



Winning By Design Certified Software Partner Agreement

Last Updated: 09/11/2024

This WbD Certified Partner Program Agreement (the "Agreement") contains terms that govern your participation in the WbD Certified Partner Program ("the Program", as defined below), entered between Winning by Design, LLC ("WbD," "we," "us," or "our") and you ("you" or "your" or "Certified Partner") whether signing up by clicking "I Accept" or similar designation through mutually executed physical document. WbD may update this Agreement from time to time. By accepting these terms, whether by agreeing online or executing below, you represent that you have authority to enter into this Agreement and bind Certified Partner hereto.

1. The WbD Certification Program.

a. Participation Requirements. To participate in the Program, Certified Partner must comply with all requirements applicable to the Program as set forth in this Agreement and on the WbD Certification Site, found at winningbydesign.com/certified-partners/ (all of the foregoing collectively, the "Certification Requirements"). The Certification Requirements include, but are not limited to, the initial payment of an annual Fee, as published on Certification Program website.

b. Valid Certification. To obtain a WbD Certification, Certified Partner must pass the WbD certification review process, as more fully described below, including a review of the implementation of the applicable Framework(s), ("Certification Review"). Each WbD Certification is valid for a period of one (1) year following the date on which Certified Partner successfully passes the Certification Review and will automatically expire if Agreement is not renewed. The Certification may be renewed upon completion of an annual Certification Review and payment of the applicable Annual Program Fees.

c. Limited License to Framework. Upon receipt of the initial or full payment herein, WbD hereby grants Certified Partner a personal, non-exclusive, non-transferable, revocable license to implement and use the applicable framework(s) and blueprints as described at winningbydesign.com/access-pass/#revenue_content_library ("Framework(s)") in accordance with the terms herein and any other applicable agreements with WbD for use in the ongoing operation of Certified Partner's business only. Subject to the terms herein, this license permits the Certified Partner to modify as necessary the Framework(s) solely to incorporate such Framework(s) into the Partner's product solution ("Product"), provided WbD has validated and approved such implementation (through the Certification Review process). In addition, if Certified Partner passes the Certification Review for implementation of the Framework(s) into the Product, Certified Partner must cite such implementation as "Winning by Design Certified", along with any other attribution as may be required by WbD from time to time. WbD grants the Certified Partner a limited, non-exclusive, non-transferable license to access, use, and, where applicable, create derivative works of the Framework(s) solely for internal business use in accordance with the terms and conditions of this Agreement. Any downloaded or modified materials must be attributed to WbD visibly. The right to use these materials is restricted to the term of the Agreement and will terminate upon its expiration. Certified Partner may access the Framework(s) and related materials through the WbD Content Portal, where applicable, with the ability to download and modify the content solely for Certified Partner's internal business use. Certified Partner may not distribute or use the content for any commercial purposes other than those explicitly set forth in this Agreement. Any modified content must maintain visible attribution to WbD. Certified Partner acknowledges that all content remains the intellectual property of WbD and that any unauthorized use of content beyond the scope of this Agreement is prohibited. All rights granted hereunder are limited to the term of this Agreement and shall automatically terminate upon its expiration.

d. General License Restrictions. Certified Partner shall not, and shall not attempt to (and shall not authorize or allow any third party to or attempt to): (a) modify, disassemble, or translate the Framework(s), or create any derivative works thereof except in strict accordance with the limited license in Section 1.c.; or (b) use the Framework(s) on behalf of any third party or for any purpose other than as described in this Agreement; (c) sell, lease, license, sublicense, distribute or otherwise transfer in whole or in part the Framework(s); (d) leverage the Framework to post, send, process or store infringing, obscene, threatening, libelous, inappropriate, or otherwise unlawful or tortuous material, including material violating of third party rights; (e) remove, alter or obscure any titles, product logo or brand name, trademarks, copyright notices, proprietary notices or other indications of the IP Rights and/or WbD rights and ownership thereof, whether such notice or indications are affixed on, contained in or otherwise connected to the Framework(s) or on any copies made in accordance with this Agreement; (f) use the Framework(s) for

