



MASTER SERVICES AGREEMENT

JACKSON COUNTY TOURISM DEVELOPMENT AUTHORITY

This Master Services Agreement is effective as of July 1, 2023 (the "**Effective Date**") by and between **Jackson County Tourism Development Authority** (hereinafter referred to as "**Client**"), having its principal place of business at **98 Cope Creek Road, Suite D, Sylva, North Carolina 28779**, and BGRM, a division of Buffalo Groupe, LLC, having its principal place of business at 960 Morrison Drive, Suite 300, Charleston, SC 29403 USA. This agreement supersedes the original agreement dated July 1, 2022.

WHEREAS, Buffalo is in the business of providing marketing consultation and related services to businesses in and related to the travel industry; and

WHEREAS, Client desires to engage BGRM to provide select marketing consultation as of the Effective Date.

NOW, THEREFORE, in consideration of the covenants and agreements of the parties contained herein, it is mutually agreed as follows:

1. **Entire Agreement.** This Agreement and the Statement(s) of Work attached hereto as **Exhibit A-1**, and so on (each, an "**SOW**") detailing the project(s) comprising the Services (defined in Section 4 below) constitute the entire agreement between Client and BGRM. If the Services comprise more than one (1) project, then each project shall be described in a separate SOW identified as Exhibit A-1, A-2 and so on, each of which shall be incorporated into this Agreement. SOWs may be added or deleted by mutual written agreement at any time during the "**Term**" (defined in Section 2 below). Any prior documents or discussions are superseded by this Agreement and the Exhibits attached hereto.
2. **Term of Agreement.** The term of this Agreement shall commence on the Effective Date and shall expire on the 30th day of June, 2024, the first (1st) anniversary of the Effective Date (the "**Term**"). Unless terminated pursuant to Section 10 below.
3. **Agreement Territory.** The "**Agreement Territory**" shall be the United States of America.
4. **Buffalo Services.** During the Term and within the Agreement Territory, BGRM shall provide Client with the services described in the SOW(s) attached to this Agreement (collectively, the "**Services**"), so long as Client is not in default of its obligations hereunder.

5. **Compensation, Expenses and Payment.** Client agrees to pay BGRM the fees and expenses as described in the SOW(s) attached to this Agreement. All payments due under this Agreement shall be payable to "BGRM" and either (a) mailed to Buffalo Groupe, LLC, 12700 Sunrise Valley Drive, Suite 300, Reston, Virginia 20191 USA, Attn: Accounting Dept.; or (b) remitted to Buffalo by wire transfer, for which Buffalo shall supply to Client a routing number and additional bank information if so requested. In the event Client elects to pay Buffalo by credit card, Client shall pay to Buffalo an additional three percent (3%) service charge for each credit card transaction. In the event that any invoice is more than thirty (30) days past due, Buffalo shall be entitled (i) to suspend the Services until Client pays the delinquent amount in full and/or (ii) to charge Client a Late Fee of ten percent (10%) of the delinquent amount. Any delinquent amounts that remain outstanding after more than sixty (60) days shall accrue interest at the rate of one and one-half percent (1.5%) per month until paid.
6. **Third-Party Expenses.** All obligations or expenses to third-parties in connection with the Services, whether incurred by Client directly or by BGRM or on behalf of Client ("**Third Party Expenses**") shall be the sole financial responsibility of Client. These include, but are not limited to, expenses related to third-parties for campaigns, advertisements and all other media, marketing and other business purchases approved by Client. BGRM shall not be obligated to make any monetary advances to or for the account of Client or to pay any sum of monies to or for the account of Client. Client shall be the sole signatory on all contracts with third-parties for campaigns, advertising, media, marketing and business.
7. **Production Expenses.** Client shall be responsible for all direct costs and expenses associated with the Services, including but not limited to all shipping, photography and artwork (notably digital images), brochures, video, social and digital media assets (hereinafter referred to as "**Production Expenses**"). All Production Expenses shall be billed directly to and paid by Client. To the extent Production Expenses are paid by Buffalo, Client shall reimburse BGRM for all Production Expenses within thirty (30) days of Client's receipt of invoice(s) from BGRM.
8. **Buffalo Out-of-Pocket Expenses.** Client shall reimburse BGRM for all out-of-pocket expenses Buffalo incurs in connection with the Services (the "**Out-of-Pocket Expenses**") including, but not limited to, reasonable travel, hotel and related expenses for Buffalo employees. Client shall reimburse BGRM for all Out-of-Pocket Expenses within thirty (30) days of Client's receipt of invoice(s) from BGRM.
9. **Sales Taxes.** Client shall be solely responsible for any sales taxes or other federal or state levies incurred on any Services or materials associated therewith.
10. **Termination.** This Agreement may be terminated only in accordance with this Section 10 or in Section 16.
 - a. **Termination at the End of Term.** This Agreement shall terminate at the end of the Term set forth in Section 2 above.

