DEVELOPER AND CLIENT AGREEMENT

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This Developer and Client Agreement takes effect on [DATE],

**BETWEEN: [YOUR COMPANY NAME]** (the "Client"), a company organised and existing under the laws of [Country], with its head office located at:

 [YOUR COMPLETE ADDRESS]

**AND: [SERVICE PROVIDER]** (the "Developer"), a company organised and existing under the laws of [Country], with its head office located at:

 [COMPLETE ADDRESS]

WHEREAS, the Developer performs programming and systems analysis services;

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

WHEREAS, the Client and the Developer desire to establish standard terms and conditions that shall apply to such services to be performed by the 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 company, 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 Authorised Signatories of all parties.

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

The term "Authorised 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 the Developer to perform services for the Client and in no event or for any purpose will these persons be considered employees of the Client.

The term “Documentation” means all or any portion of the materials, in written or other tangible form (including on magnetic media), generated by the Developer and Developer Personnel in the performance of the work, including without limitation any Software summaries, Software design, architectures, programme logic, flow charts, source code, programme 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 the Developer provides Work to the Client for which payment is based on either specific deliverable Work Product or another basis as agreed by the Parties other than the pricing outlined 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 the Client under 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 the Client or the 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 the Developer, the ownership of which by Developer either

(a) pre-dates the date of the Statement of Work under which the relevant Work was performed, or

(b) arises exclusively as a result of independent development by the Developer and not as a result of the performance of this Agreement or the Developer’s exposure to any Client Confidential Information or other Client intellectual property.

The term "Project" means an effort in which the 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 the Developer and which has been properly signed by a Client procurement official authorised to execute such form.

The term “Software” means the instructions for a computer, whether in the 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 preceding.

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 the Developer provides Work to Client for which payment is based on the rates outlined 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 under 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 the Developer to the Client, at the 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 the 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 the 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, the Client may request, and the Developer may provide the Developer Personnel to perform Work. This Agreement establishes the standard terms and conditions that will apply to such Work performed by the Developer for Client.

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

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

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

The 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 Authorised Signatories of both Client and the Developer.

* 1. **Advice and assistance**

The Client's personnel may from time to time render technical assistance or give technical advice to, or effect an exchange of information with the Developer Personnel concerning the Work to be furnished under this Agreement. However, the Developer shall not deviate from the requirements of this Agreement because of such assistance or exchange of information, unless the deviation is incorporated into and authorised by a change order issued in accordance with Section. The Developer shall not, because of such assistance, advice or exchange of information, delete or in any way modify any of the Client's rights or any of the 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 the Client's Procurement Department. The Developer understands that only the Client's Procurement Department has authority to issue Purchase Orders or to modify contract terms. The Developer further acknowledges that any agreement (whether or not such agreement is in writing) not executed by the Client's Procurement Department shall not bind or obligate Client in any manner.

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

The Client shall order Work on a Project basis by submitting to the 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 the Developer of the “Vendor Acknowledgment” copy of the Purchase Order to the Client’s Procurement Department, or ([NUMBER]) the commencement by the 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, the Developer Acknowledgment forms or other similar forms shall be deemed deleted concerning 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, The Client shall pay the Developer for such Work as follows:

* + 1. Where the Developer performs Work under a T&M Project, then the Client shall pay the 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 the Developer performs Work under an FP Project, then the Client shall pay the Developer for such Work under the milestone payment schedule or other payment schedule outlined 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**

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

The Developer shall invoice the 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**

The 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 the Developer with notice of the date on which the Client received such invoice. The Developer shall also comply with any reasonable request of the 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:

4.7.1 Receipt of a properly executed and otherwise prepared invoice in which the Developer has certified that the Work that is the subject of the invoice has been completed, or

4.7.2 Acceptance by the Client of the Work that is the subject of the invoice by the Client under. Invoices that are not properly executed and otherwise prepared shall be returned to the Developer for revision.

* 1. **Taxes**

All prices and fees outlined 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 the Client agrees to pay. In the alternative, the Client shall provide the Developer with a certificate evidencing the Client's exemption from payment of or liability for such taxes and the Developer agrees to honour such an exemption certificate. The 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 the 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 the Client, the Developer agrees to provide the Client with electronic invoices for any Work in accordance with then applicable Electronic Data Interchange standards in the format specified by the Client.

* 1. **Travel expense authorisation**

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

* 1. **Travel expense payment procedure**

The Developer shall initially be responsible for travel expenses and shall reimburse the Developer Personnel, as appropriate. The Developer will then invoice the Client for the travel. All incurred travel, transportation, and per diem expenses for which reimbursement is sought shall be itemised on the relevant invoice and substantiated by appropriate attached receipts. The Developer shall further obtain approval of such invoice before submitting to the Client by way of signature by the appropriate Client Technical Coordinator. Travel expenses must be invoiced on the next regular invoice submission to the Client. The 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 the Client under the Agreement shall be invoiced to the Client at cost. All travel expenses must comply with the 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:
			1. Commercial transportation Reimbursable on an "incurred cost" basis at the economy, tourist or coach rates; or business class for international travel.
			2. Private automobile Reimbursable at Client's standard rate.
			3. 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.
		2. Non-reimbursable expenses. The Client will not reimburse the Developer for:
			1. Local travel incurred as a result of the Developer Personnel commuting from their home or office to the Client's facility to perform Work.
			2. Long distance commuting, unless prior written approval from the Client is obtained.
			3. Hours spent in travelling to and from the place of performance of the Work.
1. **ACCEPTANCE**
	1. **Acceptance**

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

Should the Developer either be unable to correct the nonconformities within such [NUMBER] day period or should the Client aga*in re*ject the corrected version, then the Client, at its sole option, shall be entitled to:

5.1.1 a full refund of any payments made to the Developer in connection with the rejected Work, and

5.1.2 to immediately terminate the Statement of Work or Work, as applicable, by written notice to the Developer under 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 the Client of any Work under this Section shall not limit in any manner the Client’s rights under any other provision of this Agreement, including without limitation any warranty granted.

1. **DEVELOPERS RESPONSIBILITIES**
	1. **Best efforts**

The Developer shall devote its best efforts, attention, knowledge, and skill to the performance of this Agreement. Without modification of any obligation of the Developer under this Agreement, the 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**

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

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

* 1. **Status of the Developer personnel**

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

The 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. The Client shall not have any responsibility for these employee-related tax items, and shall be indemnified and held harmless by the Developer from any liability, cost or expense, including any interest, penalties, and legal fees, which may be assessed against or incurred by the Client in connection with the Developer’s failure to make any such payment.

* 1. **Compliance with Laws**

The Developer shall perform the Work in accordance with all applicable Country, 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 preceding, to the extent that the Developer performs the Work within the [COUNTRY], the Developer agrees that it will not assign to perform Work any individual who is an unauthorised 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 unauthorised aliens, the Developer will immediately remove such individuals from performing Work and replace such individuals with individuals who are not unauthorised aliens.

* 1. **Compliance with specifications**

The Developer shall perform the Work in accordance with:

6.5.1 the specifications and other requirements contained in this Agreement, including without limitation in any applicable Statement of Work, and

6.5.2 all applicable professional standards.

* 1. **Use of employees**

The 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 the Client to any such subcontracting, the Developer shall in any event and at all times remain liable for performance of the Work by all the Developer Personnel in conformity with the terms and conditions of this Agreement.

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

The Developer shall not employ Sub-developer personnel on the Work before obtaining the 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:

6.7.1 certification that the 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, The Developer agrees to provide a copy of such contract upon Client' s request; and

6.7.2 certification that the Developer Personnel to be obtained from the Sub-developer are employees of the Sub-developer and not in a Revenue Service [NUMBER] relationship.