purposes of: (1) benchmarking or competitive analysis of the Framework(s) or any other services; (2) developing, using, or providing a competing product or Framework(s); or (3) any other purpose that is to WbD's detriment or commercial disadvantage; (g) use the Framework(s) to perform any activity which is or may be, directly or indirectly, unlawful, harmful, threatening, abusive, harassing, tortuous, or defamatory, nor to perform any activity which breaches the rights of any third party; (h) use the Framework(s) in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person. The Framework(s) may be used only by Certified Partner (i) for its normal business purposes and operation, and only as integrated within Certified Partner's Product, and not on a stand-alone basis, and only for the direct benefit of Certified Partner; (ii) only in its original form without alteration or combination with other products, services or software except as expressly authorized by WbD in writing; and (iii) in compliance with all applicable laws, rules, regulations and industry standards, and in compliance with all documentation and instructions provided by WbD. Certified Partner may never use another's account without permission and any authorized users of your WbD account may not share or disclose any passwords or other security credentials. Certified Partner is solely responsible for the activity that occurs on its account, for keeping its account password secure, and for notifying WbD immediately of any breach of security or unauthorized use of its account. Certified Partner agrees not to circumvent, disable, or otherwise interfere with security-related features related to the Framework(s) or online accounts provided by WbD, or features that prevent or restrict use or copying of any content or enforce limitations on use of the Framework(s) or any other authorized content hereunder.

e. Certified Partner Responsibilities. At all times when representing yourself as the recipient of a WbD Certification or participating in the WbD Program, Certified Partner will:

- i. conduct your activities in a professional manner;
- ii. not imply any relationship or affiliation between WbD and you, except as expressly permitted by this Agreement;
- iii. maintain the confidentiality of your WbD Certification account and login credentials;
- iv. not allow any other individual to access your WbD Certification account or WbD Certification benefits for any reason;
- v. report any unauthorized disclosure of WbD Confidential Information or materials; and
- vi. ensure all WbD Certification account information is current including, but not limited to, an email address that you regularly check and that is able to receive email correspondence from the @winningbydesign.com domain.

f. Use of Name and Logo. If Certified Partner obtains a WbD Certification, WbD grants Certified Partner the limited, revocable, personal, and nontransferable right to use the name of the specific WbD Certification that Certified Partner obtained ("Certification Designation") and the associated WbD Marks, which will be made available to Certified Partner. Certified Partner may only use the WbD Marks in accordance with the WbD Trademark Usage Guidelines (available at winningbydesign.com/trademark-guidelines) to indicate Certified Partner's valid WbD Certification status. Certified Partner may not use the Certification Designation in any way that: (i) may be construed to establish an affiliation between WbD and any third parties other than Certified Partner; or (ii) negatively impacts WbD's reputation or goodwill. WbD retains all rights, title, and interests in the Certification Designation. Nothing herein shall be construed to grant any other rights to Certified Partner. Certified Partner acknowledges that WbD is the exclusive owner of all right, title, and interest in the Certification Designation, that Certified Partner shall take no action inconsistent with WbD's ownership of the Certification Designation. WbD may revoke Certified Partner's right to use any WbD Mark associated with the Certification Designation for any violation of this Agreement or applicable law, at any time by giving Certification written notice.

2. **Certification Review.**

a. Rules and Policies. Certified Partner will comply with all rules, policies, and other requirements for the successful implementation of the Framework(s), including, without limitation, fully and truthfully cooperating with the Certification Review, and identifying any irregularities or non-compliance. In addition, Certified Partner will not:

- i. receive or provide unauthorized assistance from any third-party relating to implementation of the Framework(s) or passing the Revenue Architecture Course certification;
- ii. possess, access, or use unauthorized materials of WbD or any third-party in connection with Certified Partner's use of the Framework(s) or participation in the Revenue Architecture Course certification;
- iii. falsify any documents in connection with the Certification Review, or misuse any username, or other credentials that have been provided to Certified Partner;

- iv. allow another entity other than Certified Partner to use the Framework(s) and access other approved WbD content;
- v. represent any certification that Certified Partner did not validly obtain; or
- vi. disclose or disseminate the content or process related to the Certification Review.

b. Failed Certification. If Certified Partner does not pass a Certification Review, Certified Partner may continue to achieve additional Certification Reviews during the Term at no additional cost and on a schedule as agreed to by WbD. If Certified Partner fails Certification Review during the Term, Certified Partner may renew this Agreement, and upon full payment of all Annual Program Fees, continue to seek Certification hereunder through such Renewal Term.

