

The Corporation of the Municipality of Brockton



By-Law 2019-145

Being a By-Law to Authorize the Signing of an Agreement With Bang the Table for the Purpose of Providing a Community Engagement Tool Service for the Municipality of Brockton.

Whereas The Council for the Corporation of the Municipality of Brockton deems it expedient to enter an agreement with Bang the Table with respect to providing a Community Engagement Tool Service for the Municipality of Brockton;

Now Therefore the Council of the Corporation of the Municipality of Brockton enacts as follows;

- 1.0 That The Corporation of the Municipality of Brockton Council hereby enter into an agreement with Bang the Table which is attached as "Schedule A" and forms part of this By-Law;
- 2.0 That the Corporation of the Municipality of Brockton hereby ratify the execution by the Chief Administrative Officer of said agreement dated October 30, 2019, between the Corporation of the Municipality of Brockton and Bang the Table.
- 3.0 This By-Law shall come into full force and effect upon final passage.
- 4.0 This By-Law may be cited as the "Bang the Table Agreement By-Law".

Read, Enacted, Signed and Sealed this 12th day of November, 2019.

Mayor – Chris Peabody

Clerk – Fiona Hamilton



Service Agreement

Name of "Customer"	Municipality of Brockton
Customer Address	Municipality Ontario 4104
Customer Phone	(519) 881-2223
Primary Contact	Taylor Grubb tgrubb@brockton.ca
Contract Contact	Sonya Watson swatson@brockton.ca
Term	25/11/2019 to 31/12/2021
Service Details	See Bang the Table's proposal and/or prospectus for details.
Total Fees	\$7,500 excluding tax
EngagementHQ Package	Annual License
EngagementIQ Package	Core
Additional Services & Integrations	Onboarding

Integrations require the cooperation of third parties. We enter into a contract to provide integrations on the basis of 'best endeavors' if, for reasons beyond our control, an integration ceases to work we will refund pro rata the integration portion of the contract. This has no impact on the software package and service components of the contract.

The Master Terms and Conditions set forth below (the "Terms", and together with this Service Agreement, collectively, the "Agreement") are a binding agreement between you ("you" or "Customer") and Bang the Table, ("BTT", "us" or "we") governing your use of the Services ordered above. The Terms are hereby incorporated into this Service Agreement. By signing below, each party agrees to comply with the terms and conditions set forth in this Service Agreement and in the Terms.

CUSTOMER

Signature: _____

Printed: _____

Title: _____

Date: _____

BANG THE TABLE

Signature: 

Printed: Matthew Crozier

Title: CEO and Co-Founder

Date: October 30, 2019

Master Terms and Conditions

These master terms and conditions (the "Terms"), and together with your Service Agreement ("Service Agreement"), and any attached Proposal are a binding agreement (the "Agreement") between you ("you" or "Customer") and Bang The Table, ("BTT", "us" or "we") governing your use of the services ordered on your Service Agreement (the "Services") This Agreement is effective as of the date you entered into your Service Agreement ("Effective Date").

1 Access Grant & Restrictions

1.1 Subscription to the Service. Subject to the terms of this Agreement, BTT hereby grants to the Customer a limited, non-sublicensable, non-transferable, non-exclusive subscription during the term of the Service Agreement for the Customer to access and use the specific services and feature sets of the Service specified in the applicable Service Agreement by up to the number of users identified in that Service Agreement, and solely for the Customer's business purposes as outlined on the Service Agreement and these Terms. BTT and its licensors reserve all rights not expressly granted to the Customer in this Agreement. BTT upgrades its software on a continuous basis and, while we strive to minimize the impact on the customer of any upgrades (our policy is not to change the public facing appearance of your site without your permission), BTT reserves the right to make necessary changes or modifications to the Service.

2 Customer Responsibilities. The Customer is responsible for ensuring the compliance with these terms of each of the Customer's authorized users ("Administrators") and is liable for all activity under the Customer's Administrator accounts. The Customer shall use best efforts to prevent unauthorized access to, or use of, the Service, and will notify BTT promptly of any unauthorized use of any password or account or any other known or suspected breach of security. The Customer will not attempt to or use the Customer's access to the Service to knowingly interfere with or disrupt the integrity or performance of the Service or the data contained therein. The Customer shall not allow Administrator credentials to be shared. You must ensure that we receive, in a timely manner, all information we need to enable us to supply the Services.

3 Support; Hosting. BTT will host the Website as set forth in the Service Agreement and applicable Proposal document. BTT will, where practicable, answer questions and help troubleshoot. To the extent set forth on the Service Agreement, BTT will also provide hosting and support services as set forth in Proposal, attached hereto, which is hereby incorporated hereto.

4 Termination. Customer may terminate this Agreement upon at least thirty (30) days written notice to BTT for any or no reason. BTT will not terminate this Agreement (but may non-renew as outlined in the Service Agreement) except where Customer has breached this Agreement and such failure continues for thirty (30) days after Customer receives written notice of same. Upon the termination of this Agreement for any reason: (a) any amounts owed to BTT by the Customer under this Agreement before such termination will become immediately due and payable, (b) Customer will cease using the Service and Website; and (c) BTT will shut down the Website. The rights and duties of the parties that are designed to survive termination or expiration will survive.

