information about how the product is working to keep your software up-to-date and improve the commercially released product. Information that is collected by or sent to Agilix may be stored and processed in the United States or any other country in which Agilix or its affiliates, subsidiaries or agents maintain facilities.

#### Business Transfers

If Agilix, or some or all of its assets, were acquired or otherwise transferred, or in the unlikely event that Agilix goes out of business or enters bankruptcy, user information may be transferred to or acquired by a third party.

#### Protection of Agilix and Others

We may release personal information when we believe in good faith that release is necessary to comply with the law (such as to comply with a subpoena); enforce or apply our terms or other agreements; or protect the rights, property, or safety of Agilix, our employees, our users, or others. We will try to give you notice if we release information for these reasons, but please understand that we reserve the right not to, as it may not be practical, legal, or safe to do so.

## **COOKIES AND CLEAR GIFS**

### What Are Cookies

Cookies are files that Web browsers place on a visitor's computer hard drive and are used to allow a more enjoyable visit with easier use of site and to more accurately track visitor behavior to our site. Cookies come in two flavors: session and persistent-based. Session cookies exist only during an online session. They disappear from your computer when you close your browser software or turn off your computer. Persistent cookies remain on your computer after you've closed your browser or turned off your computer. Cookies do not identify you personally. They merely recognize your browser, unless you choose to identify yourself voluntarily. You may choose to identify yourself for any one of the following reasons: asking the browser to remember your username and password, by responding to a promotional offer, when personalizing a Web page or requesting more information on a product or service, otherwise you remain as an anonymous Web site visitor.

### How We Use Cookies

When you interact with the Site, we strive to make that experience easy and meaningful. When you come to the Site, our Web server uses cookies to improve our visitors' interaction with our site.

Agilix uses session cookies to track Web visitor behavior and to allow our customers to immediately save the username and password as well as personal settings on specific pages. This allows Agilix to process your saved login information and quickly log you into the product. Session cookies also help us make sure you are who you say you are after you've logged in.

Agilix uses persistent cookies, that only Agilix can read and use, to identify the fact that you are an Agilix customer or a prior Agilix Web site visitor (whatever the case may be). We are especially careful about the security and confidentiality of the information stored in persistent cookies. Users who disable their Web browsers' ability to accept cookies will still be able to browse our Web site; however, they may lose some of the functionality provided by the use of persistent cookies.

## **SECURITY**

Our Site has security measures in place to help protect against the loss, misuse, and alteration of the Data under our control. When our Site is accessed using Netscape Navigator, Microsoft Internet Explorer versions 5.0, or higher, or Mozilla Firefox 1.0, or higher, Secure Socket Layer (SSL) technology protects information using both server authentication and data encryption to help ensure that Data is safe, secure, and available only to you. Agilix also implements an advanced security method based on dynamic data and encoded session identifications, and hosts the product in a secure server environment that uses a firewall and other advanced technology to prevent interference or access from outside intruders. Finally, Agilix provides unique usernames and passwords that must be entered each time a customer logs on. These safeguards help prevent unauthorized access, maintain data accuracy, and ensure the appropriate use of Data.

## **THIRD PARTY SITES**

The Site contains links to other Web sites. Agilix is not responsible for the privacy practices or the content of these other Web sites. Customers and visitors will need to check the policy statement of these other Web sites to understand their policies. Customers and visitors who access a linked site may be disclosing their private information. It is the responsibility of the user to keep such information private and confidential.

## **WHAT INFORMATION CAN I ACCESS?**

We allow you to access the following information about you for the purpose of viewing, and in certain situations, updating or deleting that information. This list may change as the Sites change. You may currently access the following information if it applies to how you use the Sites:

- information in your user profile
- user connections list, groups, and communities
- user preferences
- content in your account

If you would like to request that personal information regarding your child be updated or deleted, or if you'd like to refuse further contact of your child (or, if you are a teacher, a child that is in your class) by the Sites, please contact us at [support@agilix.com](mailto:support@agilix.com). A minor student's participation in our Sites, and the ability of a minor student to access the Sites, will not be conditioned on that student providing more personal information than is reasonably necessary for that participation or access. We will respond to a request made pursuant to this section within 30 days of our receipt of such request.