3. **Confidentiality.**

a. Confidential Information. Each party acknowledges that by reason of the relationship created between the parties by this Agreement, it may have access to certain non-public information of substantial value concerning the other party's business, operations, strategic plans, customers, suppliers, technology, competition and employees ("Confidential Information"), which value would be impaired if such Confidential Information were disclosed to third parties or used other than for purposes expressly authorized hereunder. Without limiting the foregoing, but for avoidance of doubt, the terms of this Agreement, and any performance, warranty and like information relating to the Framework(s) or the Certification Review (by whomsoever generated or communicated) will be considered Confidential Information of WbD. Accordingly, each party agrees (a) to maintain all Confidential Information received from the other, in whatever form disclosed, in strict confidence, using at least a reasonable standard of care, (b) not to disclose or otherwise make available such Confidential Information to any third party without the prior written consent of the disclosing party, and (c) not to use the Confidential Information of the other party except as required in the performance of its obligations or the exercise of its rights hereunder. The foregoing obligations shall not apply to Confidential Information of a disclosing party that, as can be reasonably demonstrated with admissible evidence by the receiving party: (i) is or becomes a matter of public knowledge though no action or omission of the receiving party; (ii) was rightfully in the receiving party's possession without restrictions on use or disclosure prior to its disclosure by the disclosing party; (iii) is rightfully obtained by the receiving party without an obligation of confidentiality from a third party who has no obligation of confidentiality, direct or indirect, to the disclosing or any third party; or (iv) is independently developed by the receiving party without reference to the disclosing party's Confidential Information.

b. Legally Required Disclosure. If the receiving party becomes legally compelled to disclose any the disclosing party's Confidential Information, the receiving party shall provide: (x) prompt written notice of such requirement so that the disclosing party may seek a protective order or other remedy; and (y) reasonable assistance, at the disclosing party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If, after providing such notice and assistance as required herein, the receiving party remains legally required to disclose any of the disclosing party's Confidential Information, the receiving party shall disclose no more than that portion of the Confidential Information which, on the advice of the receiving party's legal counsel, the receiving party is legally required to disclose and, upon the disclosing party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment.

c. Return of Confidential Information. Upon the written request of the disclosing party (subject to each party's rights to retain the other's Confidential Information solely for purposes of performing its obligations and exercising its rights hereunder) or upon any termination of this Agreement, the receiving party shall (a) promptly return to the disclosing party or destroy all copies and partial copies of the Confidential Information, whether maintained in tangible, electronic or other form (including permanently erasing any portions thereof from computers and systems) and (b) provide the disclosing party with written certification of its compliance with the terms of this Section. Any Confidential Information permitted to be retained under this Agreement after termination, shall continue to be subject to the terms of this Section 8 for so long as retained notwithstanding such termination.

d. Remedies. Each party acknowledges that any breach of any of its obligations with respect to the other party's Confidential Information may cause or threaten irreparable harm to such party. Accordingly, each party agrees that in such event, the aggrieved party shall be entitled to seek equitable relief in any court of competent jurisdiction without the necessity of posting bond and in addition to such other remedies as may be available to the aggrieved party under law or in equity. You agree that the Framework(s), including all related documentation, materials, and training, are WbD Confidential Information. WbD owns all right, title, and interest in its Confidential Information, including all technology and intellectual property rights. You may not use, disclose, reproduce, copy, transmit, distribute, or make derivative works of WbD Confidential Information in any form.