5 Acknowledgments. Each party acknowledges and agrees that it has the legal power and authority to enter into this Agreement. The Customer acknowledges and agrees that: (a) Customer shall abide by all applicable laws and regulations in connection with the Customer's business operations and the use of the Service, Website, and Website Visitor information, and (b) Customer owns or has obtained all rights, consents, permissions, or licenses necessary to allow the Service access to, or possession, manipulation, processing, or use of the Customer's Data and any data from Website Visitors; and (c) the Customer shall ensure that its collection, use, and sharing of information (including data from Website Visitors) is in accordance with applicable law, and its privacy policy; and (d) Customer owns or has sufficient rights to any Customer content displayed on the Website. Should you wish to change the terms of use on the Website you can do so but (as these terms are between BTT and the website visitors) in so doing you accept all responsibility for any content provided by users and website visitors.

6 Disclaimer of Warranties. EXCEPT AS SET EXPRESSLY FORTH IN THIS AGREEMENT, BTT AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO ANY CONTENT (INCLUDING ANY CONTENT FROM WEBSITE VISITORS), THE SERVICE, OR WEBSITE. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE ARE HEREBY DISCLAIMED.

7 Ownership. BTT and its licensors own all rights, title and interest, including all related intellectual property rights, in and to the Services, BTT content, platform, and technology, including all enhancements, modifications or derivative works to the foregoing, as well as any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by the Customer or any other party relating to the Services. The BTT name, the BTT logo, and the product names associated with the Services are trademarks of BTT or third parties. All rights not expressly granted are hereby retained by BTT. BTT does not own the information submitted by Customer or its Website Visitors (the "Customer's Data"). The Customer retains all right, title and interest in and to the Customer's Data. The Customer grants to BTT all necessary licenses and rights in and to the Customer's Data as necessary for BTT to provide Services to the Customer. The Customer is responsible for the Customer's Data including without limitation the accuracy, quality, integrity, legality, reliability, appropriateness of the foregoing, and obtaining any intellectual property rights ownership or right to use the foregoing. BTT reserves the right to de-identify or aggregate (or both) any data (including Customer Data), information or content obtained by BTT relating to Customer, its Administrator's, or Website Visitors use or receipt of Services, including without limitation information about how the Services are used by such users ("De-identified Data"). BTT may use De-identified Data for product optimization and development, benchmarking, and internal research but will not share any information that identifies Customer or any Website Visitor by name with any third party, except as strictly necessary to provide the Services.

8 Responsibility. If any action is instituted by a third party against the Customer based upon a claim that the Service, as provided, infringes a copyright or trademark, then BTT will defend such action at its own expense on behalf of the Customer and will pay all damages attributable to such claim which are finally awarded against the Customer or paid in settlement of such claim. BTT may, at its option and expense, and in addition to defending the Customer as set forth in the previous sentence, as the Customer's exclusive remedy hereunder: (a) procure for Customer the right to continue using the Service; (b) replace or modify the Service so that it is no longer infringing but continues to provide comparable functionality; or (c) terminate this Agreement and the Customer's access to the Service and refund any amounts previously paid for the Service attributable to the remainder of the then-current term of this Agreement. BTT will have no liability to the Customer for any infringement action that arises out of a breach of the terms and conditions of this Agreement by the Customer or of the use of the Service (i) after it has been modified by the Customer or a third party without BTT's prior written consent, or (ii) in combination with any

other service, equipment, software or process not provided by BTT where the combination is the basis for the infringing activity. THIS PARAGRAPH SETS FORTH THE ENTIRE OBLIGATION OF BTT AND THE CUSTOMER'S EXCLUSIVE REMEDY AGAINST BTT OR ANY OF ITS SUPPLIERS FOR ANY INFRINGEMENT CLAIM.

9 Limitation of Liability. TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY TYPE OR KIND, OR ANY LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICES, OR THIS AGREEMENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL BTT'S CUMULATIVE LIABILITY FOR ANY CLAIM, LOSS, ACTION, FEE, OR DAMAGE OR ANY OTHER DISPUTED UNDER THIS AGREEMENT EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER TO BTT IN THE 12 MONTHS PRECEDING THE CLAIM.

10 Confidentiality. Neither party will use the confidential information of the other party for any purpose other than exercising its rights or obligations under this Agreement, and will disclose the confidential information only to those of its employees or contractors who have a need to know for purposes of the Agreement. Notwithstanding, either party may disclose the other party's confidential information as required by law so long as, if permitted by law, such party notifies the disclosing party prior to disclosure and uses reasonable efforts to limit disclosure to only what is required by law.

11 General Terms. This Agreement may not be assigned by the parties without the prior written approval of the other party, although BTT may use subcontractors so long as it remains responsible for such subcontractors. Any purported assignment in violation of this section shall be void. BTT shall not be liable for any failure by it to perform its obligations under this Agreement because of circumstances beyond the reasonable control of BTT. No text or information set forth on any other purchase order, preprinted form or document (other than an associated BTT quote or invoice, if applicable) shall modify the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. The parties are independent contractors and this Agreement does not create any joint venture, partnership, employment, or agency relationship between the Customer and BTT. The failure of BTT to enforce any right or provision in this Agreement shall not constitute a waiver of that or any future right or provision unless acknowledged and agreed to by BTT in writing. These Terms, together with any associated Service Agreement, Proposal, or invoice, comprises the entire Agreement between the Customer and BTT and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein.