

S. TABIOS SOFTWARE SOLUTIONS  
Software Development Agreement

This document is confidential.

Agreement for the development of software

**An agreement governing**

(designation of the procurement)

has been concluded by:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(hereafter referred to as the Contractor)

**and**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(hereafter referred to as the Customer)

**Place and date:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |
| --- | --- |
| (Name of the Customer) | (Name of the Contractor) |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature of the Customer | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature of the Contractor |

The Agreement is signed in two copies; one for each party

Communications

All communications respecting this Agreement shall be addressed to:

|  |  |
| --- | --- |
| On the part of the Customer: | On the part of the Contractor: |
| Name | Name |
| Position | Position |
| Telephone | Telephone |
| E-mail | E-mail |

This Software Development Agreement is made on [AGREEMENT DATE] (the "Effective Date") between [PARTY A NAME], [whose principal place of residence is at / a [CORPORATE JURISDICTION] corporation with its principal place of business at [PARTY A ADDRESS]] (the "[PARTY A ABBREVIATION]") and [PARTY B NAME], [whose principal place of residence is at / a [CORPORATE JURISDICTION] corporation with its principal place of business at] [PARTY B ADDRESS]] (the "[PARTY B ABBREVIATION]").

(The capitalized terms used in this agreement, in addition to those above, are defined in section [DEFINITIONS].)

**Development Services**. [PARTY A] shall provide [PARTY B] with certain software according to [PARTY B]'s Specifications (the "[DELIVERABLE]") and maintenance, training, and support services in connection with the [DELIVERABLE].

**Specifications**. Promptly after the Effective Date, [PARTY B] shall

define the specifications of the [DELIVERABLE] and the schedule for its development and delivery (the "Specifications"), and

deliver to [PARTY A] a written copy of the Specifications.

**Development**. [PARTY A] shall use reasonable efforts to design, develop, and implement the [DELIVERABLE] according to the Specifications.

**Make [DELIVERABLE] Available for Download**. On the later of the Effective Date and [PARTY B]'s first payment for the [DELIVERABLE], [PARTY A] shall make the [DELIVERABLE] available to [PARTY B] in an electronic, downloadable format on [PARTY A]'s website, at [INSERT URL OF WEBSITE].

**Acceptance and Rejection**

**Inspection Period**. [PARTY B] will have [INSPECTION PERIOD] Business Days' after [PARTY A] delivers the [DELIVERABLE] to inspect and test the [DELIVERABLE] to ensure it meets the Acceptance Criteria (the "Inspection Period").

**Acceptance**. If in [PARTY B]'s opinion the [DELIVERABLE] meets the Acceptance Criteria, [PARTY B] shall accept the [DELIVERABLE] and notify [PARTY A] that it is accepting the [DELIVERABLE].

**Deemed Acceptance**. [PARTY B] will be deemed to have accepted the [DELIVERABLE] if

[PARTY B] fails to notify [PARTY A] on or before the expiration of the Inspection Period, or

if during the Inspection Period, [PARTY B] sells or attempts to sell, runs, or otherwise uses the [DELIVERABLE] beyond what is necessary for inspection and testing and in a way a reasonable person would consider consider consistent with [PARTY B] having accepting ownership of the [DELIVERABLE] from [PARTY A].

**Rejection**. If in [PARTY B]'s opinion, the [DELIVERABLE] fails in a material way to meet the Acceptance Criteria, [PARTY B] may reject the [DELIVERABLE] by delivering to [PARTY A] a written list detailing each failure to satisfy the Acceptance Criteria.

**Opportunity to Cure**. If [PARTY B] rejects the [DELIVERABLE], [PARTY A] will have [NUMBER OF OPPORTUNITIES TO CURE] opportunities to promptly cure each failure in the [DELIVERABLE] and re-deliver the [DELIVERABLE] to [PARTY B] to re-inspect and test.

**Continued Failure to Cure**. If in [PARTY B]'s opinion, [PARTY A]'s corrections fail to satisfy the Acceptance Criteria [NUMBER OF OPPORTUNITIES TO CURE] times, [PARTY B] may terminate this agreement.

**Acceptance Criteria**. "Acceptance Criteria" means the specifications the [DELIVERABLE] must meet, [as agreed on by the parties in writing / as listed in [ATTACHMENT], attached to this agreement].

