CLIENT AND DEVELOPER AGREEMENT

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This Client and Developer Agreement (the “Agreement”) is effective [DATE],

**BETWEEN: [YOUR COMPANY NAME]** (the "Client"), a company organized and existing under the laws of the [State/Province] of [STATE/PROVINCE], with its head office located at:

[YOUR COMPLETE ADDRESS]

**AND: [SERVICE PROVIDER]** (the "Developer"), a company organized and existing under the laws of the [State/Province] of [STATE/PROVINCE], with its head office located at:

[COMPLETE ADDRESS]

WHEREAS, Developer performs programming and systems analysis services;

WHEREAS, Client desires to avail itself of Developer programming and systems analysis services; and

WHEREAS, Client and Developer desire to establish standard terms and conditions that shall apply to such services to be performed by Developer for Client;

NOW, THEREFORE, it is mutually agreed as follows:

1. **DEFINITIONS**

As used throughout this Agreement, the following shall have the meanings below unless otherwise indicated:

The term “Acceptance” shall have the meaning as defined in Section 5, hereto.

The term “Affiliate” of a named Party means a corporation, partnership, joint venture or other entity controlling, controlled by or under common control with such Party. For the purposes hereof, the term "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any such entity whether through the ownership of voting securities, by contract or otherwise.

The term “Agreement” means the terms and conditions, all attached Exhibits, and any other documents made a part of this Agreement or incorporated by reference, including any written amendments which have been signed by the Authorized Signatories of all parties.

The term “Approved Sub-developer” shall have the meaning as defined in Section 6.7, hereto.

The term "Authorized Signatory" means, with regard to Client, [INDIVIDUAL NAME], and, with regard to the Developer, [INDIVIDUAL NAME].

The term "Developer" means [SERVICE PROVIDER NAME], as well as its employees, directors, subsidiaries, Affiliates, successors and assigns, existing now and created in the future.

The term "Confidential Information” shall have the meaning as defined in Section 11 hereto.

The term “Developer Personnel” means any and all Developer employees, agents, and Sub-developers supplied by Developer to perform services for Client and in no event or for any purpose will these persons be considered employees of Client.

The term “Documentation” means all or any portion of the materials, in written or other tangible form (including on magnetic media), generated by Developer and Developer Personnel in the performance of the Work, including without limitation any Software summaries, Software design, architectures, program logic, flow charts, source code, program listings, functional or technical specifications, logical models, user guides, operator guides, installation and operation guides, and any other supporting or programming materials.

The term “Fixed Price Project” or “FP Project” is a Project in which Developer provides Work to Client for which payment is based on either specific deliverable Work Product or another basis as agreed by the Parties other than the pricing set forth in Exhibit B.

The term “Client” means [YOUR COMPANY NAME], its employees, directors, subsidiaries, Affiliates, successors and assigns, existing now or created in the future.

The term “Client Competitor” means any entity that is in the business, anywhere in the world, of [SPECIFY NATURE OF ACTIVITIES], and any affiliate of such entity, including, without limitation, [COMPANY NAME] and its affiliates, [COMPANY NAME], other [SPECIFY] and their parents or affiliates, provided that [SERVICE PROVIDER] and its affiliated companies shall not be considered Client Competitors.

The term "Client Technical Coordinator" means the Client employee assigned by Client pursuant to the applicable Statement of Work to oversee and coordinate Work to be performed.

The term “Party” in its singular or plural form, refers to either Client or Developer or both, as dictated by the use.

The term “Pre-Existing Developer IP” shall mean all intellectual property rights, including without limitation patents, copyrights and trade secret rights, and the tangible embodiments thereof, owned by Developer, the ownership of which by Developer either (A) pre-dates the date of the Statement of Work pursuant to which the relevant Work was performed, or (B) arises exclusively as a result of independent development by Developer and not as a result of the performance of this Agreement or of Developer’s exposure to any Client Confidential Information or other Client intellectual property.

The term "Project" means an effort in which Developer provides Work to Client resulting in deliverable Work Product as defined by a Statement of Work specific to the Project and which may be either a Fixed Price Project or a Time & Materials Project. The first deliverable Work Product for a Project may be the development of the SOW. The SOW may reference other documents for a complete specification of the Work Product.

The term “Purchase Order” means Client's standard form, [SPECIFY], and any exhibits and attachments incorporated therein, which shall be used by Client to provide funds for all Work to be performed by Developer and which has been properly signed by a Client procurement official authorized to execute such form.

The term “Software” means the instructions for a computer, whether in source code, object code, executable form, firmware or otherwise and whether tangible or intangible, together with all related Documentation, and the intangible interests in all of the foregoing.

The term “Statement of Work” (SOW) means a written document which is mutually acceptable to the [COMPANY NAME] for a specific Project and generally in the form shown in Exhibit A.

The term “Time & Materials (T&M) Project” means a Project in which Developer provides Work to Client for which payment is based on the rates set forth in Exhibit B.

The term “Term” means the period during which this Agreement is effective.

The term “Requirements Documents” means all Purchase Orders and associated Statements of Work issued pursuant to this Agreement, and any other mutually agreed, written statements of the performance standards to which the Work must conform.

The term, “Software” means the tangible machine-readable or printed computer program(s) used in connection with the Work.

The term “Technical Coordinator” means the Client employee assigned to oversee and coordinate Work to be performed in connection with a given Developer Request or Purchase Order.

The term “Work” means the remediation tasks, performance, reports, services, Documentation and other items to be provided under this Agreement and which will be furnished by Developer to Client, at Client's request, pursuant to a Purchase Order, including but not limited to all writings, inventions, improvements or discoveries, whether or not copyrightable or patentable, which are written, conceived, made or discovered by Developer and are in any way related to the performance of this Agreement.

The term “Work Product” means all items and information, whether tangible or intangible and in whatever form or media, including without limitation all Documentation, inventions, improvements or discoveries, whether or not copyrightable or patentable, which are written, created, conceived, made or discovered by Developer or any Developer Personnel as a result of the performance of this Agreement, together with all copyrights, patents, trade secret rights or other intellectual property rights in any of the foregoing..

1. **SCOPE OF AGREEMENT**
   1. **Scope of work**

From time to time, Client may request and Developer may provide Developer Personnel to perform Work. This Agreement establishes the standard terms and conditions that will apply to such Work performed by Developer for Client.

* 1. **No minimum guarantee of Work**

Client does not guarantee that any minimum amount of Work will be purchased from Developer under this Agreement.

1. **CHANGES**
   1. **Change orders**

Client may, by written change order, make any changes within the general scope of Work, including additions, deletions, or modifications to the Statement of Work or Work ordered, or in the specifications, or in the time and place of performance. Changes to this Agreement can only be made by Authorized Signatories of both Client and the Developer.

* 1. **Advice and assistance**

Client's personnel may from time to time render technical assistance or give technical advice to, or effect an exchange of information with Developer Personnel concerning the Work to be furnished under this Agreement. However, Developer shall not deviate from the requirements of this Agreement by reason of such assistance or exchange of information, unless the deviation is incorporated into and authorized by a change order issued in accordance with Section. The Developer shall not, by reason of such assistance, advice or exchange of information, delete or in any way modify any of Client's rights or any of Developer's obligations, express or implied, which are a part of this Agreement.

* 1. **Coordination**

All Purchase Orders and contract modifications shall be coordinated with Client's Procurement Department. Developer understands that only Client's Procurement Department has authority to issue Purchase Orders or to modify contract terms. Developer further acknowledges that any agreement (whether or not such agreement is in writing) not executed by Client's Procurement Department shall not bind or obligate Client in any manner.