- b. **Immediate Termination.** Notwithstanding any provisions of this Agreement to the contrary, either party may terminate this Agreement if (i) a petition under any bankruptcy law is filed by or against the other party, (ii) the other party executes an assignment for the benefit of creditors or (iii) the other party becomes insolvent or takes advantage of any state or federal bankruptcy or insolvency law.
- c. **Effect of Termination.** In the event this Agreement is terminated for any reason, (i) Client shall pay BGRM any unpaid fees, charges, expenses or any other sums incurred up to the date of termination and (ii) upon payment of such sums, BGRM shall return all documents and material belonging to Client, whether in print or digital form.
11. **Indemnification.** To the fullest extent allowed by North Carolina law, Client shall indemnify and hold BGRM harmless from any and all liability and all expenses, including attorney's fees, arising out of or in any way connected with any claim or action (implied, threatened, asserted or actual) resulting from (i) the actions, services and involvement of Client and its subsidiaries, affiliates, agents and associations with third parties and BGRM regarding the Services or (ii) any assertion made by a third party that Client's intellectual property used as part of the Services infringes upon the property rights of any third party. Furthermore, except in circumstances of gross negligence by BGRM, and only to the extent allowed by North Carolina Law, BGRM shall not be held liable for any statements that are made by the media, bloggers and social media channels or for any situations which may arise out of or be related to the Services.
12. **Independent Contractor Relationship.** BGRM relationship with Client shall be that of an independent contractor, and nothing contained in this Agreement shall be construed as establishing an employer / employee relationship, partnership or joint venture between Client and BGRM. Accordingly, there shall be no withholding for tax purposes from any payment by Client to BGRM.
13. **Ownership of Materials.** Client shall retain exclusive rights to all ideas and concepts BGRM originates and shares with Client which are conceived as part of the Services (whether produced or not produced), including but not limited to all ideas and concepts produced under the "Concept Development" phase identified in the SOW(s) attached to this Agreement. Upon full payment of all sums due under this Agreement, all photography, brochures, manuals, film, signage and other materials generated by BGRM on Client's behalf as part of the Services (collectively referred to as "**Materials**") shall be deemed a "work made for hire" and shall, between BGRM and Client, be Client's exclusive property, subject to any third party rights, restrictions, limitations, or other obligations. Notwithstanding the foregoing, Client acknowledges that BGRM retains ownership of all works of authorship created by BGRM or on behalf of Buffalo prior to or separate from the performance of the Services under this Agreement, or any enhancements or modifications made during performance, including, but not limited to, BGRM generic and business information, tools, methodologies, code, proprietary information/services, media lists, and third party relationships held by BGRM ("**BGRM Tools**").

14. **Confidentiality.** Client is required to comply with certain applicable statutes of the State of North Carolina regarding open meetings and/or public records. Notwithstanding anything to the contrary within this Agreement, Client shall not be liable to any party for disclosing this Agreement, or any documents or communications made or received in relation thereto, to any third party or the public at large, if such disclosure is made by Client in a good faith effort within its sole discretion, to comply with any public records request or other applicable laws. Unless required to be disclosed by North Carolina public records or open meeting laws, the financial terms and conditions of this Agreement shall not be divulged to any third parties without the prior written consent of both client and BGRM. Notwithstanding the foregoing, Client and BGRM each shall have the right to disclose to others that they are working together.
15. **Non-Solicitation.** Client agrees it shall not directly or indirectly solicit for employment, employ, hire or retain any person who is an employee of BGRM, Buffalo Groupe, LLC and / or Antares Golf, LLC during the Term and for a period of two (2) years following expiration of this Agreement.
16. **Force Majeure.** If Client or BGRM are unable to meet any of their obligations under this Agreement due to war, riot, insurrection, strike, vandalism, fire, flood, earthquake, accident, storm, epidemic, pandemic, act of God or government, or any other external cause beyond such party's reasonable control, but specifically excluding the financial circumstances of such party (each, a "**Force Majeure Event**"), such party may declare a Force Majeure Event by giving written notice to the other within ten (10) days following the occurrence of such event. The written notice shall state the particulars of the event. Client and BGRM shall use all diligent efforts to promptly resume normal performance of all obligations under this Agreement after the occurrence of any Force Majeure Event. If the Force Majeure Event continues for longer than thirty (30) calendar days, then the party that did not declare the Force Majeure Event, at its sole option, may terminate this Agreement or a particular SOW in whole or in part. Notwithstanding the foregoing, nothing herein shall relieve Client of its financial responsibilities to Buffalo for amounts owed under this Agreement prior to its receipt of written notice of the Force Majeure Event.
17. **Notices.** All notices and/or submissions hereunder shall be sent via (1) overnight delivery service, with written evidence of receipt, (2) Certified Mail, Return Receipt Requested, or (3) e-mail, with evidence of receipt, to the parties at the following addresses, or such other addresses as may be designated in writing from time to time:

