TIME AND MATERIALS CONSULTING AGREEMENT

****

This Time and Materials Consulting Agreement (the “Agreement”) is effective [DATE],

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

[YOUR COMPLETE ADDRESS]

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

[COMPLETE ADDRESS]

# TERMS AND CONDITIONS

* 1. **Definitions**

As used in this Agreement:

"Company" means the company described on the cover sheet.

"Data" means representations of information or of concepts that are being prepared or have been prepared in a form suitable for use in a computer system;

“Deliverable” means those Services to be provided to Company by Service Provider and those Products to be delivered to Company by Service Provider under this Agreement.

"Service Provider" means [SPECIFY].

“Product” the Functional Requirements Study for Company’s proposed [SERVICE PROVIDER NAME] solution as described in Appendix [SPECIFY] hereto, including the documents and the business model for Company’s proposed solution and all other materials and other items produced hereunder or necessary to complete the same.

“Project" means the consulting Services that are to be performed by Service Provider on behalf of Company as described in Appendix [SPECIFY] hereto.

"Company Rates" means the rates for Services as described in Appendix [SPECIFY] hereto.

"Effective Date" means the date this Agreement is duly executed by both parties.

“Services” means the development and other services to be provided by Company to Company hereunder.

“Software” means Data representing instructions or statements that, when executed in a computer system, causes the computer system to perform a function such as logic, control, arithmetic, deletion, storage and retrieval and communication or telecommunication to, from or within a computer system.

# ENGAGEMENT

Subject to the terms and conditions contained herein, Company has engaged Service Provider to undertake to complete the Project.

# COMPENSATION

3.1 Company Rates. Company shall pay Service Provider the Company Rate for each hour worked by employees or agents of Service Provider in connection with the Project. The Company Rates shall remain valid and in effect for the duration of this Agreement. However, the total professional fees required to complete and deliver the Deliverables to Company shall not, in any circumstances, exceed [AMOUNT] [COUNTRY] unless otherwise agreed in writing by Company.

3.2 Expenses. Company shall reimburse Service Provider for reasonable out-of-pocket expenses incurred by [SERVICE PROVIDER NAME] in connection with the performance of the Project at cost plus [PERCENTAGE %].

Such out-of-pocket expenses shall be for work performed in connection with the Project at Company premises. Out-of-pocket expenses shall not exceed [AMOUNT] [COUNTRY] room and board expenses per Consultant, per room night and [AMOUNT] [COUNTRY] per return flight, without prior consent of Company.

Total expenses for the duration of this Agreement are not to exceed [AMOUNT] [COUNTRY], without prior written consent of Company.

# FACILITIES

Company shall provide suitable office accommodations, including use of a telephone, for employees or agents of [SERVICE PROVIDER NAME] engaged in the execution of work at Company's premises.

# STAFFING

Service Provider warrants that it has the appropriate abilities and skills to complete the Project and that its professional abilities conform to generally accepted industry standards. Service Provider will use reasonable endeavours to ensure that the Project is scheduled and completed in accordance with the agreed Statement of Work attached hereto.

Service Provider will use reasonable efforts to maintain staff continuity throughout the Project. Service Provider may not replace any employee assigned to the Project without prior notice to the Company. The new employee shall be competent and have the appropriate skills and abilities to complete the Project in accordance with the agreed Statement of Work.

# APPROVAL OF WORK

Service Provider and Company shall agree in writing upon a schedule for the completion of the Project. From the date of signature of this Agreement Service Provider shall, every [NUMBER] weeks, send Company a detailed statement summarising the work performed to date in connection with the Project and the work remaining to complete the Project.

Company reserves the right to refuse any work not in accordance with the agreed Statement of Work and Service Provider will make the necessary corrections at their own expense and Company may withhold payment on the invoice.

Service Provider’ sole obligation for the warranty set out herein will be to correct any non-conformance in the Deliverables. Service Provider shall have no liability to the Company for any loss, damage, costs, expenses or other claims for compensation arising from any instructions supplied by the Company which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form or arising from their late arrival or non-arrival or any other fault of the Company.

# PAYMENTS

7.1 Service Provider shall invoice Company monthly in arrears for all work performed in connection with the Project.

7.2 Service Provider shall invoice Company monthly in arrears for all out-of-pocket expenses incurred in connection with the Project. Proof of expenses for the particular expense shall accompany all invoices for out-of-pocket expenses.

7.3 Subject to Company’s approval of the work accomplished and the invoice, pursuant to Sections 6 and 7(b) hereof, payment from Company shall be due within [NUMBER] days of date of invoice. Such Company approval not to be unreasonably withheld.

7.4 Company shall pay interest charges of [PERCENTAGE %] per cent per year, *i.e.* [PERCENTAGE %] per cent per month or part thereof for all late payments.

# CONFIDENTIAL INFORMATION

Service Provider and Company shall be bound by the terms and conditions of the Non Disclosure agreement concluded between them and dated [EFFECTIVE DATE] (the “NDA”).

# TERM

This Agreement shall continue until the completion of the Project within the scheduled delay, unless sooner terminated as provided herein.

# TERMINATION

Company may, at its sole discretion terminate this Agreement upon giving [NUMBER] days notice to Service Provider. Service Provider may terminate this Agreement on [NUMBER] days notice if Company fails to pay any past-due invoices, unless payment is genuinely withheld pursuant to Section [NUMBER] hereof. Upon such notice being given, Service Provider shall cease to provide Services regarding the Project and prepare a final invoice and detailed statement regarding the work performed. If this Agreement is terminated, Company shall pay Service Provider all sums payable for work performed and expenses incurred prior to termination.

Upon termination of this Agreement, Service Provider shall return to Company all information regarding Company obtained or developed and paid in full, in the course of this Agreement, with all working documents, materials, Software designs, system and programme flow-charts, file layouts, source and object code listings, computer programs, work completed, work in progress and data, regardless of storage media, related to the Project.

# NO JOINT VENTURE

In making and performing this Agreement, Service Provider and Company act and shall act at all times as independent contractors and nothing contained in this Agreement shall be construed or implied to create an agency, partnership or employer and employee relationship between Service Provider and Company.

# NON-HIRING OF EMPLOYEES

Neither party shall hire or otherwise engage the employees or agents of the other party directly connected to the Project during the term of this Agreement and for [NUMBER] months thereafter.

# SURVIVAL

Paragraphs [SPECIFY NUMBERS], shall survive termination of this Agreement.

# ASSIGNMENT

This Agreement shall bind and inure to the benefit of the successors and assigns of the parties. Company and Service Provider may not assign this Agreement without the prior written consent of the other. Such consent will not be withheld if the proposed assignment is to a parent or subsidiary of the assignor or to a successor firm carrying on the business of the assignor. Any transferee of this Agreement must agree in writing to be bound by these terms and conditions.

# NO WAIVER

No waiver by either party of any right or remedy whether under this Agreement or otherwise shall be effective unless in writing.

# SEVERABILITY

If any provision of this Agreement is held to be invalid or unenforceable, it will be construed to have the broadest interpretation, which would make it valid and enforceable. Invalidity and unenforceability of one provision will not affect any other provision of this Agreement.

# LIABILITY

17.1 Service Provider will indemnify the Company for direct damage to property, excluding loss of or damage to data, documents or other Software, caused by the negligence of its staff in connection with the provision of Services under this contract.

17.2 Service Provider’s liability *in re*spect of death or personal injury caused by its negligence shall be unlimited.

17.3 Save for Service Provider’s liability as detailed in sub-clause 17.2 the entire aggregate liability of Service Provider under or in connection with the Contract shall *in re*spect of any direct loss or damage whether in contract, tort or otherwise shall not exceed the Contract Price.

17.4 In no circumstances shall Service Provider be liable for any indirect, special, consequential loss or damage or loss of revenue, profits, contracts, goodwill, corruption or destruction of data resulting from any Products or Services supplied, or work undertaken on the Company's behalf, or delay in the supply or delivery of such Products, Services or work. It is specifically declared to be the Company’s responsibility to ensure that it has and maintains adequate backup copies of any documents or data furnished hereunder.

17.5 The Company shall indemnify and defend Service Provider and its staff *in re*spect of any claims by third parties which are occasioned by or arising from any Service Provider performance pursuant only to the faulty instructions of the Company or its employees.

# INTELLECTUAL PROPERTY INDEMNITY

Service Provider shall indemnify and save harmless Company and its companys from and against any and all actions, claims, demands, causes of actions and/or liability (including legal fees and disbursements) arising from any suit or proceeding brought against Company or its companys insofar as it is based on a claim that the Deliverables, or any part thereof, provided by Service Provider under this Agreement constitutes an infringement of any right of intellectual property, including but not limited to patent or copyright, if Service Provider is notified as soon as possible in writing and given sole authority to defend such claim. Upon Service Provider’ request, the Company shall provide such information and assistance to Service Provider (at Service Provider’ expense) as is reasonably necessary for the defence of such a suit or proceeding.

The Company shall make no statement, representation or otherwise to any third party regarding any such suit or claim. In case the Deliverables, or any part thereof, is in such suit or proceeding, held to constitute an infringement and the use of the Deliverables or any part thereof is enjoined, Service Provider shall, in addition to the foregoing and at its own expense and sole option, either procure for Company and its companys the right to continue using the Deliverables or part thereof, or replace same with non-infringing products or services of equivalent functionality and performance to those contracted for, or modify the Deliverables so they becomes non-infringing.

Service Provider shall not be liable to Company and its companys under any provision of this clause if any intellectual property infringement claim is based upon the use of the Deliverables or part in connection with devices not normally used with the Deliverables or in a manner for which the Deliverables or part were not designed provided, and to the extent (i) such use does not reasonably constitutes an intended or expected use and (ii) the infringement claim would have been avoided but for such use.

This indemnity shall continue to apply after termination of this Agreement and any applicable period of prescription shall not commence to run until Company has received notice of any infringement claim.