1. **ORDERING, PRICE AND PAYMENT**
   1. **Ordering Process**

Client shall order Work on a Project basis by submitting to Developer a Purchase Order expressly referencing this Agreement accompanied by a SOW containing, as appropriate, information addressing the topics specified in Exhibit A, as well as any additional information deemed appropriate for the covered Project, provided that any Purchase Order for a T&M Project shall contain a not-to-exceed total [AMOUNT] for all Work. A Purchase Order for a Project and the accompanying SOW shall become binding obligations as between the [COMPANY NAME] upon the earlier of: ([NUMBER]) return by Developer of the “Vendor Acknowledgment” copy of the Purchase Order to Client’s Procurement Department, or ([NUMBER]) the commencement by Developer of the Work required pursuant to such Purchase Order.

* 1. **Pre-printed purchase order provisions**

The pre-printed provisions on or attached to Purchase Orders, Developer Acknowledgment forms or other similar forms shall be deemed deleted with respect to any Purchase Orders and of no legal effect.

* 1. **Price**

For the full, satisfactory and timely performance of Work, and in accordance with the requirements of this Agreement, Client shall pay Developer for such Work as follows:

* + 1. Where Developer performs Work under a T&M Project, then Client shall pay to Developer the fees for such Work based upon the applicable hourly rates specified in Exhibit B, but subject to any available discounts and the not-to-exceed [AMOUNT] contained in the applicable Purchase Order;
    2. Where Developer performs Work pursuant to an FP Project, then Client shall pay Developer for such Work pursuant to the milestone payment schedule or other payment schedule set forth in the applicable SOW; or
    3. At such other amounts and in such other manner as to any specified Work as may be agreed by the Parties in writing.
  1. **Contents of invoice**

Developer shall include the following information on invoices submitted to Client:

* + 1. For T&M Projects

1. Purchase Order number;
2. period billed;
3. name(s) and employer of each of the Developer Personnel;
4. number of hours worked by each individual(s) during the billing period and the applicable monthly rate from Exhibit "Rates";
5. cumulative amount billed to Client under all Purchase Orders; and
6. confirmation that all amounts invoiced are gross amounts.
   * 1. For FP Projects
7. Purchase Order Number;
8. description of item that had achieved Acceptance pursuant to, for which Client is being invoiced;
9. name(s), social security number(s) (or [COUNTRY] equivalent(s)) of Developer Personnel;
10. number of hours worked by each individual(s) during the billing period and the applicable monthly rate from Exhibit "Rates", if applicable;
11. cumulative amount billed to Client under all Purchase Orders, if applicable;
12. confirmation that all amounts invoiced are gross amounts.
    1. **Periodicity of invoice submission**

Developer shall invoice Client for Work on the following basis:

* + 1. On a monthly basis where Work is being performed under a T&M Project; or
    2. At such intervals or upon such event(s) as described in the Statement of Work where Work is being performed under an FP Project. If no intervals or events are described in the Statement of Work, then Developer shall submit invoices upon Acceptance of the Work by Client.
  1. **Transmittal of invoices**

Developer shall submit all original invoices to the Client Vendor Services Department shown on the relevant Purchase Order. All invoices shall be submitted via a shipping method that provides Developer with notice of the date on which Client received such invoice. Developer shall also comply with any reasonable request of Client regarding the content, format and manner of submitting invoices.

* 1. **Payment of Invoices**

Undisputed invoices shall be paid in [SPECIFY CURRENCY] within [NUMBER] days net after the later of: (A) receipt of a properly executed and otherwise prepared invoice in which Developer has certified that the Work that is the subject of the invoice has been completed, or (B) Acceptance by Client of the Work that is the subject of the invoice by Client pursuant to. Invoices that are not properly executed and otherwise prepared shall be returned to Developer for revision.

* 1. **Taxes**

All prices and fees set forth in Exhibit A or the relevant SOW, as applicable, are exclusive of sales and/or use taxes that are imposed on a purchaser of services by [YOUR COUNTRY LAW], which Client agrees to pay. In the alternative, Client shall provide Developer with a certificate evidencing Client's exemption from payment of or liability for such taxes and Developer agrees to honor such exemption certificate. Developer agrees to calculate and impose such taxes at the time the original invoice for the Work and/or any associated travel and related expenses is delivered to Client.

* 1. **Inquiries**

All payment related issues regarding Work related to Projects should be referred to the Client [SPECIFY] Department.

* 1. **Electronic invoices.**

Upon reasonable written notice from Client, Developer agrees to provide Client with electronic invoices for any Work in accordance with then applicable Electronic Data Interchange standards in the format specified by Client.

* 1. **Travel expense authorization**

The Client Technical Coordinator may request Developer Personnel to travel in the performance of Work. Developer Personnel must receive approval from Developer and must have the written authorization of the Client Technical Coordinator before commencing travel.

* 1. **Travel expense payment procedure**

Developer shall initially be responsible for travel expenses and shall reimburse Developer Personnel, as appropriate. Developer will then invoice Client for the travel. All incurred travel, transportation, and per diem expenses for which reimbursement is sought shall be itemized on the relevant invoice and substantiated by appropriate attached receipts. Developer shall further obtain approval of such invoice prior to submittal to Client by way of signature by the appropriate Client Technical Coordinator. Travel expenses must be invoiced on the next regular invoice submission to Client. Client shall have no liability for travel and related expenses invoiced more than [NUMBER] days after the expenses were incurred.

* 1. **Travel expense payment policy**

Client-approved travel and related out-of-pocket expenses incurred in performing Work for Client under the Agreement shall be invoiced to Client at cost. All travel expenses must comply with Client's corporate travel policy in effect from time to time during the term of this Agreement, the version of which in effect as of the Effective Date includes the following policies:

* 1. **REIMBURSEMENT OF EXPENSES**
     1. Reimbursable expenses. Reimbursement will be as follows:
  2. Commercial transportation Reimbursable on an "incurred cost" basis at economy, tourist or coach rates; or business class for international travel.
  3. Private automobile Reimbursable at Client's standard rate.
  4. Per Diem The actual costs of lodging and local transportation shall be reimbursable; the actual cost of meals not to exceed [AMOUNT] per day shall be reimbursable.
     1. Non-reimbursable expenses. Client will not reimburse Developer for:

1. Local travel incurred as a result of Developer Personnel commuting from their home or office to Client's facility to perform Work.
2. Long distance commuting, unless prior written approval from Client is obtained.
3. Hours spent in traveling to and from the place of performance of the Work.
4. **ACCEPTANCE**
   1. **Acceptance**

Client may reject all or any portion of the Work within [NUMBER] days after receipt of the Work from Developer (the “Acceptance Period”) for noncompliance with the applicable specifications or other requirements of this Agreement and any applicable Statement of Work. Client may expressly accept the Work, in writing, and receipt of such written notice shall be deemed “Acceptance.” Failure of Client to accept or reject the Work within the applicable Acceptance Period shall also be deemed “Acceptance”. If any portion of the Work is rejected, Developer shall within [NUMBER] days after notice correct all nonconformities and redeliver the same to Client, but without any additional cost or expense to Client.

Should Developer either be unable to correct the nonconformities within such [NUMBER] day period or should Client again reject the corrected version, then Client, at its sole option, shall be entitled to: (A) a full refund of any payments made to Developer in connection with the rejected Work, and (B) to immediately terminate the Statement of Work or Work, as applicable, by written notice to Developer pursuant to the Article entitled “Termination,” but without any further right of cure as otherwise provided under such Section.

* 1. **No limitation of other rights**

Acceptance by Client of any Work pursuant to this Section shall not limit in any manner Client’s rights pursuant to any other provision of this Agreement, including without limitation any warranty granted.

1. **DEVELOPER’S RESPONSIBILITIES**
   1. **Best efforts**

Developer shall devote its best efforts, attention, knowledge and skill to the performance of this Agreement. Without modification of any obligation of Developer under this Agreement, Developer will provide day to day management and supervision of the Work, including without limitation determining in its reasonable discretion the time, scheduling, manner, method and place of performance of the Work.

* 1. **Independent Developer**

Developer represents and warrants that pursuant to the [COUNTRY CODE] of [YEAR], the regulations promulgated therein and applicable provisions of the common [YOUR COUNTRY LAW], all Developer Personnel will be independent Developers in relation to Client. Accordingly, Developer will file all required forms and necessary payments appropriate to the status of Developer Personnel as independent Developers in relation to Client.

In the event such independent Developer status is denied or changed and any Developer personnel are declared to have "employee" status with respect to Client, Developer agrees to hold Client harmless from all costs, including any interest, penalties and legal fees, which Client may incur as a result of such change in status. Developer is providing the Work to Client as an independent Developer. Developer shall file all forms and make all payments necessary or appropriate to preserve or support such independent Developer tax status.

* 1. **Status of Developer personnel**

Developer is responsible for all employee-related benefits applicable to Developer Personnel performing Work under this Agreement. Client shall not be obligated to provide Developer Personnel with employee benefits of any type unless otherwise required by [YOUR COUNTRY LAW]. Developer is responsible for withholding Developer Personnel's portion of [SPECIFY YOUR COUNTRY’S] taxes, and for withholding income taxes for [STATE/PROVINCE] income tax purposes in the manner required by [YOUR COUNTRY LAW].

Developer will, in a timely manner, pay over all amounts withheld to the [SPECIFY STATE AUTHORITIES], as the case may be, and will timely pay its share of all [SPECIFY YOUR COUNTRY’S TAX ACT] taxes (or [COUNTRY] equivalents) for all Developer Personnel performing Work under this Agreement. Client shall not have any responsibility for these employee-related tax items, and shall be indemnified and held harmless by Developer from any liability, cost or expense, including any interest, penalties and legal fees, which may be assessed against or incurred by Client in connection with Developer’s failure to make any such payment.

* 1. **Compliance with Laws**

Developer shall perform the Work in accordance with all applicable federal, state/provincial and local statutes, [YOUR COUNTRY LAW] and regulations, and further in accordance with the conditions of all applicable permits and licenses. Without limiting the generality of the foregoing, to the extent that Developer performs the Work within the [COUNTRY], Developer agrees that it will not assign to perform Work any individual who is an unauthorized alien under the [SPECIFY COUNTRY’S IMMIGRATION ACT] [YEAR] or its implementing regulations. In the event any Developer Personnel performing Work are discovered to be unauthorized aliens, Developer will immediately remove such individuals from performing Work and replace such individuals with individuals who are not unauthorized aliens.

* 1. **Compliance with specifications**

Developer shall perform the Work in accordance with (A) the specifications and other requirements contained in this Agreement, including without limitation in any applicable Statement of Work, and (B) all applicable professional standards.

* 1. **Use of employees**

Developer shall use only its employees or employees of an Approved Sub-developer (“Developer Personnel” in the aggregate) to perform any Work under this Agreement. Notwithstanding the approval by Client to any such subcontracting, Developer shall in any event and at all times remain liable for performance of the Work by all Developer Personnel in conformity with the terms and conditions of this Agreement.

* 1. **Approval of Sub-developers**

Developer shall not employ Sub-developer personnel on the Work before obtaining Client’s approval for the use of such Sub-developer. Such approval shall be in writing and shall be required for all tiers of Sub-developers. Once approval has been obtained, such Sub-developer shall be deemed an “Approved Sub-developer.” Sub-developer approval will not be unreasonably provided the following has been demonstrated: (A) certification that Developer has a valid contract with the Sub-developer which meets the terms and conditions of this Agreement and has no other conflicting provisions, and in this regard, Developer agrees to provide a copy of such contract upon Client' s request; and (B) certification that Developer Personnel to be obtained from the Sub-developer are employees of the Sub-developer and not in an IRS Form [NUMBER] relationship.

* 1. **Subcontract agreements**

Developer may use Developer Personnel provided by Approved Sub-developers provided that Developer and such Sub-developer have executed a written agreement containing provisions substantially similar to those set forth in this Agreement modified to the extent reasonably necessary to make the same apply as between Developer and such Sub-developer and which is in full force and effect during all times that such Sub-developer is providing Developer Personnel to perform Work under this Agreement. Developer shall be solely responsible and shall remain liable for performance of Work by all such Developer Personnel in conformity with the terms and conditions of this Agreement.

* 1. **Access and Cooperation**

Developer shall provide Client's representatives with access to any Work in progress. Developer and Developer Personnel shall fully cooperate with any other Developer performing similar or related work or services for Client.

* 1. **Security Regulations**

Developer agrees that Developer Personnel and other Developer employees and representatives will comply with all Client security regulations in effect while on Client's premises. Developer understands that only Developer Personnel working under an approved Developer Request or on a Project are allowed unescorted access to Client facilities, but subject to such applicable security regulations. All other Developer Personnel and other Developer employees and representatives, including without limitation Developer's account and sales representatives, must be escorted at all times while on Client’s premises.

* 1. **Conflict of Interest**

During the term of this Agreement and for a period of [NUMBER] months following the earlier of either the expiration or termination of this Agreement, neither Developer nor Developer’s Approved Sub-developers shall, without the prior written permission of Client, assign any Developer Personnel who performed Work under this Agreement to perform the same or similar work as required under this Agreement under any agreement, contract or other arrangement that Developer may enter into with an Client Competitor or any Affiliates of an Client Competitor.

* 1. **Developer Marketing Activities**

Developer agrees to restrict marketing its services, whether pursuant to this Agreement or otherwise, only to those Client personnel and Client organizations approved by an Client Technical Coordinator.

* 1. **Authorization to Perform Work**

Client shall have no liability for Work performed without a relevant Purchase Order.

* 1. **Non-Disclosure Agreements**

Developer shall have all Developer Personnel sign a non-disclosure agreement (NDA), in a form acceptable to Client prior to the start of Work. Developer Personnel who are performing Work as of the effective date of this Agreement must sign the NDA within [NUMBER] days from the Effective Date of this Agreement. Upon request Client shall be provided with an original copy of such NDA. Client reserves the right to conduct spot audits to ensure NDA’s are on file at Developer’s offices. Client additionally shall have the right to require execution of a corporate-level agreement regarding non-disclosure of Client, Confidential Information substantially in a form acceptable to Client as a condition for approval of Developer’s Sub-developer(s).

* 1. **Responsibility for acts and omissions**

Subject to Section, Developer shall be responsible to Client for all acts and omissions of all Developer Personnel.

* 1. **Access to Work in progress**

Developer shall provide Client' s Technical Coordinator with access to any Work in progress.

* 1. **Technical direction**

All Work to be performed, including general direction and guidance in connection with the Work, must be approved by Client's Technical Coordinator.

* 1. **Place of performance**

Developer shall perform the Work at such place (s) as mutually acceptable to Client and Developer.

* 1. **Prohibited employees**

Developer agrees not to use any former Client employees to perform Work under this Agreement without prior written approval from the Client Developer Services Representative. Developer further agrees not to use any Developer Personnel that worked at Client through another vendor without a written release from the former vendor.

1. **REPORTS AND RECORDS**
   1. **Reports**

Developer shall provide reports of progress on the Work on a monthly basis, or as requested by Client.

* 1. **Records**

For a period of [NUMBER] years following the furnishing of any Work performed by Developer Personnel pursuant to this Agreement, Developer shall maintain such records as will adequately substantiate charges and hours worked in connection with said Work, and, upon Client's request, shall produce such records for Client's inspection at Developer's business office where such records are kept. Client shall give timely notice of its intent to inspect such records and agrees to preserve their confidentiality in accordance with the provisions of hereof.

1. **CLIENT PROPERTY**
   1. **Client Property**

Any property, including but not limited to documentation, data or other technical or proprietary information, and other equipment or material of every description furnished to Developer by Client, is and shall remain the property of Client. Developer shall not substitute any property for Client's property and shall not use such property except in performing Work as required by this Agreement. At Client's request, Developer shall submit a listing of all Client furnished materials relating to the Work including designs, reports, manuals, documents, patterns, specifications, etc. held in its possession. All such materials shall be returned to Client upon the earlier of either Client's request or termination of this Agreement.

* 1. **Ownership**

Unless the [COMPANY NAME] otherwise agreed in writing, any property including, but not limited to Software, Documentation, designs, reports, manuals, documents, patterns, specifications, data or other technical or proprietary information, and other equipment or material of every description furnished to Developer by Client or developed by Developer for Client in performance of this Agreement, is and shall remain the property of Client. Developer shall not substitute any other property for Client's property and shall not use such property except in performing Work as required by this Agreement. Such property while in Developer's custody or control shall be maintained in good condition at Developer's expense and shall be held at Developer's risk.

* 1. **Protection of Client Property**

Such property while in Developer's custody or control shall be maintained in good condition at Developer's expense and shall be held at Developer's risk. All tangible property furnished to Developer by Client shall be kept insured by Developer at Developer's expense in an amount equal to the replacement cost with loss payable to Client.

1. **INDEMNIFICATIONS**
   1. **Intellectual Property Warranty and Indemnification**
      1. Developer represents and warrants that the Work shall not infringe upon or violate any patent, copyright, trademark, trade secret or other intellectual property right of any third party existing under the [YOUR COUNTRY LAW] of the [COUNTRY], or any future signatory to the [SPECIFY COUNTRY AGREEMNT/ACT/LAW] or any successor treaty thereto.
      2. Developer will defend at its expense and indemnify and hold harmless Client, Client’s Affiliates and Client’s third party users of any of the Work, and its and their respective directors, officers, employees, agents and advisers (each, as to Developer, an "Indemnified Party") from and against any action, suit, or other proceeding, or settlement thereof, to the extent that such action, suit or proceeding claims against the Indemnified Party that intellectual property rights of the claimant are infringed by use by an Indemnified Party of any of the Work.
      3. Developer shall pay those losses, damages, expenses and costs, including without limitation attorneys fees and allocable in house legal expenses, awarded against, or incurred by, any Indemnified Party in, or as a result of any such action, suit or proceeding, or settlement thereof that are attributable to such claim, provided that (1) the Indemnified Party or Client reasonably promptly notifies Developer in writing of any such claim, ([NUMBER]) Developer shall be accorded control of the defense and of all negotiations for settlement or
      4. compromise of such claim, and ([NUMBER]) Client and the Indemnified Party if other than Client cooperate with Developer in the defense and settlement of such claim, including providing to Developer, at the expense of Developer, such information and assistance as Developer may reasonably request. The Indemnified Party may, at its own expense, be represented in such defense.
      5. Developer agrees that should the Work or any portion of the Work provided by Developer become, or in Client’s opinion be likely to become, the subject of a claim of infringement, or should Client's use of the Work be finally enjoined, Developer shall, at its expense:
   2. Procure for Client the right to continue using, relying upon and receiving the Work;
   3. Replace or modify the Work to make it non-infringing while still complying with the applicable specifications or other requirements of this Agreement and the relevant Statement of Work and/or Purchase Order; or
   4. Only if neither of the foregoing can be accomplished without impacting the economic viability of Developer, Developer shall reimburse Client the price paid for the Work.
   5. **Other Developer Indemnification**

Developer will further defend at its expense and indemnify and hold harmless the Indemnified [COMPANY NAME] from and against any action, suit, or other proceeding, or settlement thereof, to the extent that such action, suit or proceeding arises out of or results from any one of the following:

* + 1. Damage to property and injuries, including without limitation death, to all persons, arising from any occurrence caused by any act or omission of Developer or Developer Personnel related to the performance of this Agreement;
    2. Developer’s material breach of any of its representations, warranties, covenants or obligations contained in this Agreement;
    3. Developer's independent Developer status being denied or changed and Developer or its Personnel being declared to have "common [YOUR COUNTRY LAW]" status with respect to the Work performed for Client; or
    4. Developer’s failure (1) to provide any employee related benefits applicable to Developer Personnel performing Work under this Agreement, or (2) to withhold and/or remit all amounts required by applicable [YOUR COUNTRY LAW], rule, regulation, Developer benefits plan or Developer policy, including but not limited to withholdings for [SPECIFY COUNTRY’S LAW/ACT], unemployment insurance, disability, pension, income tax and health insurance purposes.
    5. Developer shall pay those losses, damages, expenses and costs, including without limitation interest, penalties, and fees of attorneys and accountants (including allocated in house legal and accounting expenses), awarded against, or incurred by, any Indemnified Party in, or as a result of, any such suit, action or other proceeding, or any settlement thereof, provided that

1. the Indemnified Party or Client reasonably promptly notifies Developer in writing of any such claim,
2. Developer shall be accorded control of the defense and of all negotiations for settlement or compromise of such claim, and
3. Client and the Indemnified Party if other than Client cooperate with Developer in the defense and settlement of such claim, including providing to Developer, at the expense of Developer, such information and assistance as Developer may reasonably request. The Indemnified Party may, at its own expense, be represented in such defense.
4. **INTELLECTUAL PROPERTY RIGHTS**
   1. **Pre-existing Developer IP**

The [COMPANY NAME] acknowledge and agree that the Work to be provided may incorporate Pre-Existing Developer IP. Developer hereby grants to Client a non-exclusive, worldwide, fully-paid up, irrevocable and perpetual license to use such Pre-Existing Developer IP (to the extent incorporated into the Work) as necessary or appropriate to Client’s enjoyment of its rights of ownership to, and use of, the Work, including but not limited to the rights to copy, distribute and sublicense such Pre-Existing Developer IP (to the extent incorporated in the Work) and to make derivative works therefrom, provided that Developer retains all ownership rights and title to the Pre-Existing Developer IP.

Developer further agrees to give Client or any person designated by Client, at Client's expense, all such information and to execute all such additional documents as may be reasonably required to perfect Client’s rights to the foregoing license.

* 1. **Ownership**

The [COMPANY NAME] agree that all copyrightable material contained within the Work Product shall be deemed to be “works made for hire.” In any event, Developer hereby irrevocably conveys and assigns, and agrees to in the future irrevocably convey and assign, to Client on behalf of Developer, all Developer Personnel, and Developer’s Sub-developers, and agrees that upon such conveyance and assignment Client shall exclusively own on a worldwide basis, all of their respective right, title and interest in and to the Work Product and all intellectual property rights therein, including without limitation all copyrights, patents, or trade secret rights, acquired, created, composed, made, conceived by, or otherwise resulting from the performance of the Work by Developer, any Developer Personnel and any of Developer’s Sub-developers. Client shall have the right, at its own expense, to obtain and to hold in its own name copyrights, registrations, patents, or such other protection as may be appropriate to said Work.

* 1. **Disclosure**

Developer shall promptly disclose the Work Product to Client, including without limitation all Software, Documentation, reports, programs, source code, manuals, flow charts, tapes, card decks, listings and any other programming materials, and all any inventions, improvements or discoveries, whether or not copyrightable or patentable, which are written, conceived, made or discovered by Developer, Developer Personnel and Developer’s Sub-developers as a result of or during the performance of the Work, including any features or concepts considered to be new or different.

* 1. **Further Assurances**

From time to time, at the request of Client, but without further consideration from Client, Developer will provide Client and any person designated by Client all such additional information and shall do, execute and deliver, or cause to be done, executed or delivered, all such further acts, things and instruments as may be reasonably requested or required by Client to more effectively evidence, give effect to, and/or perfect the conveyance, assignment, registration and vesting of rights in the Work Product in Client required pursuant to this .

Developer expressly agrees to execute, and that it will procure Developer Personnel and Developer’s Sub-developers execution of, any documents (including without limitation patent and copyright applications and assignments) requested by Client, at Client's expense, to provide Client the right to own, use and protect such rights.

* 1. **Disclosure of Third Party Materials**

Developer shall provide Client advance written notice of the extent to which the Work Product will use, incorporate or be dependent upon third party intellectual property, including but not limited to patents, copyrights, or trade secrets, and shall obtain for Client any license rights to such intellectual property necessary or appropriate to Client’s ownership and use of the Work Product.

* 1. **No Trademark License**

Nothing herein shall grant to either Party any interest in, or right to use, and neither Party shall use without the prior written consent of the other Party, any trademark, service mark, tradename or similar designation which incorporates or which otherwise is confusingly similar to any name, logo, trademark, service mark, trade name or similar designation of the other Party or its Affiliates.

* 1. **Copyright notice**

Developer shall insert a proper statutory copyright notice at an appropriate location on all material that may be subject to copyright protection and that contained within the Work Product, which copyright notice shall specify Client as the sole copyright owner.

1. **CONFIDENTIAL INFORMATION**
   1. **Purpose**

In order that Developer may perform this Agreement, Client may disclose confidential and proprietary information pertaining to Client's past, present and future activities, including without limitation, research, development, or business plans, operations or systems. It is further recognized that Developer will develop material and information that Client will wish to hold and to be held by Developer as confidential and proprietary information of Client.

* 1. **Definition**

As used in this Agreement, the term “Confidential Information” shall mean: (1) Work Product (including without limitation any notes, notations, and drafts, and regardless of whether such Work Product has been delivered to Client), (2) the terms, purpose, and subject matter of this Agreement, and any performance by either Party, (3) all information relating to Client’s technology, research and development, and business affairs, (4) financial and pricing data specific to this Agreement, and (5) such information that may be reasonably understood from legends, the nature of such information itself and/or the circumstances of such information's disclosure, to be confidential and/or proprietary to the disclosing party or to third parties to which the disclosing party owes a duty of confidentiality.

* 1. **Marking of Work Product**

Developer shall designate by appropriate markings all Work Product as Confidential Information of Client upon its generation, replication or internal dissemination.

* 1. **Exceptions**

The restrictions of this on use and disclosure of Confidential Information shall not apply to information that:

* + 1. Was publicly known at the time of Discloser's communication thereof to Recipient; Becomes publicly known through no fault of Recipient subsequent to the time of Discloser's communication thereof to Recipient;
    2. Was in Recipient's possession free of any obligation of confidence at the time of Discloser's communication thereof to Recipient, provided, however, that Developer uses reasonable efforts to promptly inform Client in writing to establish Developer's prior possession, and provided further, however, that this exception shall not apply to Work which upon its generation by Developer constitutes Client Confidential Information
    3. Is developed by Recipient independently of and without reference to any of Discloser's Confidential Information or other information that Discloser disclosed in confidence to any third party;
    4. Is rightfully obtained by Recipient from third [COMPANY NAME] authorized to make such disclosure without restriction; or is identified by Discloser as no longer proprietary or confidential.
  1. **Limitations on Use and Disclosure**

Each Party receiving Confidential Information (the “Recipient”) agrees as to any such Confidential Information that may be disclosed to it by the other Party (the “Discloser”):

* + 1. To protect such Confidential Information from disclosure to others, using the same degree of care used to protect its own confidential or proprietary information of like importance, but in any case using no less than a reasonable degree of care. Recipient may disclose Confidential Information received to (1) its Affiliates who agree, in advance, in writing, to be bound by this Agreement, and (2) to Developer Personnel and Approved Sub-developers,
    2. and its Affiliates, who have a need to know and to use Confidential Information for purposes of such performance and who have been advised of and agree to the obligations and restrictions on persons receiving such information as set forth in this Agreement, provided that Developer notifies Client in advance of the names of any Developer Personnel having access to Confidential Information under this Agreement.
    3. Confidential Information shall not otherwise be disclosed to any third party without the prior written consent of the Discloser and only after such third parties have agreed in writing to be bound by the confidentiality and use restrictions of this Agreement;
    4. To treat Confidential Information as strictly confidential and as trade secret information, by protecting such information in the same manner and subject to the same protection as Developer treats and protects its own respective proprietary information of like importance; To use such Confidential Information only for the purposes of this Agreement or as otherwise expressly permitted by this Agreement;
    5. Not to make copies of any such Confidential Information or any part thereof except for the purposes of this Agreement;
    6. To reproduce and maintain on any copies of any Confidential Information such proprietary legends or notices (whether of Discloser or a third party) as are contained in or on the original or as the Discloser may otherwise reasonably request;
    7. To insure that all Developer Personnel having access to such Confidential Information terminating employment with or services for Developer are reminded prior to such termination of his/her nondisclosure obligations undertaken pursuant to this or other employee nondisclosure agreement;
    8. Not to modify, prepare derivative works from, decompile, disassemble, or reverse engineer any Confidential Information other than in furtherance of the Work; and Not to disclose in any manner (including but not limited to news releases, articles, brochures, advertisements, speeches or other information releases) without the prior written approval of Client, the terms, purpose, and subject matter of this Agreement, and any performance by either Party.
  1. **Disclosure Pursuant to Legal Requirement**

In the event Recipient is required by law, regulation or court order to disclose any of Discloser's Confidential Information, Recipient will promptly notify Discloser in writing prior to making any such disclosure in order to facilitate Discloser seeking a protective order or other appropriate remedy from the proper authority. Recipient agrees to cooperate with Discloser in seeking such order.

* 1. **Or Other Remedy**

Recipient further agrees that if Discloser is not successful in precluding the requesting legal body from requiring the disclosure of the Confidential Information, it will furnish only that portion of the Confidential Information, which is legally required and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded the Confidential Information.

* 1. **Return of Confidential Information**

All Confidential Information disclosed under this Agreement (including information in computer software or held in electronic storage media) shall be and remain the property of Discloser, provided that the Work Product shall become the Confidential Information of Client. Developer shall return all Confidential Information and any copies thereof to Client at the completion of all Work under this Agreement or at such earlier date as Client may designate,

with a certification by an officer of Developer that Developer retains no Confidential Information in any form whatsoever; upon completion of all Work or upon receipt of a request by Client, Developer shall also erase or destroy, or cause to be erased or destroyed, any Confidential Information in any computer memory or data storage apparatus; provided, however, that Developer shall deliver to Client the database or data flat file and full accompanying Documentation identifying record format and record data elements.

* 1. **No disclosure of Developer Confidential Information**

It is understood by both [COMPANY NAME] that Developer shall not disclose to Client any Developer confidential information without the express prior written agreement of Client.

* 1. **Survival**

Notwithstanding the return, erasure, or destruction of Confidential Information or the termination, through completion nor otherwise, of this Agreement, the rights and obligations with respect to the disclosure and use of Confidential Information shall survive, until disclosure is permitted in accordance with Section. To the extent reasonably possible Developer agrees to give Client prompt notice if Developer becomes aware either (i) that any Developer Personnel having access to Confidential Information will leave (or has left) its employ within [NUMBER] years after the completion of this Agreement and will join or perform (or has joined or performed) Work for any Client Competitor, or (ii) that there has been or is likely to be an unauthorized disclosure of Confidential Information under this Agreement.