4. **Additional Benefits.** If Certified Partner holds one or more active WbD Certification(s) under the Program, Certified Partner is entitled to the additional benefits as described on the WbD Program Website (winningbydesign.com/certified-partners) or marketing collateral, as updated from time to time, and also our Advisory Access benefits (winningbydesign.com/access-pass/) including (but not limited to):

- a. Password access to the Winning by Design Reference Library for one primary account holder and three additional account holders (available once primary account holder is confirmed)
- b. Access to three seats in any of the following courses—Revenue Architecture, Bowtie Analytics, and Insight Engineering (available upon executed agreement)
- c. Unlimited scheduled calls to WbD Advisors to answer questions and provide general guidance on use and implementation of the Framework(s) (available upon executed agreement)
- d. Ability to earn 10% referral fees on your referrals of Open Course learners or Revenue Architecture Advisory Access purchases (available upon executed agreement)
- e. Listing on WbD Program Directory with a link to your website (available once the partner has passed the certification review process)

All benefits are non-transferable and intended for use solely by the Certified Partner and the WbD Certification account to which the benefit was originally assigned. If WbD, in its sole discretion, determines Certified Partner, including any employees or other authorized personnel, misused, transferred, or allowed improper access to a benefit, WbD may invalidate the Program Certification related to such misconduct. WbD will not reinstate the benefit, and Certified Partner will not be eligible for a refund or any compensation as a result of such action.

5. **Account Information.** WbD will use Certified Partners account information and personal information provided in order to participate in the Program in accordance with WbD's privacy policies (available at (winningbydesign.com/privacy-policy/)). Certified Partner consents to WbD's use of such personal information in accordance with the same and in the execution of the Program, as well as the promotion of additional products and services to Certified Partner as further described in this Agreement.

6. **Proprietary Rights.**

a. **Customer Data.** WbD acknowledges and agrees that Certified Partner shall own all title to and ownership any proprietary raw data owned by Certified Partner independent of this Agreement provide to WbD in connection with the Program ("Certified Partner Data") and that WbD shall have no rights thereto except as expressly set forth in this Agreement. Certified Partner hereby grants to WbD a limited, non-exclusive license, during the Term, to access, use, modify and create derivative works of the Certified Partner Data in order to perform its obligations herein. In addition, Certified Partner acknowledges agrees that WbD may use anonymized and aggregated Certified Partner Data for statistical analysis, promotion of, and improvements and modifications to the Program ("Anonymized Data"), and Certified Partner hereby provides WbD a perpetual, royalty-free, non-revocable, transferable, worldwide right and license to use, modify, create derivative works, and publish all Anonymized Data in connection with the foregoing uses.

b. **WbD Intellectual Property.** Certified Partner acknowledges and agrees that, subject only to the limited rights expressly granted to Certified Partner under Section 1(c), and (f), and the limitations in Section 1(d) and throughout this Agreement, WbD retains all ownership and intellectual property rights in and to the WbD Program, Framework(s), WbD Marks, WbD Certification Designation, and all materials and intellectual property in connection with the same and as owned or licensed by WbD whether created prior to, contemporaneously with, or under this Agreement, including without limitation, all trade secret, copyright, patent, trademark, trade name, and other intellectual and proprietary rights therein, and in the technology embodied in or reflected by the foregoing (in each case including any extensions, derivatives, translations, reformulations or developments of the foregoing) (collectively, "WbD Intellectual Property"). Without limiting the generality of the foregoing, WbD reserves the right to (i) create and market public indexes, analysis or insights created from the Anonymized Data, (ii) use such Anonymized Data to improve and enhance the Program and for other development, diagnostic and corrective purposes in connection with the same and other WbD offerings, and (iii) disclose such WbD solely in aggregate or other de-identified form in connection with its business. Nothing contained in this Agreement or in the parties' performance or failure to perform hereunder, or in the Program, or any services

provide by WbD, shall be construed as granting or conferring to Certified Partner, by implication, estoppel, or otherwise, any such rights in or to any WbD Intellectual Property.

c. **Fees; Payment Terms.** Certified Partner shall pay to WbD in immediately available US dollars, the then applicable annual Program fee as set forth on the Certification Site (the "Annual Program Fee"). All amounts are due and payable upon Certified Partner's execution of this Agreement in accordance with the terms herein. The Annual Program Fees, and any fees for any additional services, or extensions which may be purchased hereunder, are exclusive of all applicable taxes, duties, or other governmental assessments, which are the responsibility of Certified Partner. Unless otherwise stated in this Agreement, invoices will be stated in United States dollars and shall be due and payable within 10 days following invoice date unless otherwise specified herein or agreed upon in writing by the parties. Late payments shall be subject to a service charge equal to the lesser of, 1.5% per month or the maximum amount allowed by law, with respect to the overdue amount, as well as all costs of collection. All payments hereunder are noncancellable and nonrefundable.