**Purchase Price**. [PARTY B] shall pay [PARTY A] a purchase price of $[PURCHASE PRICE] (the "Purchase Price") for the [DELIVERABLE].

**Purchase Price**. [PARTY B] shall pay the Purchase Price

in an initial down payment of $[DOWN PAYMENT AMOUNT] due on [[DATE, MONTH] / the date of this agreement], and

with the remaining payment of $[REMAINING PAYMENT AMOUNT] due on [[DATE, MONTH] / delivery and[PARTY B]'s acceptance (after [PARTY B] has reasonable opportunity to inspect, at its own expense)],

both payment made in immediately available funds, and

to the account [PARTY A] lists immediately below:

Account Number:

Routing Number:

**Taxes**. [PARTY B] shall pay all Taxes applicable to payments between the parties under this agreement.

**Interest on Late Payments**. Any amount not paid within [PAYMENT DEADLINE] Business Days' [of receiving the applicable invoice / of its due date] will bear interest from the due date until paid at a rate equal to [1]% per month ([12.68]% annually) or the maximum allowed by Law, whichever is less.

**Training**

**Training Scope**. During the [30] Business Day period following the Effective Date, on [PARTY B]'s reasonable request, [PARTY A] shall provide [PARTY B] and its employees with the training necessary and desirable to use the [DELIVERABLE].

**Training Dates and Locations**. [PARTY A] shall conduct the training on the dates and at the locations the parties agree on in writing.

**Training Costs**. [PARTY A] shall bear the costs of trainings under this section.

**Changes to Services**

**Change Orders**. [PARTY B] may request changes to the [DELIVERABLE] by written notice to [PARTY A].

**Additional Time or Expense**. If the proposed change will require a delay in delivery of the [DELIVERABLE]or would result in additional expense,

[PARTY A] shall submit a proposal for the requested changes, detailing any added time and expense, and

[PARTY B] may elect to either

withdraw its proposed change, or

require [PARYT A] to provide the [DELIVERABLE] with the proposed change, subject to the delay and additional expense.

**Termination**. If [PARTY A] cannot, or chooses not to accept the change order, then [PARTY B] may terminate this agreement and pay [PARTY A] any amounts it already owes under this agreement.

**Changes Made in Writing**. If the parties agree to make changes to the [DELIVERABLE], the parties shall make those changes in writing, signed by each party.

**Term**. This agreement begins on [the Effective Date] and will continue until [CONDITION / EVENT / FULFILLMENT OF ORDER / COMPLETION OF SERVICES], unless terminated earlier (the "Term").

**Limited Warranty**

**Media Warranty**. [PARTY A] hereby warrants that for a period of [WARRANTY PERIOD] (the "Warranty Period") following delivery of the [DELIVERABLE] that the media the [DELIVERABLE] is delivered on will be free from defects and operate under to normal circumstances of use.

**Performance Warranty**. [PARTY A] hereby warrants that for the Warranty Period the [DELIVERABLE] will perform substantially according to the Specifications.

**Product Warranty**

**[PARTY A] Products**. All [PARTY A]-branded hardware products are covered by [PARTY A]'s limited warranty statements that are provided with the products or otherwise made available.

**Term of Product Warranties**. Hardware warranties begin on the delivery date, or if applicable on completion of [PARTY B]'s installation of the [DELIVERABLE], but in no case later than [DELAYED TOLLING PERIOD] Business Days' after the delivery date.

**Third Party Products**. Non-[PARTY A] branded products receive warranty coverage as provided by the relevant third party supplier.

**Software Warranty**. [PARTY A] hereby warrants that for the Warranty Period, that when operated according to the documentation and other instructions [PARTY A] provides, the [DELIVERABLE] will perform substantially according to the functional specifications listed in the documentation.

**Service Warranty**. [PARTY A] hereby warrants that its services will be performed consistent with generally accepted industry standards.

**Replace or Replace**. During the Warranty Period, within [10] Business Days' after notice of a defect from [PARTY B], [PARTY A] shall repair or replace the defect.

**No Other Obligation**. [PARTY A]'s obligation to repair or replace defects under this section will be [PARTY B]'s sole remedy for defects.

**No Infringement**. [PARTY A] hereby warrants that nothing in the [DELIVERABLE], nor [PARTY B]'s use of the [DELIVERABLE], will infringe or constitute a misappropriation of the Intellectual Property rights of a third party.

**No Open Source**. [PARTY A] hereby warrants that the [DELIVERABLE] does not contain any software, hardware, or other materials, components, or parts licensed under an open source license.

**No Warranty**

**"As-Is"**. Unless otherwise listed in this agreement, the [DELIVERABLE] is provided "as is," with all faults, defects, bugs, and errors.

**No Warranty**. Unless otherwise listed in this agreement,

[PARTY A] does not make any warranty regarding the [DELIVERABLE], which includes that

***[PARTY A] disclaims to the [fullest] extent authorized by Law any and all [other] warranties, whether express or implied, including any implied warranties of [title, non-infringement, quiet enjoyment, integration,] merchantability or fitness for a particular purpose.***

**Exclusions from Warranty**. [PARTY A]'s warranties under this agreement exclude any claims by [PARTY B]based on defects in the [DELIVERABLE] caused by [PARTY B], or by third parties beyond [PARTY A]'s control.

**Work Made for Hire**. [PARTY A] hereby acknowledges the parties' mutual intent that the [DELIVERABLE] is a"work for hire" within the meaning of the Copyright Act of 1976, as amended, and be [PARTY B]'s exclusive property.

**Assignment of Rights**. On [PARTY B]'s acceptance of the [DELIVERABLE] and payment of all compensation due to [PARTY A], [PARTY A] shall assign to [PARTY B] its entire interest in the [DELIVERABLE] (including all Intellectual Property and other property rights).

**Confidentiality Obligations**. The parties shall continue to be bound by the terms of the Non-Disclosure Agreement between the parties dated [DATE], a copy of which is attached as [ATTACHMENT].

**Insurance**

**Insurance Requirement**. [PARTY A] shall maintain the insurance necessary to cover its obligations and responsibilities under this agreement, or any amount required by Law, but in no case less than

[LIST OF SPECIFIC TYPES AND AMOUNTS OF INSURANCE REQUIRED]

**Proof of Insurance**. At [PARTY B]'s request, [PARTY A] shall provide [PARTY B] with certificates or other acceptable proof of its insurance, describing the coverage of its insurance, and notice of any material change to its insurance.

**Additional Insurance**. [PARTY B] may require [PARTY A] to obtain a reasonable amount of additional insurance, by providing [PARTY A] with

good reason for the additional insurance, and

requirements for the additional insurance.

**Additional Insured**

**[PARTY B] Added to [PARTY A]'s Policy** [PARTY A] shall, within [ADDITIONAL INSURED NOTIFICATION DAYS] Business Days' of the Effective Date, have [PARTY A]'s insurer add [PARTY B] as an additional insured to [PARTY A]'s policy.

**Certificate of Insurance**. [PARTY A] shall have its insurer send a certificate to [PARTY B], proving [PARTY B] has been added to [PARTY A]'s policy, and confirming that the insurer will give [PARTY B] [30] Business Days written notice before any proposed cancelation, modification, or reduction in coverage of [PARTY A]'s policy.

**No Contribution from [PARTY A]**. Any insurance carried by [PARTY B] will not be subject to contribution.

**Escrow of Source Code**

**Delivery of Object Code**. [PARTY A] will be required to provide the [DELIVERABLE] to [PARTY B] in object code form only.

**Escrow of Source Code**. Within [ESCROW DELIVERY DAYS] Business Days' after delivering the object code of the [DELIVERABLE] to [PARTY B], [PARTY A] shall deposit one copy, on [PARTY B]'s behalf, of the [DELIVERABLE] in source code with an escrow agent specializing in software escrows who the parties agree on in writing.

**Updates of Source Code**. If [PARTY A] makes any updates, enhancements, or modifications to the [DELIVERABLE], [PARTY A] shall promptly deposit one copy, on [PARTY B]'s behalf, of that update, enhancement, or modification, and any documentation related to the update, enhancement, or modification, to the escrow agent.

**Upkeep of Escrow** **Account**. [PARTY B] shall pay all fees necessary to establish and maintain the escrow.

**Contingent License**. [PARTY A] hereby grants to [PARTY B] a contingent license to receive the source code from the escrow agent and to use the source code to support its use of the [DELIVERABLE] in machine-readable form if [PARTY A]

whether directly or through a successor or affiliate, ceases to be in the software business,

fails to fulfill its obligations to maintain the [DELIVERABLE] as provided in this agreement,

becomes insolvent or admits insolvency or a general inability to pay its debts as they become due,

 files a petition for protection under the U.S. Bankruptcy Code, or an involuntary petition is filed against it and is not dismissed within 60 Business Days, or

comes under the control of a competitor of [PARTY B].

**Termination**

**Termination on Notice**. Either party may terminate this agreement for any reason on [TERMINATION NOTICE BUSINESS DAYS] Business Days’ notice to the other party.

**Termination for Material Breach**. Each party may terminate this agreement with immediate effect by delivering notice of the termination to the other party, if

the other party fails to perform, has made or makes any inaccuracy in, or otherwise materially breaches, any of its obligations, covenants, or representations, and

the failure, inaccuracy, or breach continues for a period of [BREACH CONTINUATION DAYS] Business Days' after the injured party delivers notice to the breaching party reasonably detailing the breach.

**Termination for Insolvency**. If either party becomes insolvent, bankrupt, or enters receivership, dissolution, or liquidation, the other party may terminate this agreement with immediate effect.

**Effect of Termination**

**Termination of Obligations**. Subject to paragraph [PAYMENT OBLIGATIONS], on termination or expiration of this agreement, each party's rights and obligations under this agreement will cease immediately.

**Payment Obligations**. Even after termination or expiration of this agreement, each party shall

pay any amounts it owes to the other party, including payment obligations for services already rendered, work already performed, goods already delivered, or expenses already incurred, and

refund any payments received but not yet earned, including payments for services not rendered, work not performed, or goods not delivered, expenses forwarded.

**No Further Liability**.On termination or expiration of this agreement, neither party will be liable to the other party, except for liability

that arose before the termination or expiration of this agreement, or

arising after the termination or expiration of this agreement and in connection with sections [CONFIDENTIALITY], [TAXES], or [TERMINATION].

**Return of Property**. On termination or expiration of this agreement, or on [PARTY A]'s request, [PARTY B] shall

return to [PARTY A] all originals of the information, documents, equipment, files, and other property, including Intellectual Property, it received from [PARTY A],

destroy all copies of [PARTY A]'s of the information, documents, equipment, files, and other property, including Intellectual Property, it made, and

on [PARTY A]'s request, certify to [PARTY A] in writing that it destroyed all these copies.

**Indemnification**

**Indemnification by [PARTY B]**. [PARTY A] (as an indemnifying party) shall indemnify [PARTY B] (as an indemnified party) against all losses and expenses arising out of any proceeding

brought by either a third party, and

arising out of a claim that the [DELIVERABLE] infringes the third party's Intellectual Property rights.

**Mutual Indemnification**. Each party (as an indemnifying party) shall indemnify the other (as an indemnified party) against all losses arising out of any proceeding

brought by either a third party or an indemnified party, and

arising out of the indemnifying party's willful misconduct or gross negligence.

**Notice and Failure to Notify**

**Notice Requirement**. Before bringing a claim for indemnification, the indemnified party shall

notify the indemnifying party of the indemnifiable proceeding, and

deliver to the indemnifying party all legal pleadings and other documents reasonably necessary to indemnify or defend the indemnifiable proceeding.

**Failure to Notify**. If the indemnified party fails to notify the indemnifying party of the indemnifiable proceeding, the indemnifying will be relieved of its indemnification obligations to the extent it was prejudiced by the indemnified party's failure.

**Exclusive Remedy**. The parties' right to indemnification is the exclusive remedy available in connection with the indemnifiable proceedings described in this section [INDEMNIFICATION].

**Mutual Limitation on Liability**. Neither party will be liable for breach-of-contract damages that are remote or speculative, or that the breaching party could not reasonably have foreseen on entry into this agreement.

**Definitions**

"Business Day" means a day other than a Saturday, a Sunday, or any other day on which the principal banks located in New York, New York are not open for business.

"Effective Date" is defined in the introduction to this agreement.