Under California Civil Code Sections 1798.83-1798.84, California residents are entitled to ask us for a notice identifying the categories of personal information which we share with our affiliates and/or third parties for marketing purposes, and providing contact information for such affiliates and/or third parties. If you are a California resident and would like a copy of this notice, please submit a written request to [support@agilix.com](mailto:support@agilix.com).

## **WHAT OTHER CHOICES DO I HAVE?**

You can always opt not to disclose information, even though it may be needed to take advantage of certain of our features.

You are able to update or delete certain information in your account, and you may request deletion of your account by contacting us at [support@agilix.com](mailto:support@agilix.com). Please note that some unrevised information may remain in our records after revision of such information or deletion of your account, or in cached and archived pages. Some information may remain viewable elsewhere to the extent that it was copied or stored by other users. We may use any aggregated data derived from or incorporating your personal information after you delete your information, but not in a manner that would identify you personally.

We will retain your personal information for as long as your account is active or as long as needed to provide services to you on the Sites; we also may retain and use your information as we deem it necessary to comply with our legal obligations, resolve disputes, and to enforce our agreements.

**CONTACT US**

If users have questions, concerns, or suggestions regarding our Privacy Policy, they should first contact us by e-mail at [support@agilix.com](mailto:support@agilix.com). We may also be reached at the contact information on our Contact Us page.

## EXHIBIT C

### END USER LICENSE AGREEMENT BUZZ ONLINE TERMS OF USE

**IMPORTANT! If you are not of legal age to form a binding contract (in many places, this is 18 years old), then you must get your parent or guardian to read these terms and agree to them for you, before you use Buzz or provide any information to us. Please review this agreement with your parent or guardian so that you both understand how Buzz works and what restrictions apply to your use of our websites and services. Remember, always get an adult's permission before going online.**

1. STATEMENT OF RIGHTS AND RESPONSIBILITIES. The Buzz Terms of Use ("Terms") constitute a legal agreement that governs Agilix Labs, Inc.'s relationship with users and others who interact with Buzz. By using or accessing Buzz, You agree to the following Terms. If You do not agree to all of the provisions of these Terms, do not access or otherwise use Buzz.

2. DEFINITIONS. By "Buzz" we mean the features and services we make available, including through (a) our website at [www.Buzz.com](http://www.Buzz.com) (b) our Platform; and (c) other media, devices or networks now existing or later developed.

By "Us," "We" and "Our" we mean Agilix Labs, Inc, and/or its affiliates.

By "You" we mean the user of Buzz.

By "Platform" we mean a set of APIs and services that enable applications, developers, operators or services to retrieve data from Buzz and provide data to us relating to Buzz users.

By "Content" we mean the content and information you post on Buzz, including information about you and the actions you take.

By "Post" we mean post on Buzz or otherwise make available on the Platform.

3. PRIVACY. Your privacy is very important to us. We designed our Privacy Policy (<http://www.agilix.com/privacy.html>) to make important disclosures to you about how we collect and use the information you post on Buzz. We encourage you to read the Privacy Policy, and to use the information it contains to help make informed decisions.