7. **Term and Termination.** The term of this Agreement will begin when executed by your signature, or when you click an "I Accept" button or checkbox presented with these terms, and will continue for one (1) year, or until otherwise terminated as provided herein. Upon expiration of this Agreement, the Agreement shall automatically renew, with the Annual Program Fees due and payable upon such renewal, unless either party provides the other party written notice of non-renewal at least thirty (30) days prior to the end of the current Term (each a "Renewal Term"). Upon renewal of the Agreement, Certified Partner must pass annual Certification Reviews to maintain the WbD Certification and Certification Designation. Either party may immediately terminate this Agreement if the other party has committed a material breach and has failed to cure such breach within ten (10) days of receipt of written notice from the non-breaching party. Upon termination of this Agreement, your WbD Certification(s) will become invalid, you may no longer use the WbD Marks and shall immediately cease use of the Framework(s), destroy or return any copies in their possession, and certify in writing to WbD that all materials have been properly disposed of. Any continued use of WbD's intellectual property following termination is strictly prohibited. . Notwithstanding the foregoing, upon such termination, Certified Partner shall retain all intellectual property rights associated with the Product, not including any elements of the Framework(s). If Certified Partner pays the Annual Program Fee, as then in effect, but does not seek renewal of the Certification, then Certified Partner may not include the Certification Designation with the Product or otherwise, but may continue to use the Framework(s) pursuant to the license and other terms herein, as incorporated into the Product as previously approved by WbD, without modification, unless otherwise approved in writing by WbD. Upon termination, your obligation to adhere to all confidentiality provisions, will remain in effect.

8. **No Warranty.** THE CERTIFICATION PROGRAM IS PROVIDED "AS IS" WITH NO WARRANTIES OF ANY KIND. WBD DOES NOT WARRANT OR REPRESENT ANY RESULTS FROM PARTICIPATION IN THE CERTIFICATION PROGRAM AND EXPLICITLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES IMPLIED BY USAGE OF TRADE OR CUSTOM OF DEALING, AND NON-INFRINGEMENT.

9. **Third Party Claim Defense and Indemnification.**

a. **Intellectual Property Infringement.** WbD shall (a) indemnify and hold harmless Certified Partner from any costs, expenses, claims, liabilities, judgments, damages or losses, in each case arising out of any third party claim that the WbD Intellectual Property infringes a United States patent, copyright, trademark, or other US intellectual property right of such third party, and (b) pay directly or indemnify Certified Partner with respect to any judgment or settlement amount awarded in connection with such claim. The foregoing obligations are contingent upon Certified Partner providing WbD with: (i) prompt notice of such claim (and in any event notice in sufficient time for WbD to respond without prejudice); (ii) the exclusive right to control, direct, and perform the investigation, defense, or settlement of such claim (provided such settlement does not result in an liability to, or admission of Certified Partner); and (iii) such assistance as may be reasonably requested by WbD at WbD's expense. If Certified Partner's use of the WbD Intellectual Property is, or in WbD's opinion is likely to be, enjoined, or if required by settlement, or if commercially advisable, WbD may: (x) substitute for the infringing element functionally similar content; (y) procure for Certified Partner the right to continue using the infringing content; or, (z) terminate this Agreement and refund to Certified Partner that portion of any prepaid Fee associated with any unused portion of the Term. The foregoing defense and indemnification obligations of WbD shall not apply to the extent the alleged infringement arises out of the misuse, use in contravention to WbD instructions, or Trademark Usage Guidelines, or any alteration or modification of the WbD Intellectual