"Governmental Authority" means

(a) any federal, state, local, or foreign government, and any political subdivision of any of them,

(b) any agency or instrumentality of any such government or political subdivision,

(c) any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that its rules, regulations or orders have the force of law), or

(d) any arbitrator, court or tribunal of competent jurisdiction.

"Intellectual Property" means any and all of the following in any jurisdiction throughout the world

(a) trademarks and service marks, including all applications and registrations, and the goodwill connected with the use of and symbolized by the foregoing,

(b) copyrights, including all applications and registrations related to the foregoing,

(c) trade secrets and confidential know-how,

(d) patents and patent applications,

(e) websites and internet domain name registrations, and

(f) other intellectual property and related proprietary rights, interests and protections (including all rights to sue and recover and retain damages, costs and attorneys' fees for past, present, and future infringement, and any other rights relating to any of the foregoing).

"Law" means

(a) any law (including the common law), statute, bylaw, rule, regulation, order, ordinance, treaty, decree, judgment, and

(b) any official directive, protocol, code, guideline, notice, approval, order, policy, or other requirement of any Governmental Authority having the force of law.

"Person" includes

(a) any corporation, company, limited liability company, partnership, Governmental Authority, joint venture, fund, trust, association, syndicate, organization, or other entity or group of persons, whether incorporated or not, and

(b) any individual.

"Purchase Price" is defined in section [PURCHASE PRICE].

"[Software]" is defined in section [SOFTWARE DEVELOPMENT AND FEES].

"Specifications" is defined in section [SPECIFICATIONS].

"Taxes" includes all taxes, assessments, charges, duties, fees, levies, and other charges of a Governmental Authority, including income, franchise, capital stock, real property, personal property, tangible, withholding, employment, payroll, social security, social contribution, unemployment compensation, disability, transfer, sales, use, excise, gross receipts, value-added and all other taxes of any kind for which a party may have any liability imposed by any Governmental Authority, whether disputed or not, any related charges, interest or penalties imposed by any Governmental Authority, and any liability for any other person as a transferee or successor by Law, contract or otherwise.

"Term" is defined in section [TERM].

"Warranty Period" is defined in section [LIMITED WARRANTY].

**General Provisions**

**Entire Agreement**. The parties intend that this agreement, together with all attachments, schedules, exhibits, and other documents that both are referenced in this agreement and refer to this agreement,

represent the final expression of the parties' intent and agreement between the parties relating to the subject matter of this agreement,

contain all the terms the parties agreed to relating to the subject matter, and

replace all the parties' previous discussions, understandings, and agreements relating to the subject matter.

**Counterparts**

**Signed in Counterparts**. This agreement may be signed in any number of counterparts.

**All Counterparts Original**. Each counterpart is an original.

**Counterparts Form One Document**. Together, all counterparts form one single document.

**Amendment**.This agreement can be amended only in writing signed by both parties.

**Assignment**. Neither party may assign this [agreement /plan] or any of their rights or obligations under this [agreement /plan] without the other party's written consent.

**Binding Effect**. This [agreement /plan] will benefit and bind the parties and their respective heirs, successors, and permitted assigns.

**Notices**

**Form of Notice**. All notices and other communications between the parties must be in writing.

**Method of Notice**. The parties shall give all notices and communications between the parties by (i) personal delivery, (ii) a nationally-recognized, next-day courier service, (iii) first-class registered or certified mail, postage prepaid[, (iv) fax][ or (v) electronic mail] to the party's address specified in this agreement, or to the address that a party has notified to be that party's address for the purposes of this section.

**Receipt of Notice**. A notice given under this [agreement / plan] will be effective on

the other party's receipt of it, or

if mailed, on the earlier of the other party's receipt of it and the [fifth] Business Day after mailing it.

**Dispute Resolution**

**Arbitration**. Any dispute or controversy arising out of this agreement and [SUBJECT MATTER OF THE AGREEMENT] will be settled by arbitration in [STATE], according to the rules of the American Arbitration Association then in effect, and by [NUMBER OF ARBITRATORS] arbitrators[s].