* 1. **Subcontract agreements**

The Developer may use the Developer Personnel provided by Approved Sub-developers provided that the 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 applies as between the Developer and such Sub-developer and which is in full force and effect during all times that such the Sub-developer is providing the Developer Personnel to perform Work under this Agreement. The 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**

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

* 1. **Security Regulations**

The Developer agrees that the Developer Personnel and other Developer employees and representatives will comply with all the Client security regulations in effect while on the Client's premises. The Developer understands that only the Developer Personnel working under an approved Developer Request or on a Project are allowed unescorted access to the Client facilities, but subject to such applicable security regulations. All other Developer Personnel and other Developer employees and representatives, including without limitation the Developer's account and sales representatives, must be escorted at all times while on the 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 the Developer nor the 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 the Developer may enter into with a Client Competitor or any Affiliates of a Client Competitor.

* 1. **Developer Marketing Activities**

The Developer agrees to restrict marketing its services, whether under this Agreement or otherwise, only to those Client personnel and Client organisations approved by a Client Technical Coordinator.

* 1. **Authorisation to Perform Work**

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

* 1. **Non-Disclosure Agreements**

The Developer shall have all the Developer Personnel sign a non-disclosure agreement (NDA), in a form acceptable to the Client before the start of Work. The 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, the Client shall be provided with an original copy of such NDA. The Client reserves the right to conduct spot audits to ensure NDA’s are on file at the Developer’s offices. The Client additionally shall have the right to require execution of a corporate-level agreement regarding non-disclosure of the Client, Confidential Information substantially in a form acceptable to the Client as a condition for approval of the Developer’s Sub-developer(s).

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

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

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

The Developer shall provide the 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 the Client's Technical Coordinator.

* 1. **Place of performance**

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

* 1. **Prohibited employees**

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

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

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

* 1. **Records**

For a period of [NUMBER] years following the furnishing of any Work performed by the Developer Personnel pursuant to this Agreement, the Developer shall maintain such records as will adequately substantiate charges and hours worked in connection with said Work, and, upon the Client's request, shall produce such records for the Client's inspection at the Developer's business office where such records are kept. The Client shall give timely notice of its intent to inspect such records and agrees to preserve their confidentiality by 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 the Developer by the Client, is and shall remain the property of the Client. The Developer shall not substitute any property from the Client's property and shall not use such property except in performing Work as required by this Agreement. At the Client's request, the Developer shall submit a listing of all the 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 the 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 the Developer by the Client or developed by the Developer for the Client in performance of this Agreement, is and shall remain the property of the Client. The Developer shall not substitute any other property for the Client's property and shall not use such property except in performing Work as required by this Agreement. Such property while in the Developer's custody or control shall be maintained in good condition at the Developer's expense and shall be held at the 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. The 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 AGREEMENT/ACT/LAW] or any successor treaty thereto.
		2. The Developer will defend at its expense and indemnify and hold harmless the 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 the 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. The 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, or as a result of any such action, suit or proceeding, or settlement thereof that are attributable to such claim, provided that 9.1.3.1 the Indemnified Party or Client reasonably promptly notifies the Developer in writing of any such claim,

9.1.3.2 The Developer shall be accorded control of the defence and all negotiations for settlement compromise of such claim, and

9.1.3.3 The Client and the Indemnified Party if other than the Client cooperate with the Developer in the defence and settlement of such claim, including providing to the Developer, at the expense of the Developer, such information and assistance as the Developer may reasonably request. The Indemnified Party may, at its own expense, be represented in such defence.

* + 1. The Developer agrees that should the Work, or any portion of the Work provided by the Developer become, or in the Client’s opinion be likely to become, the subject of a claim of infringement, or should the Client's use of the Work be finally enjoined, the Developer shall, at its expense:
		2. Procure for the 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 preceding can be accomplished without impacting the economic viability of the Developer, the Developer shall reimburse the Client the price paid for the Work.
	1. **Other Developer Indemnification**

The 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 the Developer or the Developer Personnel related to the performance of this Agreement;
		2. The Developer’s material breach of any of its representations, warranties, covenants or obligations contained in this Agreement;
		3. The Developer's independent Developer status being denied or changed and the Developer or its Personnel being declared to have "common [YOUR COUNTRY LAW]" status concerning the Work performed for Client; or
		4. The Developer’s failure to:

9.2.4.1 provide any employee-related benefits applicable to the Developer Personnel performing Work under this Agreement, or

9.2.4.2 withhold and/or remit all amounts required by applicable [YOUR COUNTRY LAW], rule, regulation, the 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.

