

EPIC MARKETING AGREEMENT

This EPIC Marketing Agreement (the “**Agreement**”) is made and entered into this ___ day of _____, 2021 (the “**Effective Date**”) by and between the entity set forth in the signature blocks below (“**EPIC**”) and BFLY Operations, Inc., with an office located at 530 Old Whitfield Street, Guilford, CT 06437 (“**Company**”).

WHEREAS, Company has developed a portable ultrasound imaging probe (the “**Device**”) and related hosted software service for viewing, using and storing the ultrasound images (the “**Software Services**”) for various medical diagnostic purposes, research and education; and

WHEREAS, EPIC is a purchasing group supporting various veterinarian groups (“**EPIC Members**”); and

WHEREAS, Company desires that EPIC, and EPIC is willing to, market, advertise, and/or promote the Device and the Software Services on EPIC’s website, social media accounts, and/or via other marketing channels as may be agreed in writing by the parties (“**Promotional Services**”) in exchange for the consideration as set forth in this Agreement; and

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

1. **Promotional Services.** EPIC shall, upon mutual execution of this Agreement, commence providing the Promotional Services for the benefit of Company. EPIC shall solely promote the Device and Software Services to eligible veterinarian practitioners during this Agreement solely within the United States, provided that EPIC shall make concerted efforts to target EPIC Members. EPIC shall not engage in the activities contemplated in this Agreement outside of the United States without Company’s prior written consent. EPIC represents that it has the right to provide the Promotional Services for the benefit of Company as set forth in this Agreement. EPIC agrees not to send unsolicited electronic messages to multiple unrelated recipients (“**Spamming**”) in performing the Promotional Services, and shall not otherwise engage in any other form of mass electronic communications prohibited by law.

2. **Grant of License.** Company hereby grants EPIC a non-exclusive, fully-paid-up, royalty-free, non-transferable, non-sublicenseable, revocable license to display the Company trademarks (listed on Exhibit A to this Agreement) (“**Licensed Marks**”) on EPIC’s website, social network accounts, and/or via other marketing media as agreed in writing by the parties, solely for the purpose of performing the Promotional Services, provided that EPIC must obtain Company’s prior written approval of any usage of the Licensed Marks. EPIC shall not modify previously approved usage(s) of Company’s Licensed Marks without Company’s prior written approval. Company may revoke and/or terminate this license at any time by written notice. Upon termination of this Agreement for any reason whatsoever, or upon written request by Company, the license granted herein shall expire and EPIC shall immediately cease all its activities under this Agreement.

3. **Permissible Use of Licensed Marks.** Company may provide specifications and instructions from time to time as to EPIC’s permissible use of the Licensed Marks in creating marketing materials and promoting the Device and Software Services and EPIC shall immediately comply with such specifications and instructions or cease usage of the Licensed Marks. EPIC shall ensure that all Licensed Marks appearing in its marketing materials are in the form and substance approved by Company, and shall not modify any Licensed Marks. EPIC must obtain Company’s written approval prior to use of Licensed Marks. EPIC agrees not to associate the Licensed Marks with content that is unlawful in any manner, or which is otherwise harmful, threatening, defamatory, obscene, offensive, harassing, sexually explicit, violent, discriminatory, or otherwise objectionable in Company’s sole discretion. EPIC shall further immediately comply with reasonable instructions from Company as to the form, content and display of marketing materials containing the Licensed Marks or promptly cease usage of the Licensed Marks.

4. **Non-Disparagement.** During the Term and for five (5) years thereafter, EPIC agrees that it will not disparage Company or any of its officers, directors, employees or agents, or otherwise take any action that could reasonably be expected to adversely affect Company’s reputation. For purposes of this Agreement, “**disparage**” shall mean any negative statement, whether written or oral, about Company or any its officers, directors employees, or agents. The Parties agree and acknowledge that this non-disparagement provision is a material term of this Agreement, the absence of which would have resulted in the Company refusing to enter into this Agreement.

5. **Customer Relations.** During and after the Term, Company shall be the exclusive owner of all relations created via EPIC among Company and leads with respect to the Device and/or Software Services, including any and all information identifying leads who contract with Company. EPIC agrees to convey to leads the nature of its business relations with Company. EPIC agrees to convey to leads the nature of its business relations with Company. Company and EPIC will provide standard customer support for their respective customers, and EPIC will provide Company support as needed for Company to directly resolve service requests with its customers. Finally, EPIC will direct customer inquiries relating to the Device and/or Software Services to Company at support@butterflynetwork.com (or an updated contact if provided by Company). EPIC shall convey all complaints about the Device and/or Software Services to Company within 24 hours of the moment EPIC becomes aware of such complaint.