The Children's Online Privacy Protection Act ("COPPA") requires that online service providers obtain parental consent before they collect personally identifiable information online from children who are under 13. Therefore, we only collect personal information through Buzz from a child under 13 where that student's school, district, and/or teacher has agreed (via the terms described in the following paragraph) to obtain parental consent for that child to use Buzz and disclose personal information to us, for the use and benefit of the learning environment. If you are a student under 13, please do not send any personal information about yourself to us if your school, district, and/or teacher has not obtained this prior consent from your parent or guardian, and please do not send any personal information other than what we request from you in connection with Buzz. If we learn we have collected personal information from a student under 13 without parental consent being obtained by his or her school, district, and/or teacher, or if we learn a student under 13 has provided us personal information beyond what we request from him or her, we will delete that information as quickly as possible. If you believe that a student under 13 may have provided us personal information in violation of this paragraph, please contact us at [support@agilix.com](mailto:support@agilix.com).

If you are a school, district, or teacher, you represent and warrant that you are solely responsible for complying with COPPA, meaning that you must obtain advance written consent from all parents or guardians whose children under 13 will be accessing Buzz. When obtaining consent, you must provide parents and guardians with our Privacy Policy. You must keep all consents on file and provide them to us if we request them. You can find more information on COPPA at <http://www.business.ftc.gov/documents/Complying-with-COPPA-Frequently-Asked-Questions>. If you are a teacher, you represent and warrant that you have permission and authorization from your school and/or district to use Buzz as part of your curriculum, and for purposes of COPPA compliance, you represent and

warrant that you are entering into these Terms on behalf of your school and/or district.

4. LICENSE GRANT. We hereby grant You a non-exclusive, nontransferable, nonsublicensable license to use Buzz solely in accordance with these Terms. Buzz incorporates various intellectual property rights, that may include, without limitation, copyrights, trademarks, patents, trade secrets and other proprietary rights (collectively, the "Intellectual Property Rights"). While You have been given access to Buzz, We retains all rights, title and interests in and to Buzz and all Intellectual Property Rights embodied therein.

5. RIGHTS AND RESTRICTIONS. Buzz is protected by U.S. and foreign copyright laws and international copyright treaties, as well as by other such intellectual property laws and treaties. Buzz is licensed (and not sold) to You, and any and all rights not expressly granted to You herein are reserved by Us and You shall not remove, alter or obscure any product identification, trademark or other notices or legends contained in or on Buzz.

6. REVERSE ENGINEERING. You shall not, nor permit anyone else to, directly or indirectly, adapt or otherwise modify, create any derivative work, or decompile, disassemble, reverse engineer, or otherwise attempt to derive any source code from, Buzz (or any portion thereof).

#### 7. SHARING YOUR CONTENT AND INFORMATION

You retain ownership of all of your Content and information you Post on Buzz. In order for Us to use certain types of Content and provide you with Buzz, You agree to the following:

For Content that is covered by intellectual property rights, like photos and videos ("IP content"), You specifically give Us the following permission: You grant Us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that you Post on or in connection with Buzz ("IP License"). This IP License ends when you delete your IP content or your account (except to the extent your content has been shared with others, and they have not deleted it). Without this license, we would not be able to display your Content to your students (if you are a teacher) or your teachers (if you are a student).

When you delete IP content, it is deleted in a manner similar to emptying the recycle bin on a computer. However, You understand that removed content may persist in backup copies for a reasonable period of time (but will not be available to others).

We appreciate feedback or other suggestions to help us improve Buzz. While you are not required to offer feedback or suggestions, You understand that if you do then We may use your feedback and suggestions without any obligation to compensate you for it (just as you have no obligation to offer it).

8. SAFETY. We do our best to keep Buzz safe, but we cannot guarantee it. We need your help in order to do that, which includes the following commitments:

- You will not send or otherwise post unauthorized commercial communications to users (such as spam).
- You will not collect users' information, or otherwise access Buzz, using automated means (such as harvesting bots, robots, spiders, or scrapers) without our permission.
- You will not upload viruses or other malicious code.
- You will not solicit login information or access an account belonging to someone else.
- You will not bully, intimidate, or harass any user.
- You will not post content that is hateful, threatening, pornographic, or that contains nudity or graphic or gratuitous violence.
- You will not use Buzz to do anything unlawful, misleading, malicious, or discriminatory.
- You will not facilitate or encourage any violations of these Terms.