* + 1. The 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 the Client reasonably promptly notify the Developer in writing of any such claim,
			2. the Developer shall be given control of the defence and all negotiations for settlement or compromise of such claim, and
			3. the Client and the Indemnified Party if other than Client cooperate with the Developer in the defence and settlement of such claim, including providing to the Developer, at the expense of the Developer, such information and assistance as the Developer may reasonably request. The Indemnified Party may, at its own expense, be represented in such defence.
1. **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. The Developer hereby grants to the Client a non-exclusive, worldwide, fully-paid up, irrevocable and perpetual licence to use such Pre-Existing Developer IP (to the extent incorporated into the Work) as necessary or appropriate to the 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 the Developer retains all ownership rights and title to the Pre-Existing Developer IP.

The Developer further agrees to give the Client or any person designated by the Client, at the Client's expense, all such information and to execute all such additional documents as may be reasonably required to perfect the Client’s rights to the preceding 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, the Developer hereby irrevocably conveys and assigns, and agrees to in the future irrevocably convey and assign, to the Client on behalf of the Developer, all the Developer Personnel, and the Developer’s Sub-developers, and agrees that upon such conveyance and assignment the 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 the Developer, any Developer Personnel and any of Developer’s Sub-developers. The Client shall have the right, at its own expense, to obtain and to hold in its name copyrights, registrations, patents, or such other protection as may be appropriate to said Work.

* 1. **Disclosure**

The Developer shall promptly disclose the Work Product to the Client, including without limitation all Software, Documentation, reports, programs, source code, manuals, flow charts, tapes, card decks, listings, and any other programming materials, and any inventions, improvements or discoveries, whether or not copyrightable or patentable, which are written, conceived, made or discovered by the 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 the Client, but without further consideration from the Client, the Developer will provide the Client and any person designated by the 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 the Client to more effectively evidence, give effect to, and/or perfect the conveyance, assignment, registration, and vesting of rights in the Work Product in the Client required pursuant to this .

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

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

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

The 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 the Client as the sole copyright owner.

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

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

* 1. **Definition**

As used in this Agreement, the term “Confidential Information” shall mean:

11.2.1 Work Product (including without limitation any notes, notations, and drafts, and regardless of whether such Work Product has been delivered to the Client),

11.2.2 the terms, purpose, and subject matter of this Agreement, and any performance by either Party,

11.2.3 all information relating to the Client’s technology, research and development, and business affairs,

11.2.4 financial and pricing data specific to this Agreement, and

11.2.5 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**

The Developer shall designate by appropriate markings all Work Product as Confidential Information of the 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 after the time of Discloser's communication thereof to Recipient;
		2. Was *in Re*cipient's possession free of any obligation of confidence at the time of Discloser's communication thereof to Recipient, provided, however, that the Developer uses reasonable efforts to promptly inform the Client in writing to establish the Developer's prior possession, and provided further, however, that this exception shall not apply to Work which upon its generation by the Developer constitutes the 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] Authorised 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. The Recipient may disclose Confidential Information received to

11.5.1.1 it's Affiliates who agree, in advance, in writing, to be bound by this Agreement, and

11.5.1.2 to the Developer Personnel and Approved Sub-developers,

* + 1. 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 the Developer notifies the Client in advance of the names of any Developer Personnel having access to Confidential Information under this Agreement.
		2. 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;
		3. 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 the Developer treats and protects its 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;
		4. Not to make copies of any such Confidential Information or any part thereof except for this Agreement;
		5. To reproduce and maintain 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;
		6. To ensure that all the Developer Personnel having access to such Confidential Information terminating employment with or services for the Developer are reminded before such termination of his/her nondisclosure obligations undertaken under this or other employee nondisclosure agreement;
		7. 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 the 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 the Recipient is required by law, regulation or court order to disclose any of Discloser's Confidential Information, the Recipient will promptly notify Discloser in writing prior to making any such disclosure to facilitate Discloser seeking a protective order or other appropriate remedy from the proper authority. The Recipient agrees to cooperate with Discloser in seeking such an order.