Client: Nick Breedlove
 Executive Director
 Jackson County Tourism Development Authority
 98 Cope Creek Road, Suite D,
 Sylva, NC 28779
 director@discoverjacksonnc.com

BGRM: John M. Kautz
Managing Director
BGRM, a Buffalo Groupe Company
960 Morrison Drive, Suite 300
Charleston, SC 29403
jkautz@buffalogroupe.com

With Copy To: Emily Clark
Chief Operating Officer
Buffalo Groupe, LLC
960 Morrison Drive, Suite 300
Charleston, SC 29403
eclark@buffalogroupe.com

18. **Authority.** Each person executing this Agreement represents and warrants that he or she has the authority to bind the party on whose behalf he or she is signing and that, upon such signature, this Agreement will be the legal, valid and binding obligation of such party.
19. **Opportunity to Review.** Each party hereto has had the opportunity to review this Agreement with counsel of its choosing.
20. **Amendment.** No amendment of this Agreement shall be effective unless memorialized by a written instrument executed by Client and BGRM. New or revised SOWs may be added and old ones deleted by a written agreement signed by both Client and BGRM and identified as **Exhibit A-1, Exhibit A-2** and so on.
21. **Assignment.** Either party may assign its obligations under this Agreement to any entity which acquires all or substantially all of the business or assets of such party; provided, however, that such assignee must agree in writing to undertake the obligations of the assigning party.
22. **Governing Law and Venue.** This Agreement is made and entered into in Jackson County, North Carolina and shall be governed by and construed in accordance with North Carolina law. Any claim for breach or enforcement of this Agreement shall be filed in the appropriate court location in the jurisdiction of Jackson County, North Carolina.
23. **Successors.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and permitted assigns.
24. **Attorneys' Fees.** Should any litigation or arbitration be commenced between the parties concerning this Agreement, each party shall be responsible for its own legal fees and expenses, but the party substantially prevailing in any such dispute shall be entitled to recover such fees and expenses from the other.

25. **Counterparts.** This Agreement may be executed in any number of counterparts, including PDF or facsimile counterparts, all of which taken together shall constitute one legal, valid and binding agreement.
26. **Severability.** If any one or more provisions of this Agreement are held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be impaired.
27. **Survival.** The rights and obligations of the parties hereto which by their nature must survive termination of this Agreement, such as Sections 11, 12, 13, 14 and 15, shall do so.
28. **Electronic Signatures.** Client and BGRM expressly agree to the use of electronic signatures as an additional method of signing and initialing this Agreement. Each party confirms that if both parties choose to use electronic signatures, the electronic signatures will have the same legal significance as written signatures.

[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE TO MASTER SERVICES AGREEMENT]

The foregoing Agreement accurately sets forth the understanding between Client and BGRM as acknowledged by the signatures below, and shall be binding on Client and BGRM as of the Effective Date above.

AGREED AND ACCEPTED:

CLIENT:

JACKSON COUNTY TOURISM DEVELOPMENT AUTHORITY:

BY: _____
Daniel Fletcher
Chair

DATE: _____

This instrument has been pre-audited in the Manner required by the Local Government Budget and Fiscal Control Act.

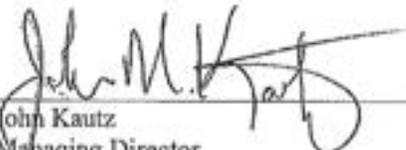
This the 8th day of May 2023



Finance Officer
Jackson County, North Carolina

BGRM:

BGRM, a division of Buffalo Groupe, LLC, a Virginia limited liability company:

BY: 

DATE: 4/26/23



Exhibit A-1
Statement of Work No. 1

BGRM charges for the products(s) or service(s) are indicated below for Fiscal Year 2023-2024.

Annual Budget for FY 2023-2024: \$535,792

Ad Firm Media (24-4926-370-00)	294,652
Website Service (24-4926-370-01)	25,200
Creative and Production Services (24-4926-370-02)	90,000
Digital Campaign Reporting (24-4926-370-03)	13,200
Email Campaigns (24-4926-370-04)	16,800
Website Projects (24-4926-393-05)	12,500
Ad Firm Retainer - Brand Leadership (24-4926-393-06)	60,840
Misc. Agency Expenses (24-4926-393-08)	22,600
TOTAL	\$535,792

AGREED AND ACCEPTED:

CLIENT: JACKSON COUNTY TOURISM DEVELOPMENT AUTHORITY:

BY: _____
Daniel Fletcher
Chair

DATE: _____

BGRM: BGRM, a division of Buffalo Groupe, LLC, a Virginia limited liability company:

BY: _____
John Kautz
Managing Director

DATE: 4/26/23

Effective Date: July 1, 2023