**Judgment**. Judgment may be entered on the arbitrator's award in any court having jurisdiction.

**Arbitrator's Authority**. The arbitrator will not have the power to award any punitive [or consequential]damages.

**Governing Law and Consent to Jurisdiction and Venue**

**Governing Law**. This agreement, and any dispute arising out of the [SUBJECT MATTER OF THE AGREEMENT], shall be governed by laws of the State of [GOVERNING LAW STATE].

**Consent to Jurisdiction**. Each party hereby irrevocably consents to the [exclusive, non-exclusive]jurisdiction and venue of any [state or federal] court located within [VENUE COUNTY] County, State of [VENUE STATE] in connection with any matter arising out of this [agreement / plan] or the transactions contemplated under this [agreement / plan].

**Consent to Service**. Each party hereby irrevocably

agrees that process may be served on it in any manner authorized by the Laws of the State of [GOVERNING LAW STATE] for such Persons, and

waives any objection which it might otherwise have to service of process under the Laws of the State of [GOVERNING LAW STATE].

**Force Majeure**. A party shall not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is

 beyond the reasonable control of a party,

 materially affects the performance of any of its obligations under this agreement, and

 could not reasonably have been foreseen or provided against,

but does not include general economic or other conditions affecting financial markets generally.

**Waiver**

**Affirmative Waivers**. Neither party's failure or neglect to enforce any of rights under this agreement will be deemed to be a waiver of that party's rights.

**Written Waivers**. A waiver or extension is only effective if it is in writing and signed by the party granting it.

**No General Waivers**. A party's failure or neglect to enforce any of its rights under this agreement will not be deemed to be a waiver of that or any other of its rights.

**No Course of Dealing**. No single or partial exercise of any right or remedy will preclude any other or further exercise of any right or remedy.

**Severability**. If any part of this [agreement /plan] is declared unenforceable or invalid, the remainder will continue to be valid and enforceable.

**Interpretation**

**References to Specific Terms**

**Accounting Principles**. Unless otherwise specified, where the character or amount of any asset or liability, item of revenue, or expense is required to be determined, or any consolidation or other accounting computation is required to be made, that determination or calculation will be made in accordance with the generally accepted accounting principles defined by the professional accounting industry in effect in the United States ("GAAP").

**Currency**. Unless otherwise specified, all dollar amounts expressed in this agreement refer to American currency.

"**Including**." Where this agreement uses the word "including," it means "including without limitation," and where it uses the word "includes," it means "includes without limitation."

"**Knowledge**." Where any representation, warranty, or other statement in this agreement, or in any other document entered into or delivered under this agreement,] is expressed by a party to be "to its knowledge," or is otherwise expressed to be limited in scope to facts or matters known to the party or of which the party is aware, it means:

the then-current, actual knowledge of the directors and officers of that party, and

the knowledge that would or should have come to the attention of any of them had they investigated the facts related to that statement and made reasonable inquiries of other individuals reasonably likely to have knowledge of facts related to that statement.

**Statutes, etc**. Unless specified otherwise, any reference in this agreement to a statute includes the rules, regulations, and policies made under that statute and any provision that amends, supplements, supersedes, or replaces that statute or those rules or policies.

**Number and Gender**. Unless the context requires otherwise, words importing the singular number include the plural and vice versa; words importing gender include all genders.

**Headings**. The headings used in this agreement and its division into sections, schedules, exhibits, appendices, and other subdivisions do not affect its interpretation.

**Internal References**. References in this agreement to sections and other subdivisions are to those parts of this agreement.

**Calculation of Time**. In this agreement, a period of days begins on the first day after the event that began the period and ends at 5:00 p.m. [TIME ZONE] Time on the last day of the period. If any period of time is to expire, or any action or event is to occur, on a day that is not a Business Day, the period expires, or the action or event is considered to occur, at 5:00 p.m. [TIME ZONE] Time on the next Business Day.

**Construction of Terms**. The parties have each participated in settling the terms of this agreement. Any rule of legal interpretation to the effect that any ambiguity is to be resolved against the drafting party will not apply in interpreting this agreement.

**Conflict of Terms**. If there is any inconsistency between the terms of this agreement and those in any schedule to this agreement or in any document entered into under this agreement, the terms of [this agreement/[SPECIFIED AGREEMENTS]] will prevail. The parties shall take all necessary steps to conform the inconsistent terms to the terms of [this agreement / [SPECIFIED AGREEMENTS].