* 1. **Developer Personnel with access**

Developer will maintain a current listing of all Developer Personnel who have signed nondisclosure agreements in accordance with this Article, or who otherwise have access to such Confidential Information, and copies of such agreements to Client upon request.

* 1. **Remedies**

Developer acknowledges that the Confidential Information under this Agreement constitutes unique, valuable and special trade secret and business information of Client, and that disclosure may cause irreparable injury to Client. Accordingly, Developer acknowledges and agrees that the remedy at [YOUR COUNTRY LAW] for any breach of the covenants contained in this may be inadequate, and in recognition, agrees that Client shall, in addition, be entitled to injunctive relief without bond including reasonable attorneys' fees and other court costs and expenses, upon the finding by a court of competent jurisdiction of a breach of any of the provisions of this, which relief shall be in addition to and not in derogation of any other remedies which may be available to Client as a result of such breach.

1. **PUBLICITY**
   1. **Publicity**

Both [COMPANY NAME] agree that no news releases, public announcements or advertising materials, or confirmation of same, concerning any part of this Agreement or any of its performance, or use of the other Party's name, logo or service marks in advertising or sales materials shall be made without the prior written approval of the other Party. Such requests shall be in writing and addressed in accordance with the Section Article entitled “Notices.”

1. **WARRANTIES**
   1. **Developer’s Warranties**

Developer represents and warrants that:

* + 1. The Work provided should be performed in a professional and workmanlike manner in accordance with all applicable professional standards, shall be free of defects in materials and design, and shall comply with any applicable specifications or other requirements set forth in this Agreement and the relevant Statement of Work and/or Purchase Order;
    2. It has full power and authority to enter into and perform this Agreement, the person signing this Agreement on behalf of Developer has been properly authorized and empowered to enter into this Agreement, and when executed, this Agreement will constitute a legal, valid and binding agreement and obligation of Developer enforceable according to its terms;
    3. It is not currently bound by any other agreements, restrictions or obligations, nor will Developer assume any such obligations or restrictions which do or would in any way interfere or be inconsistent with the Work to be furnished by Developer to Client under this Agreement;
    4. The Work will (A) provide accurate processing of date and date dependent data (including, but not limited to, calculating, comparing and sequencing operations) for all dates through the year [YEAR], including without limitation all leap year instances, and otherwise comply with the certification requirements for ISO [NUMBER] standards for year [YEAR] date compliance, and that upon request, Developer will provide sufficient evidence through adequate testing of the Work
    5. Or otherwise to demonstrate compliance with this warranty; and (B) express all date and date dependent data passed to, from or through the Work through the use of fully complimented [NUMBER] digit years in a single field in the format "CCYY", where "CC" stands for the century and "YY" stands for the year, (such range of dates shall not encompass more than [NUMBER] years)
    6. No material portion of the Work is or will be intended, other than under the documented control of Client:
  1. At some specific time or on a specific instruction or occurrence of a given event, to stop, limit or interfere with the operation of the Work in conformity with the applicable specifications or other requirements;
  2. To damage or materially alter or render inaccessible the Work, or any other hardware, software or data which the Work is designed to process or use, or any other hardware, programs or data attached to, resident on, or accessible to the system on which the Work may be executed or stored;
  3. To contain any feature which would impair in any way the operation of the Work including, but not limited to, software locks or drop dead devices, date/time expiration codes, or serial number dependent passwords; or To otherwise be impaired in its operation now or in the future in any way by Developer.
  4. Developer shall be responsible for, indemnify and hold Client harmless from any damages, costs, liabilities, and/or expenses (including without limitation reasonable attorneys' fees and allocated in-house legal expenses), arising out of the breach of the foregoing Sub-items (1), (2), (3) and (4).
  5. **Remedy**

Developer, at no additional cost to Client, shall within [NUMBER] days after notice from Client, correct and redeliver to Client any Work not in compliance with any of the warranties set forth above. Developer further agrees both that it will within [NUMBER] business days after Client's request provide sufficient evidence through adequate testing of the Work or otherwise to demonstrate compliance with these warranties, and that the requirements of these warranties shall be part of the specifications applicable to the Work for all purposes under this Agreement, including without limitation for purposes of Acceptance of the Work by Client. Additionally, notwithstanding anything in to the contrary, Developer shall be responsible for, indemnify and hold Client or its affiliated companies harmless from any damages, costs, liabilities, and/or expenses, including attorneys' fees, allocated in-house legal expenses and other legal costs, arising out of the breach of the foregoing warranties up to a maximum of twice the aggregate of the invoices submitted to Client under this Agreement.

1. **INSURANCE**
   1. **Insurance**

Developer shall maintain in full force and effect insurance coverage of the types, at the policy limits, and pursuant to the other requirements as specified in Exhibit B, or as otherwise reasonably requested from time to time by Client.

1. **LIMITATION OF LIABILITY**
   1. **Limitation of liability**

Except as to the liabilities and obligations of Developer arising under the Articles entitled “Intellectual Property Rights”, “Indemnities” “Warranties” and “Insurance,” and any other indemnity obligations of Developer under this Agreement, as to which the following limitation of liability shall not apply, under no circumstances shall either Party be liable to the other for any special, exemplary, punitive, indirect, statutory or consequential damages (including lost revenue or profits) resulting from, arising out of, or related to its performance or failure to perform any of its obligations under, or breach of, this Agreement, whether or not such Party has been advised, knew, or should have known, of the possibility of such damages.

1. **TERM AND TERMINATION**
   1. **Term**

This Agreement shall have an effective date of [DATE] and shall remain in full force and effect unless terminated earlier pursuant to this.

* 1. **Termination for Convenience**

By written notice to Developer, Client may, in its sole discretion and without cause, immediately terminate this Agreement, any outstanding Purchase Order, in whole or in part, at any time prior to completion. In the event of termination under this Section, and in accordance with the entitled "Ordering, Price and Payment", Client shall be liable for payment only for Work authorized by Client to be performed prior to the effective date of termination. In no event shall Client be liable for anticipated profit on Work not performed.

* 1. **Termination for cause**

Client may terminate this Agreement, any outstanding Purchase Order or any Developer Request, in whole or in part:

* + 1. Upon [NUMBER] days prior written notice in the event of Developer’s material breach of any provision of this Agreement, provided that such breach has not been cured by the end of such thirty day period, Developer acknowledging and agreeing that the failure of Developer to meet any schedule, delivery date, milestone or other deadline specified in this Agreement or any Purchase Order or SOW or otherwise established pursuant to this Agreement shall be deemed a material breach of this Agreement; or
    2. Immediately by written notice in the event that Developer applies for or consents to the appointment of or the taking of possession by a receiver, custodian, trustee, or liquidator of itself or of all or a substantial part of its property, makes a general assignment for the benefit of creditors, commences a voluntary case under the Federal Bankruptcy Code (as now or hereinafter effect),
    3. or fails to contest in a timely or appropriate manner or acquiesces in writing to any petition filed against it in an involuntary case under such Bankruptcy Code or any application for the appointment of a receiver, custodian, trustee, or liquidation of itself or of all or a substantial part of its property, or its liquidation, reorganization, or dissolution.
  1. **Additional rights**

In the event of any termination pursuant to this Section, in addition to any other rights or remedies that Client may have in connection with the breach giving rise to such right of termination:

* + 1. Developer shall repay to Client any payments made by Client in excess of the price of Work delivered by Developer and accepted by Client prior to the effective date of termination. In no event shall Client be liable for the cost of partially completed Work not delivered to Client or rejected by Client pursuant to the Article entitled “Acceptance.”
    2. Client may procure, upon such terms and in such manner as Client may deem appropriate, work and services substantially similar to the Work so terminated, and Developer shall be liable to Client for any excess costs incurred by Client for such substantially similar work and services over the costs that would otherwise have been incurred for the same.
    3. Client shall be liable only for Work authorized by Client to be performed and accepted by Client pursuant to the Article entitled “Acceptance” prior to the effective date of termination. In no event shall Client be liable for anticipated profit on Work not performed.
  1. **Effect of Termination**

In the event all or part of this Agreement is terminated:

* + 1. Developer shall immediately cease work as of the effective date of termination as to any terminated portion of the Work. Client shall have no obligation to Developer with respect to any terminated portions of this Agreement except as provided in this Agreement.
    2. Developer shall continue performance of any portion of this Agreement or of any Purchase Order or Statement of Work not terminated.
    3. Regardless of any dispute which may exist between Developer and Client, Developer shall immediately: (1) document in detail the status of the Work that has been terminated and deliver to Client all copies of the Work Product that are in the possession of Developer, any Developer Personnel or any third party, whether or not such Work Product has been completed or is still in progress, and such Work Product shall, for all purposes of this Agreement, be deemed Work delivered to Client, with respect to which Client shall have all applicable ownership rights, and (2) promptly deliver to Client all other Client property and materials provided pursuant to this Agreement that is in the possession of Developer, any Developer Personnel or any third party.
  1. **Work in Progress**

In the event all or part of this Agreement is terminated for any reason whatsoever, Developer shall immediately, at Client's option and request, document in reasonable detail the status of the Work that has been terminated and either deliver to Client or dispose, in accordance with Client instructions, of all Software, Documentation or other materials relating to or falling under the Work that are in its or any third party's possession, whether or not such Software, Documentation or other materials have been completed or are still in progress.

Client shall have all rights to such Software, Documentation and materials in accordance with the Article entitled “Intellectual Property." Developer agrees after termination to cooperate reasonably with Client in its or another’s efforts on Client's behalf to complete the Work in progress specified in the applicable Purchase Order(s) or Developer Request(s) and to provide for an orderly transition of such Work at the agreed upon rate.

* 1. **Available Remedies**

Termination of all or any portion of this Agreement in accordance with this Article shall not limit either Party from pursuing any other remedies otherwise available to it at [YOUR COUNTRY LAW] or in equity, including injunctive relief, and not otherwise precluded by this Agreement.

1. **ARBITRATION**
   1. **Dispute Resolution**

Any dispute or disagreement between the Parties arising out of or in connection with this Agreement, which is not settled to the mutual satisfaction of the Parties within [NUMBER] days (or such longer period as may be mutually agreed upon) from the date that either Party informs the other in writing that such dispute or disagreement exists, shall be settled by arbitration in the District of [STATE/PROVINCE] (applying the law [STATE/PROVINCE]) in accordance with the [COUNTRY ACT/LAW/RULE].

Any arbitrator appointed by [SPECIFY] shall be knowledgeable and experienced in the telecommunications and computer industries, including without limitation as to software and related intellectual property issues. The costs of arbitration, including the fees and expenses of the arbitrator, shall be shared equally by the [COMPANY NAME] unless the arbitration award provides otherwise. Each Party shall bear the cost of preparing and presenting its case.

The [COMPANY NAME] agree that this provision and the arbitrator’s authority to grant relief shall be subject to the [COUNTRY ACT/LAW/RULE] for Arbitrators in Commercial Disputes.

The [COMPANY NAME] agree that the arbitrator shall have no power or authority to make awards or issue orders of any kind except as expressly permitted by this Agreement, and in no event shall the arbitrator have the authority to make any award that provides for punitive or exemplary damages. The arbitrator’s decision shall follow the plain meaning of the relevant documents, and shall be final and binding. The award may be confirmed and enforced in any court of competent jurisdiction.

* 1. **Equitable Relief**

Notwithstanding the determination by the [COMPANY NAME] to utilize arbitration as specified above for resolution of disputes arising out of or in connection with this Agreement, nothing herein shall preclude either Party from seeking and obtaining from a court of competent jurisdiction appropriate equitable relief, including without limitation a temporary restraining order or other injunctive relief, to prevent a breach of this Agreement or to otherwise maintain the status quo pending outcome of any arbitration.

1. **FORCE MAJEURE**
   1. **Force majeure**

If the performance of this Agreement, or of any obligation, is prevented, restricted or interfered with by reason of:

* + 1. Acts of God;
    2. Wars, revolution, civil commotion, acts of public enemies, blockage or embargo;
    3. Acts of the Government in its sovereign capacity;
    4. Labor difficulties, including, without limitation, strikes, slowdowns, picketing or boycotts; or
    5. Any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected.
    6. The Party affected, upon giving prompt notice to the other Party, but in no event to exceed more than [NUMBER] days after either learning of such event or after the date when such Party should have known of event, shall be excused from such performance on a day to day basis to the extent of such prevention, restriction,
    7. or interference (and the other Party shall likewise be excused from performance of its obligations on a day to day basis to the extent such Party's obligations are related to the performance so prevented, restricted or interfered with); provided, however, the Party so affected shall use its best efforts to avoid or remove such causes of non performance and both [COMPANY NAME] shall proceed whenever such causes are removed or cease.
  1. **Cause for termination**

Any delay that will or does exceed [NUMBER] days duration shall at Client's option, except for charges due for Work delivered and accepted under this Agreement, be cause for termination at no cost to Client.

1. **MISCELANEOUS**
   1. **Waiver**

The failure of either Party to insist on the strict performance of any terms, covenants and conditions of this Agreement at any time, or in any one or more instances, or its failure to take advantage of any of its rights, or any course of conduct or dealing, shall not be construed as a waiver or relinquishment of any such rights or conditions at any future time and shall in no way affect the continuance in full force and effect of all the provisions of this Agreement.

* 1. **Headings**

Headings used in this Agreement are for convenience of reference only and shall not be construed as altering the meaning of this Agreement or any of its parts.

* 1. **Applicable [YOUR COUNTRY LAW]**

This Agreement shall be construed and enforced in accordance with the [YOUR COUNTRY LAW] of the State of [STATE/PROVINCE] other than the [YOUR COUNTRY LAW] thereof that would require reference to the [YOUR COUNTRY LAW] of any other jurisdiction. For all purposes for which resort to a court may be had, the [COMPANY NAME] irrevocably consent to the exclusive jurisdiction and venue of the federal and local courts located in the [STATE/PROVINCE]. Developer shall appoint and maintain an agent for service of process in the [STATE/PROVINCE], and shall provide written notice of the name, address, and telephone number of such agent to Client.

* 1. **Survival.**

The [COMPANY NAME] agree that the provisions of the Articles entitled “Intellectual Property Rights,” “Confidential Information,” ”Warranties” and “Limitation of Liability,” shall survive the expiration or any earlier termination of this Agreement along with any other provisions of this Agreement which by their nature should reasonably survive such expiration or termination.

* 1. **Severability**

If any provision of this Agreement is held to be illegal, invalid or unenforceable, the remaining terms shall not be affected. The Agreement shall be interpreted as if the illegal, invalid or unenforceable provision had not been included in it, and the invalid or unenforceable provision shall be replaced by a mutually acceptable provision which, being valid and enforceable, comes closest to the intention of the [COMPANY NAME] underlying the invalid or unenforceable provision.

* 1. **Notices**

All notices, requests, demands, or communications required or permitted shall be in writing, delivered personally or by fax, electronic mail or certified, registered, or express mail at the respective addresses set forth below. All notices, requests, demands or communications shall be deemed effective upon personal delivery, on the day of the fax or electronic mail, or when received if sent by registered, certified, or express mail.