* 1. **Or Other Remedy**

The 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 obta*in re*liable 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 the Client. The Developer shall return all Confidential Information, and any copies thereof to the Client at the completion of all Work under this Agreement or at such earlier date as the Client may designate, with a certification by an officer of the Developer that the Developer retains no Confidential Information in any form whatsoever; upon completion of all Work or upon receipt of a request by the Client, the 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 the Developer shall deliver to the 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 the Developer shall not disclose to the Client any Developer confidential information without the express prior written agreement of the 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 this Section. To the extent reasonably possible the Developer agrees to give the Client prompt notice if the Developer becomes aware either

* + 1. 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
		2. that there has been or is likely to be an unauthorised disclosure of Confidential Information under this Agreement.
	1. **Developer Personnel with access**

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

* 1. **Remedies**

The Developer acknowledges that the Confidential Information under this Agreement constitutes unique, valuable and special trade secret and business information of the Client, and that disclosure may cause irreparable injury to the Client. Accordingly, the 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 re*cognition, agrees that the 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 the 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 by the Section Article entitled “Notices.”

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

The Developer represents and warrants that:

* + 1. The Work provided should be performed professionally 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 outlined 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 the Developer has been properly authorised and empowered to enter into this Agreement, and when executed, this Agreement will constitute a legal, valid and binding agreement and obligation of the Developer enforceable according to its terms;
		3. It is not currently bound by any other agreements, restrictions or obligations, nor will the 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 the Developer to the Client under this Agreement;
		4. The Work will:

13.1.4.1 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, the Developer will provide sufficient evidence through adequate testing of the Work, or otherwise to demonstrate compliance with this warranty; and

13.1.4.2 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)

* + 1. No material portion of the Work is or will be intended, other than under the documented control of the Client:
		2. 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;
		3. 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, programmes or data attached to, resident on, or accessible to the system on which the Work may be executed or stored;
		4. 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 the Developer.
		5. The Developer shall be responsible for, indemnify and hold the 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).
	1. **Remedy**

The Developer, at no additional cost to the Client, shall within [NUMBER] days after notice from the Client, correct and redeliver to the Client any Work not in compliance with any of the warranties set forth above. The Developer further agrees that it will within [NUMBER] business days after the 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 the Client. Additionally, notwithstanding anything in to the contrary, the Developer shall be responsible for, indemnify and hold the 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**

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

* 1. **Termination for Convenience**

By written notice to the Developer, the 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 before completion. In the event of termination under this Section, and in accordance with the entitled "Ordering, Price and Payment," the Client shall be liable for payment only for Work authorised by the Client to be performed before the effective date of termination. In no event shall the Client be liable for anticipated profit on Work not performed.

* 1. **Termination for cause**

The 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 the Developer’s material breach of any provision of this Agreement, provided that such breach is not rectified by the end of such thirty day period, The Developer acknowledging and agreeing that the failure of the 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 the Developer applies for or consents to the appointment of or the taking of possession by a receiver, custodian, trustee, or liquidator of itself or all or a substantial part of its property, makes a general assignment for the benefit of creditors, commences a voluntary case under the Country 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, reorganisation, or dissolution.
	1. **Additional rights**

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

* + 1. The Developer shall repay to the Client any payments made by the Client in excess of the price of Work delivered by the Developer and accepted by the Client prior to the effective date of termination. In no event shall the Client be liable for the cost of partially completed Work not delivered to the Client or rejected by the Client under the Article entitled “Acceptance.”
		2. The Client may procure, upon such terms and in such a manner as the Client may deem appropriate, work and services substantially similar to the Work so terminated, and the Developer shall be liable to the Client for any excess costs incurred by the Client for such substantially similar work and services over the costs that would otherwise have been incurred for the same.
		3. The Client shall be liable only for work authorised by the Client to be performed and accepted by the Client under the Article entitled “Acceptance” prior to the effective date of termination. In no event shall the 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. The Developer shall immediately cease work as of the effective date of termination as to any terminated portion of the Work. The Client shall have no obligation to the Developer with respect to any terminated portions of this Agreement except as provided in this Agreement.
		2. The Developer shall continue performance of any portion of this Agreement or any Purchase Order or Statement of Work not terminated.
		3. Regardless of any dispute which may exist between the Developer and the Client, the Developer shall immediately:

16.5.3.1 document in detail the status of the Work that has been terminated and deliver to the Client all copies of the Work Product that are in the possession of the 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 the Client, with respect to which the Client shall have all applicable ownership rights, and

16.5.3.2 promptly deliver to the Client all other Client property and materials provided pursuant to this Agreement that is in possession of the 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, the Developer shall immediately, at the Client's option and request, document *in re*asonable detail the status of the Work that has been terminated and either deliver to the Client or dispose, in accordance with the 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.

The Client shall have all rights to such Software, Documentation, and materials in accordance with the Article entitled “Intellectual Property." The Developer agrees after termination to cooperate reasonably with the Client in its or another’s efforts on the Client's behalf to complete the Work in progress specified in the applicable Purchase Order(s) or the 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 [PROVINCE] (applying the law [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 utilise 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 because 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. Labour 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 the 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. **MISCELLANEOUS**
	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 [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 Country and local courts located in the [PROVINCE]. The Developer shall appoint and maintain an agent for service of process in the [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. The Developer shall not assign this Agreement, in whole or in part, without the prior written consent of the Client, which consent shall not be unreasonably withheld or delayed. Any assignment by the Developer, without such consent, shall be null and void.

* 1. **Third Party Beneficiaries**

Any Client Affiliate, whether now existing or created at any time 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 is 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 the 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 the Developer and the Client. Neither Party is by virtue of this Agreement authorised as an agent, employee or legal representative of the other. Except as specifically set forth herein, neither Party shall have the 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

Authorised Signature Authorised 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:

1.2.1 Client Organisation(s).

1.2.2 Client Technical Coordinator.

1.2.3 Client Technical Coordinator’s address, fax, email, and phone number.

1.3 Developer contact information:

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

1.3.2 Developer Project Manger’s address, fax, email and phone number.

## PROJECT DESCRIPTION AND REQUIREMENTS

2.1 Project description.

This section will provide a 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:

2.2.1 Inputs – all feeds into the proposed solution

2.2.2 Processing – what computations must take place to get the desired output

2.2.3 Outputs – what will the proposed solution produce

2.2.4 Required Features – expected features of the system

2.2.5 Deliverables – list all deliverables for the project to be considered a success by the customer and a list of documents that are a result of completing the deliverables

2.2.6 Logistics – where the work is performed and where and how the work will be delivered.

2.2.7 Acceptance Criteria – sign-offs required by the Client for each phase or document.

## Client OBLIGATIONS

3.1 Client obligations.

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

## SCHEDULE

4.1 Schedule.

The schedule for the project shall include, at a minimum:

(1) The Developer start date;

(2) Work delivery schedule broken down into specific milestones; and (3) Project end date.

## COST

5.1 Cost Breakdown.

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

5.1.1 Agreed upon hours in a month/days in a month.

5.1.2 Rate per hour

5.1.3 Whether and how the milestones identified in, above, relate to payment of the Developer.

5.1.4 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, the Developer shall maintain insurance, the kinds and in the amounts specified with insurers of recognised responsibility, licenced to do business in the [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, The Developer shall require the Sub-developer(s) to maintain and furnish insurance equivalent to what is required of the Developer.

In accordance with the above, the 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 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.

1. 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.

The Developer will submit to the Client a standard "Accord" insurance certificate (or comparable form acceptable to the Client) signed by an authorised 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 the Client, its subsidiaries and affiliates, as Additional Insurers as respects work performed under this Agreement.

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

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

Should the 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.