Property, use or combination of the same with other non-WbD products, services, hardware, software or processes, or any unauthorized use of such WbD Intellectual Property. In addition, WbD's obligations and liabilities under this Section shall be governed by the limitations on liability set forth in Section 10 below and shall be capped at and included within any calculation of direct damages under that Section. THIS SECTION 9(a) SETS FORTH LICENSOR'S SOLE LIABILITY AND CERTIFICATION PARTNER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT HEREUNDER.

b. **Certified Partner Indemnification Obligations.** Certified Partner shall indemnify and hold WbD, it affiliates, and each of their respective officers, directors, members, partners, employees, contractors, agents, representatives, successors and assigns harmless from any costs, expenses, claims, liabilities, judgments, damages or losses, in each case arising out of (i) any breach by Certified Partner of this Agreement, including any representation, warranty or obligation herein; (ii) the Certified Partner Data or any other content, data or other materials provided, by or on behalf of Certified Partner; (iii) any actual or alleged non-compliance by Certified Partner with applicable laws and regulations; (iv) Certified Partner's actual or alleged violation of third party privacy rights, including without limitation any breach of the scope of the license granted herein; (v) Certified Partner's violation of WbD's intellectual property rights, including without limitation any violation of Sections 1(c), (d), or (f) or 6, or (vi) Certified Partner's use of the Certification Designation or Framework(s), including any permitted derivative works thereof.

10. **Limitation of Damages.** IN NO EVENT SHALL WBD BE LIABLE TO CERTIFICATION PARTNER OR ANY THIRD-PARTY, BASED ON ANY THEORY OF LAW, EQUITY, TORT, CONTRACT OR OTHERWISE, FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF USE, LOSS OF DATA, OR COSTS OF COVER, IN CONNECTION WITH THIS AGREEMENT, EVEN IF WBD WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. WBD'S TOTAL LIABILITY UNDER THIS AGREEMENT OF ANY KIND, WITH ALL CLAIMS, DAMAGES AND LIABILITIES AGGREGATED, AND BASED ON ANY THEORY OF LAW, EQUITY, TORT, CONTRACT OR OTHERWISE, SHALL NOT EXCEED THE TOTAL AMOUNTS PAID OR PAYABLE BY CERTIFICATION PARTNER DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE CLAIM (IN ADDITION TO ANY FEES PAID BY CUSTOMER). ANY CLAIM BY CERTIFICATION PARTNER SHALL BE BROUGHT WITHIN 12 MONTHS FOLLOWING THE EVENT GIVING RISE TO THE SAME.

11. **Notice and Modifications.** We may from time to time modify this Agreement. We will notify you of changes by posting them on the Agreement website location at winningbydesign.com/terms-of-use/ (the "Agreement Site") or by sending you an email using the email address then associated with your WbD Certification account. You are responsible for checking the Agreement Site regularly for changes. Changes will be effective as of the date we post such changes or, if we notify you by email, as stated in the email message. By continuing to participate in the WbD Program, you agree to comply with the most current version of this Agreement. Where we make a materially adverse change to the Agreement, as reasonably determined by us, we will provide advance notice to you by email or reasonably substitutable means.

12. **General.**

a. **Notices.** All notices required or permitted under this Agreement shall be in writing and shall be sent by hand, overnight courier, by United States Postal Services, certified or registered mail, return receipt requested, or by email to the address provided during registration (in each case with confirmation of receipt). Notices shall be deemed delivered on the date of delivery if delivery occurs within normal business hours or on the next business day if delivery occurs outside of normal business hours. All communications will be sent to the respective addresses first set forth above or to such other address as may be designated by a party by giving written notice to the other party pursuant to this Section.

b. **Assignment.** Certified Partner may not assign this Agreement or any of its licenses, rights, or duties under this Agreement, whether by operation of law or otherwise, without the prior written consent of WbD, Subject to the previous sentence, the rights and liabilities of the parties hereto will bind and inure to the benefit of their respective successors and assignees. Any attempted assignment in violation of the foregoing shall be null and void.

c. **Publicity.** Neither party shall engage in any publicity or issue any press release relating to the subject matter of this Agreement except to the extent expressly authorized herein or otherwise upon the written consent of the non-requesting party.