If to Client:

[Attention:][Title]Client[Address][Fax:] With a copy to:

If to Developer:

[Attention:][Title]Client[Address][Fax:]

* 1. **Assignment**

The respective rights and obligations provided in this Agreement shall bind and inure to the benefit of the [COMPANY NAME], their legal representatives, successors and permitted assigns. Developer shall not assign this Agreement, in whole or in part, without the prior written consent of Client, which consent shall not be unreasonably withheld or delayed. Any assignment by Developer, without such consent, shall be null and void.

* 1. **Third Party Beneficiaries**

Any Client Affiliate, whether now existing or created at anytime in the future, shall be a third party beneficiary of this Agreement. No other party shall be considered a third party beneficiary of this Agreement.

* 1. **Order of Precedence**

All Exhibits attached to, and specifically referenced in, this Agreement are hereby incorporated into and made a part of this Agreement. In the event of any ambiguity and/or inconsistency among these Terms and Conditions, any Purchase Order, Developer Release or other documents that are a part of this Agreement, the following descending order of precedence shall control:

* + 1. The Terms and Conditions of this Agreement and any amendments;
    2. Any Purchase Orders and accompanying SOW’s or Developer Requests;

or

* + 1. Any other document made a part of this Agreement.
  1. **Relationship of [COMPANY NAME]**

Nothing contained in this Agreement shall be deemed or construed as creating a joint venture or partnership between Developer and Client. Neither Party is by virtue of this Agreement authorized as an agent, employee or legal representative of the other. Except as specifically set forth herein, neither Party shall have power to control the activities and operations of the other. Neither Party shall have any power or authority to bind or commit the other.

* 1. **Entire Agreement**

This Agreement constitutes the entire understanding of the [COMPANY NAME], and supersedes all prior or contemporaneous written and oral agreements, representations or negotiations with respect to the subject matter hereof. This Agreement may not be modified or amended except in writing signed by the [COMPANY NAME].

IN WITNESS WHEREOF, each party to this agreement has caused it to be executed at [PLACE OF EXECUTION] on the date indicated above.

Client Developer

Authorized Signature Authorized Signature

Print Name and Title Print Name and Title

# EXHIBIT A

## Statement of Work Requirements

## 1 PROJECT IDENTIFICATION AND CONTACT INFORMATION

1.1 Initiative Name/Title.

1.2 Client Contact information:

(i) Client Organization(s).

(ii) Client Technical Coordinator.

(iii) Client Technical Coordinator’s address, fax, email and phone number.

1.3 Developer contact information:

(i) Developer single point of contact for technical, finance, and programmatic issues (“Project Manager”).

(ii) Developer Project Manger’s address, fax, email and phone number.

## 2 PROJECT DESCRIPTION AND REQUIREMENTS

* 1. Project description.

This section will provide sufficient definition of the Project for the Developer to carry out its responsibilities. The description should include the requirements and the scope of what is to be included in the project as well as what is excluded from the project. The requirements should be written from the customer perspective as to what functionality of features will be available should the project be completed.

* 1. Project requirements.

This section should also provide specific requirements for the following areas:

(i) Inputs – all feeds into the proposed solution

(ii) Processing – what computations must take place to get desired output

(iii) Outputs – what will the proposed solution produce

(iv) Required Features – expected features of the system

(v) Deliverables – list all deliverables for the project to be considered a success by the customer and a list of documents that area a result of completing the deliverables

(vi) Logistics – where the work be performed and where and how the work will be delivered.

(vii) Acceptance Criteria – sign-offs required by Client for each phase or document.

## 3 Client OBLIGATIONS

* 1. Client obligations.

This section shall describe information, assistance or materials required of Client and identification of the Client groups thus impacted. Client milestones should be included in the schedule.

## 4 SCHEDULE

* 1. Schedule.

The schedule for the project shall include, at a minimum: (1) Developer start date; (2) Work delivery schedule broken down into specific milestones; and (3) Project end date.

## 5 COST

* 1. Cost breakdown.

The SOW shall include a cost breakdown that specifies the following items:

(i) Agreed upon hours in a month/days in a month.

(ii) Rate per hour

(iii) Whether and how the milestones identified in, above, relate to payment of Developer.

(iv) Any special requirements regarding the currency for invoice and payment.

## EXHIBIT B

## RATES

Standard Rates

1. The standard rates for work performed in [COUNTRY] will be paid for on an hourly basis at a rate of [COUNTRY] [AMOUNT] per hour.

2. The basis for payment will be actual hours worked per individual, to the nearest half-hour, not to exceed the hourly rate times [NUMBER], representing the number of workable hours per month in any given month.

3. Total payments for a given project under this agreement shall not exceed the limitations imposed by the associated Purchase Order and/or the SOW.

## INSURANCE REQUIREMENTS

During the term of this Agreement, Developer shall maintain insurance, the kinds and in the amounts specified with insurers of recognized responsibility, licensed to do business in the [STATE/PROVINCE] where the work is being performed, and having at least: [SPECIFY RATINGS]. If any work provided for or to be performed under this Agreement is subcontracted, Developer shall require the Sub-developer(s) to maintain and furnish insurance equivalent to that which is required of Developer.

In accordance with the above, Developer and any Sub-developers shall maintain the following insurance coverages:

1. COMMERCIAL GENERAL LIABILITY insurance covering liability for bodily injury or property damage arising from its premises, operations, independent Developers, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract, with minimum limits of: [AMOUNT] per occurrence / [AMOUNT] aggregate. The completed operations coverage shall be provided for a period of at least two years after completion of the work. Such policy shall be written on an occurrence form. Claims-made policies will not be acceptable.

2. BUSINESS AUTOMOBILE LIABILITY including coverage for owned, hired, leased, rented and non-owned vehicles as follows: [AMOUNT] combined single limit per accident.

3. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY as follows:

Workers' Compensation (or [COUNTRY] equivalent): Statutory limits.

Employers' Liability: Bodily Injury by Accident [[AMOUNT] each accident.

Bodily Injury by Disease: [AMOUNT] policy limit.

Bodily Injury by Disease: [AMOUNT] each employee.

4. PROFESSIONAL LIABILITY in the amount of [AMOUNT]. A combination of primary and excess/umbrella liability policies will be acceptable as a means to meet the limits specifically required hereunder.

THE REQUIRED MINIMUM LIMITS OF COVERAGE SHOWN ABOVE, HOWEVER, WILL NOT IN ANY WAY RESTRICT OR DIMINISH DeveloperS' LIABILITY UNDER THIS AGREEMENT.

Developer will submit to Client a standard "Accord" insurance certificate (or comparable form acceptable to Client) signed by an authorized representative of such insurance company (ies), certifying that the insurance coverage(s) required hereunder are in effect for the purposes of this Agreement. Said insurance certificate shall certify that no material alteration, modification or termination of such coverage(s) shall be effective without at least 30 days advance written notice to Client.

All policies (excluding [SPECIFY]) shall name Client, its subsidiaries and affiliates, as Additional Insurers as respects work performed under this Agreement.

Developer's insurers shall waive all rights of recovery against Client for any injuries to persons or damage to property in the execution of work performed under this Agreement.

Developer shall permit any authorized representative of Client to examine Developer's original insurance policies, should Client so reasonably request.

Should Developer at any time neglect or refuse to provide the insurance required herein, or should such insurance be cancelled or non-renewed, Client shall have the right to terminate this Agreement, or costs of securing substitute coverages shall be deducted from payments owed the Developer. Developer's insurance shall be considered primary and not excess or contributing with any other applicable insurance.