9. REGISTRATION AND ACCOUNT SECURITY. Buzz users provide their real names and information, and we need your help to keep it that way. Here are some commitments You make to Us relating to registering and maintaining the security of your account:

- You will not provide any false personal information on Buzz, or create an account for anyone other than yourself without permission.
- You will keep your contact information accurate and up-to-date.

- You will not share your password, let anyone else access your account, or do anything else that might jeopardize the security of your account.
- You will not transfer your account to anyone for any reason.

10. PROTECTING OTHER PEOPLE’S RIGHTS. We respect other people's rights, and expect You to do the same:

- You will not Post Content or take any action on Buzz that infringes someone else's rights or otherwise violates the law.

**DOMAINS AND SUBDOMAINS.** Buzz includes a feature that allows administrators to create subdomains in Buzz. Should that feature be available to You, You agree that You will not create, nor permit to be created, any Buzz subdomains based on the copyrighted or trademarked works of anyone else. We reserve the right to remove any subdomains created by You in Buzz that infringe on the copyrights, trademarks, or other intellectual property rights of others.

You agree that any subdomains You create will include Your Buzz domain name. For example, if Your domain name in Buzz were abccompany (abccompany.Buzz.com), and you wanted to create a subdomain for training, the subdomain You create would be like abccompanytraining (abccompanytraining.Buzz.com), or trainingabccompany (trainingabccompany.Buzz.com) or the like, but NOT training (training.Buzz.com).

**We reserve the right to remove any subdomains that violate these terms.**

- We can remove any Content you Post on Buzz if we believe that it violates these Terms.
- If You repeatedly infringe other people's intellectual property rights, We will disable your account when appropriate.
- You will not use Our copyrights or trademarks without Our written permission.
- You will not Post anyone's identification documents or sensitive financial information on Buzz.

**DMCA Takedown Policy**

You may have heard of the Digital Millennium Copyright Act (“DMCA”), as it relates to online service providers like Agilix being asked to remove material that allegedly violates someone’s copyright. You can learn more about the DMCA at <http://www.copyright.gov/legislation/dmca.pdf>. We respect others’ intellectual property rights, and we reserve the right to delete or disable Content alleged to be infringing, and to terminate the accounts of repeat alleged infringers; you can review our complete Copyright Dispute Policy and learn how to report potentially infringing content at <http://agilix.com/copyright-policy> or at such URL as Agilix shall time to time designate.

11. THIRD-PARTY PRODUCTS AND SERVICES ON BUZZ. We offer educational products and services that are directly aligned with your immediate educational needs. We will use reasonably available data to best align available products and services to your needs but cannot guarantee that the alignment will be perfect. We never provide identifiable information to any third party other than as described in our Privacy Policy or as required by legal action or by law.

12. AMENDMENTS. We can change these Terms at any time. At our discretion, We may provide a notice online at [www.Buzz.com](http://www.Buzz.com), or by email, or by any other commercially reasonable means whenever we make changes to the Terms.

13. TERMINATION. If You violate the letter or spirit of these Terms, or otherwise create possible legal exposure for Us, We can stop providing all or part of Buzz to You. We will generally try to notify You, but have no obligation to do so. You may also delete your account at any time.

14. GOVERNING LAW. These Terms shall be governed by and construed under the laws of the State of Utah, excluding that body of law related to choice of laws, and of the United States of America. Nothing in these Terms shall prevent Us from complying with the law.

15. DISPUTES. You will resolve any claim, cause of action or dispute ("claim") you have with Us arising out of or relating to these Terms or Agilix Labs, Inc. in a state or federal court located in Utah. The laws of the State of Utah will govern these Terms, as well as any claim that might arise between You and Us, without regard to conflict of law provisions. You agree to submit to the personal jurisdiction of the courts located in

Utah for the purpose of litigating all such claims.