d. **Waiver.** A waiver shall only be deemed to have been made if expressed in writing by the party granting such waiver and shall not be construed as a waiver of future performance of any such term.

e. Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement, other than payment obligations, due to causes that are beyond its reasonable control, including, but not limited to, an act of God, act of civil or military authority, fire, epidemic, pandemic, flood, earthquake, riot, war, terrorism, sabotage, and governmental action. The delayed party shall: (i) give the other party written notice of such cause promptly; and (ii) use its reasonable efforts to correct such failure or delay.

f. Entire Agreement; Construction. This Agreement and its exhibits and schedules, if any, constitute the entire understanding between the parties, and supersede all prior discussions, representations, understandings, or agreements (including any brochures or information contained on any website, or pre-existing nondisclosure agreement, except as to its surviving terms and with respect to information disclosed under that agreement), whether oral or in writing, between the parties with respect to the subject matter of this Agreement. If any provision of this Agreement shall be held by a court of law of competent jurisdiction to be unenforceable, the remaining provisions shall remain in full force and effect and, to the extent allowed and practicable, the unenforceable provision shall be modified so as to be enforceable consistent with its original intent and economic effect. The headings and captions used in this Agreement are for convenience only, and shall not affect the interpretation of the provisions of this Agreement. The word "including" shall be construed non-exclusively, to mean "including but not limited to." The word "or" shall be construed inclusively, to mean that one or more of the options may occur. This Agreement and any amendment hereto may be executed in counterparts, each of which shall be deemed an original and both of which together shall constitute one instrument.

g. Independent Contractors. The relationship of WbD and Certified Partner established by this Agreement is that of independent contractors, and nothing contained in the Agreement will be construed to constitute the parties as partners, joint venturers, co-owners, or otherwise as participants in a joint undertaking.

h. Recruiting Fee. It is agreed and acknowledged by the parties, that it is the intent of the parties that neither party shall during the Term of this Agreement and for a period of twelve (12) months immediately following the termination of this Agreement for any reason, directly or indirectly solicit induce, recruit or encourage any of the other party's employees or consultants to terminate their relationship with such party, or attempt to solicit, induce, recruit, encourage or take away employees or consultants of the other party, either for itself or for any other person or entity. However, if a party elects to hire any employee or consultant of the other party, then such party agrees to pay the other party a recruiting fee equal to thirty percent (30%) of the amount (calculated on an annualized basis) such employee or consultant receives, or is targeted to receive, including through bonus or other incentive compensation, from their new service relationship or, if that amount cannot be reasonably ascertained, thirty percent (30%) of the annualized cash compensation such employee or consultant received from the prior employing party immediately prior to such employee's or consultant's termination of its relationship with the same. The foregoing shall not apply to any hiring resulting from an employee or consultant of a party responding to a general recruiting advertisement or posting.

i. Governing Law and Jurisdiction; Attorneys' Fees. This Agreement shall be governed by and construed under the laws of the State of California without regard to conflict of laws provisions. The federal and state courts sitting in Santa Clara County, California shall have exclusive jurisdiction and venue to adjudicate any dispute arising out of this Agreement, and each party hereto expressly consents to the personal jurisdiction of such courts and waives any objection to venue, including the objection of forum non conveniens. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action.

THE FOLLOWING SIGNATURE BLOCK DOES NOT NEED TO BE EXECUTED BY THE PARTIES IF THE AGREEMENT IS ACCEPTED ONLINE. CERTIFICATION PARTNER HEREBY AGREES AND ACKNOWLEDGES THAT ANY ONLINE ACCEPTANCE CONSTITUTES A BINDING AGREEMENT BETWEEN CERTIFICATION PARTNER AND WBD AND CERTIFICATION PARTNER FURTHER REPRESENTS THAT THE INDIVIDUAL ACCEPTING THIS AGREEMENT ONLINE HAS AUTHORITY TO BIND HIS/HER/THEIR RESPECTIVE ORGANIZATION.

IN WITNESS WHEREOF, this Agreement has been executed below by the parties' duly authorized representatives effective as of the Effective Date first set forth above.

CERTIFICATION PARTNER: _____

Signature: _____

Print Name: _____

Print Title: _____

Date: _____