6. **EPIC Member Discounts.** Upon signature of this Agreement and EPIC commencing performance of the Promotional Services, Company agrees that:

- A. During the term of this Agreement, EPIC Member Qualified Leads (as that term is defined below) shall receive the following discounts on Butterfly iQ+ Vet and accompanying Software Services:
 - a. 5% discount off Company’s then current MSRP (not inclusive of taxes and applicable fees) on each Device an EPIC Member Qualified Lead purchases with an accompanying Software Service subscription for at least a one (1) year term.
 - b. 15% discount off Company’s then current MSRP for the first year of any Software Services purchased. For the avoidance of doubt, the foregoing discount shall not apply to years two and beyond nor any renewal terms of Software Services and all such years shall be subject to pricing as set forth by Company.

- c. Company's Hardware as a Service ("HaaS") offerings for Device and Software Services shall not be subject to the discounts contemplated in this Agreement. EPIC Members shall be subject to Company's then current MSRP for HaaS.
- B. Qualified Lead. A Qualified lead is defined as a customer of the Company who: was directly acquired through Promotional Services rendered by the EPIC; is attributed through the channels in the agreed upon Implementation; makes an eligible Software Service purchase (as set forth on Company's website) from Company; did not previously have a Company account; and for whom there is no more recent other attribution (e.g. last touch). Each Qualified Lead shall be referred to Company by EPIC through a unique hyperlink provided by Company to EPIC. A Qualified lead is defined as a customer of the Company who: was directly acquired through Promotional Services rendered by the EPIC; is attributed through the channels in the agreed upon Implementation; makes an Individual or Team purchase (as set forth on Company's website) of Software Services with Company; did not previously have a Company account; and for whom there is no more recent other attribution (e.g. last touch).

7. Intellectual Property. All intellectual property rights (such as but not limited to trademarks, trade names, logos, patents, copyrights, domain names and derivative rights) in, on or related to the Licensed Marks, the Device, or the Software Services, and/or related content and technology around the world ("Company IP Rights") are and will remain the exclusive property of Company. EPIC agrees that it shall (a) not contest or impair any Company IP Rights; (b) not create or obtain any intellectual property rights (such as but not limited to trademarks, trade names, logos, patents, copyrights, domain names and derivative rights) that are substantially similar to any Company IP Rights; and (c) promptly notify Company of any unauthorized use of any Company IP Rights of which EPIC has actual knowledge.

8. Indemnification. EPIC will indemnify, defend and hold Company and its subsidiaries, EPICs, officers, directors, employees and agents (the "Indemnified Parties") harmless from and against any and all costs, liabilities, losses and expenses (including but not limited to reasonable attorneys' fees) resulting from any claim, suit, action, demand or proceeding brought by any third party against the Indemnified Parties arising from: (a) a breach of the Agreement by EPIC; (b) the negligence, gross negligence or willful misconduct of EPIC or its employees, agents or contractors; or (c) a failure by EPIC or its employees, agents, or contractors to comply with applicable laws and regulations.

9. Disclaimer of Warranty. Company makes no warranties, express or implied, of any kind and Company expressly disclaims any and all warranties and conditions, including but not limited to any implied warranty of merchantability, fitness for a particular purpose, availability, security, title, and/or non-infringement.

10. Limitation of Liability. NEITHER COMPANY NOR ANY OFFICER, EMPLOYEE, DIRECTOR OR ANY OTHER REPRESENTATIVE OF COMPANY SHALL BE LIABLE TOWARDS EPIC OR TOWARDS ANY THIRD PARTY, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS TERMINATION, IN CONTRACT, PRE-CONTRACT, TORT OR OTHERWISE FOR (A) ANY ECONOMIC LOSS, INCLUDING BUT NOT LIMITED TO, LOSS OF REVENUES, PROFITS, CONTRACTS, BUSINESS OR ANTICIPATED SAVINGS, (B) ANY LOSS OF GOODWILL OR REPUTATION, (C) ANY SPECIAL, INDIRECT, INCIDENTAL, STATUTORY, PUNITIVE OR CONSEQUENTIAL LOSSES OR DAMAGES, OR (D) ANY LOSSES OR DAMAGES CAUSED BY INTERRUPTION OF OPERATIONS. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, COMPANY'S ENTIRE LIABILITY TO EPIC UNDER THIS AGREEMENT SHALL NOT EXCEED \$100.00 FOR ANY AND ALL CLAIMS FOR DAMAGES OF ANY KIND MADE BY EPIC UNDER OR IN CONNECTION WITH THIS AGREEMENT.