If anyone brings a claim against Us related to Your actions or your Content on Buzz, You will indemnify and hold Us harmless from and against all damages, losses, and expenses of any kind (including reasonable legal fees and costs) related to such claim.

16. NO WARRANTIES. WE TRY TO KEEP BUZZ UP, BUG-FREE, AND SAFE, BUT YOU USE IT AT YOUR OWN RISK. WE ARE PROVIDING BUZZ "AS IS" WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. WE DO NOT GUARANTEE THAT BUZZ WILL BE SAFE OR SECURE. AGILIX LABS, INC. IS NOT RESPONSIBLE FOR THE ACTIONS OR CONTENT OF THIRD PARTIES, AND YOU RELEASE US, OUR DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS FROM ANY CLAIMS AND DAMAGES, KNOWN AND UNKNOWN, ARISING OUT OF OR IN ANY WAY CONNECTED WITH ANY CLAIM YOU HAVE AGAINST ANY SUCH THIRD PARTIES.

17. LIMITATION OF LIABILITY. WE WILL NOT BE LIABLE TO YOU FOR ANY LOST PROFITS OR OTHER CONSEQUENTIAL, SPECIAL, INDIRECT, OR INCIDENTAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR BUZZ, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. OUR AGGREGATE LIABILITY ARISING OUT OF THESE TERMS OR BUZZ WILL NOT EXCEED THE GREATER OF ONE HUNDRED DOLLARS (\$100) OR THE AMOUNT YOU HAVE PAID US IN THE PAST TWELVE MONTHS. APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN SUCH CASES, OUR LIABILITY WILL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE CALIFORNIA CIVIL CODE SECTION 1542, WHICH SAYS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

18. OTHER.

You will not transfer any of your rights or obligations under these Terms to anyone else without Our consent.

These Terms do not confer any third party beneficiary rights.

All of our rights and obligations under these Terms are freely assignable by Us in connection with a merger, acquisition, or sale of assets, or by operation of law or otherwise.

19. WAIVER. No failure or delay by Us in exercising any right, power or remedy under these Terms shall operate as a waiver of any such right, power or remedy, unless expressly indicated by Us in a signed writing.

20. ENTIRE AGREEMENT. These Terms constitute the entire agreement between You and Us regarding the acceptable use of Buzz and accompanying rights and obligations. The headings of the sections and subsections of these Terms are for convenience of reference only and shall not be of any effect in construing the meanings of any provision hereof. If any provision of these Terms (or part thereof) is determined by a court of competent jurisdiction to be void, invalid or otherwise unenforceable, such provision (or part thereof) shall be deemed deleted from these Terms, while the remaining provisions of these Terms shall continue in full force and effect.

BY ACCESSING AND USING BUZZ, YOU ARE PROVIDING A SYMBOL OF YOUR LEGAL SIGNATURE AND ACKNOWLEDGING AND ACCEPTING ALL OF THE PROVISIONS OF THESE TERMS. YOU REPRESENT AND WARRANT THAT YOU ARE OF LEGAL AGE TO FORM A BINDING CONTRACT (OR IF NOT, YOU HAVE RECEIVED YOUR PARENT'S OR GUARDIAN'S PERMISSION TO USE BUZZ AND GOTTEN YOUR PARENT OR GUARDIAN TO AGREE TO THESE TERMS ON YOUR BEHALF). IF YOU ARE AGREEING TO THESE TERMS ON BEHALF OF AN ORGANIZATION OR ENTITY (FOR EXAMPLE, IF YOU ARE AN ADMINISTRATOR AGREEING TO THESE TERMS ON BEHALF OF YOUR DISTRICT),



YOU REPRESENT AND WARRANT THAT YOU ARE AUTHORIZED TO AGREE TO THESE TERMS ON THAT ORGANIZATION OR ENTITY'S BEHALF AND BIND THEM TO THESE TERMS.