11. Confidentiality.

- a. Scope of Confidential Information. From time to time during the Term of this Agreement, a Party (the "**Disclosing Party**") may disclose or make available to the other Party (the "**Receiving Party**") information about its business affairs, goods and services, forecasts, confidential information, and materials comprising or relating to intellectual property rights, trade secrets, third-party confidential information, and other sensitive or proprietary information, as well as the terms of this Agreement, whether orally or in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure, and as established by documentary evidence: (i) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Section 12 by the Receiving Party; (ii) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (iii) was known by or in the possession of the Receiving Party prior to being disclosed by or on behalf of the Disclosing Party in a non-confidential manner; or (iv) was or is independently developed by the Receiving Party without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information. The Receiving Party shall have the burden of demonstrating that any of the foregoing exceptions apply by clear and convincing evidence.
- b. Protection of Confidential Information. During the Term of this Agreement, and for a period of three (3) years following termination or expiration of this Agreement, the Receiving Party shall: (i) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (ii) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (iii) not disclose any Disclosing Party's Confidential Information to any third-party without the express written permission of the Disclosing Party, except to Receiving Party's employees, agents, lawyers, accountants or advisers who need to know the Confidential Information to assist Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement.

- c. On the expiration or earlier termination of this Agreement in accordance with Section 12, or at any time during the Term at the Disclosing Party's written request, the Receiving Party shall, promptly return or destroy all Confidential Information and copies thereof that it has received under this Agreement, but in no event later than ten (10) days after receiving written notice from the Disclosing Party. Notwithstanding the foregoing, the Receiving Party may keep in secure legal files an archival copy of the Confidential Information, and will not be required to erase electronically stored Confidential Information that has been saved to a back-up file or other electronic medium in accordance with ordinary back-up or archiving practices, provided that the Receiving Party shall continue to treat any retained Confidential Information with the same level of care required under this Section 11 for so long as Receiving Party maintains possession of such Confidential Information.

12. Term; Termination. This Agreement shall commence on the Effective Date and shall continue in full force and effect for a period of one (1) year. Thereafter this Agreement shall automatically renew for additional one-year periods unless either party provides at least thirty (30) days prior written notice of non-renewal. Additionally, Company may terminate this Agreement at any time by written notice to EPIC, and EPIC may terminate this Agreement at any time with at least thirty (30) days prior written notice to Company. Sections 4, 5, 8, 9, 10, 11, and 18 of this Agreement shall survive termination or expiration of this Agreement.

13. Independent Contractors. The parties herein shall be independent contractors. Nothing in this Agreement shall create any joint venture, agency, franchise, sales representative, employment or any other relationship between the parties. EPIC is expressly precluded from acting on Company's behalf. EPIC's display of Licensed Marks or other content under this Agreement, and any communications between EPIC and third parties, shall not misrepresent the relations described herein.

14. Compliance with Law. Each party agrees to comply with all applicable laws and regulations including, but not limited to, fraud and abuse laws. Each party will also maintain in full force and effect during the term of this Agreement all applicable licenses, permits, certificates and accreditations as may be required by law or regulation. EPIC shall only promote the Device and Software Services to eligible veterinarian practitioners.

15. Notices. Any notice or other communication by either party to the other will be in writing, and will be deemed to have been given when sent by nationally-recognized overnight delivery service capable of providing confirmation of receipt, addressed as to the persons executing this Agreement below at the addresses provided by the parties.

16. Assignment. This Agreement may not be assigned, in whole or in part, by EPIC without prior written consent of Company.

17. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and shall supersede all previous negotiations, comments and writings.

18. Choice of Law. This Agreement, and any claim, controversy or dispute arising under or related to this Agreement, the relationship of the parties and/or the interpretation or enforcement of their respective rights and obligations, shall be governed by and construed in accordance with the laws of the State of Delaware without regard to principles of conflicts of law. The parties hereto agree to the exclusive jurisdiction of the courts located in the above stated jurisdiction.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Agreement effective as of the date first written above.

BFLY OPERATIONS, INC.

EPIC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

EXHIBIT A

Trademarks

[INSERT LIST]

Promotional Services

1. EPIC will promote Company Device and Services to EPIC Members, as approved in Sections 1 and 3, in agreed upon channels, which may include social channels, web, educational forums, email, conferences, etc.
2. EPIC shall direct prospective EPIC Member purchasers of Company Device and Software Services using the following unique promo code: **EPIC** at <https://vet.butterflynetwork.com/>
3. EPIC shall have no authority to bind the Company to any obligations and shall not enter into any letters of intent (binding or non-binding) or any other promises or commitments without Company's prior written consent.