# ENTIRE AGREEMENT

This Agreement, including the attached Appendices and the documents incorporated by reference, shall constitute the entire agreement between the parties as to the matters hereunder and there are no other contracts, express or implied. This Agreement may only be modified by an agreement in writing signed by both parties.

# GOVERNING LAW

It is agreed that this agreement shall be governed by, construed, and enforced in accordance with the laws of the [State/Province] of [STATE/PROVINCE].

# NOTICES

Service of notice to either party may be made by [SPECIFY] mail, qualified [SPECIFY] carrier, or telecopier, addressed to Company at the address set forth in this Agreement or at some other address designated by the parties. Notice sent by [SPECIFY] carrier or telecopier will be effective one day after the date sent; Notice sent by regular mail shall be effective [NUMBER] days after the date received. Any notice provided by facsimile or other electronic means that is received after [HOUR] local time of the recipient will be deemed received the following business day.

# RIGHTS TO DELIVERABLES

All right, title and interest to any copyrights and other intellectual property rights (“Intellectual Property Rights”) in and to the Deliverables developed or produced by Service Provider solely in the course of the Project are the sole and exclusive properties of Company, once paid for in full, Service Provider hereby assigning to Company any and all such Intellectual Property Rights, without limitation as to territory, duration or otherwise. For more certainty, as the Deliverables does not include any Software, no title to Software is therefore transferred hereunder.

However no title to pre-existing material and methods, some of which will be contained within the Deliverables, which is already the property of Service Provider (“Pre-existing Service Provider’ Intellectual Property”) is transferred hereunder and, for the avoidance of doubt, all rights, title and interest to any Intellectual Property Rights in any Pre-existing Service Provider’ Intellectual al. Property shall be and remain the sole property of Service Provider, Service Provider hereby granting to Company, for itself and for its affiliates, subsidiaries, assignees and companys, a fully paid-up, royalty-free, perpetual, worldwide, transferable and non-exclusive licence to use (including to reproduce, modify, sublicense, distribute or commits such other acts covered by Intellectual Property Rights) any and all such Pre-existing Service Provider’ Intellectual Property. Notwithstanding anything to the contrary in this Agreement, Service Provider and its personnel shall be free to use and employ its and their general skills, know-how, and expertise and to use, disclose, and employ any generalised ideas, concepts, know-how, methods, techniques in so far as it and they do not thereby breach Service Provider obligations under the NDA nor infringe Company’s Intellectual Property Rights.

For the avoidance of doubt the Product shall be the exclusive property of Service Provider, but the ideas and techniques described in the documents that constitutes Pre-existing Service Provider’ Intellectual Property remains so and Service Provider shall be free to use such Pre-existing Service Provider’ Intellectual Property without restriction or limitation provided Company (including its affiliates, subsidiaries, assignees and clients) shall be entitled to use such Pre-existing Service Provider’ Intellectual Property as part of, or in connection with Company’s proposed solution (as the same may evolves or be modified), or in connection with products and/or services based on Company’s proposed solution (as the same may evolves or be modified).

# HEADINGS

The headings of this Agreement are for convenience only and shall have no effect on the meaning or interpretation of this Agreement.

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

## COMPANY SERVICE PROVIDER

Authorised Signature Authorised Signature

Print Name and Title Print Name and Title

**APPENDIX A**

# COMPANY’S RATE

[SERVICE PROVIDER NAME]’s hourly rate for completing the Project will be [AMOUNT] [COUNTRY] per hour. This rate includes a discount of approximately [PERCENTAGE %] under [SERVICE PROVIDER NAME]’s standard rate for Senior Consultants.

**APPENDIX B**

**STATEMENT OF WORK**

[SERVICE PROVIDER NAME] shall provide all materials, labour and other items necessary to complete a Functional Requirements Study for [SERVICE PROVIDER NAME]’s proposed [SERVICE PROVIDER NAME]. The Functional Requirements Study will be provided in the form of a report identifying the following:

The commercial and technical needs of the [COUNTRY] [SPECIFY] market, including the needs of agents, consumers and suppliers. [SERVICE PROVIDER NAME]’ personnel will be required to interview and assess the business and technical environments of key market players in the areas of air transportation, travel agencies, consolidators and tour operators. A summary analysis of each player visited will be provided, documenting findings, functional requirements for each player, integration efforts and individual benefits potentially obtained through our [SPECIFY] offering.

A technical architecture of the overall [SPECIFY] solution (presentation layer, business logic, search and database engine, host manager, packaging and pricing modules, integration requirements, etc) will be provided. Each feature described will be based on our common understanding of market opportunities assessed in our player visits. A segmented approach is required based on the following assumptions:

1. Requirements must be identified on the premise that [SPECIFY] is not part of the solution;

2. Requirements must be identified on the premise that [SERVICE PROVIDER NAME] will leverage [SPECIFY] as a central part of the solution.

Where [SPECIFY] is assumed to be the central point of the solution, a gap analysis is required (in terms of effort and feasibility).

The solution architecture must specify changes required to the base [SPECIFY] product, such that it effectively addresses the needs of the [COUNTRY] [SPECIFY] market, with a primary focus on [SPECIFY] agents.

In both cases, the solution architecture will also include components that tie into settlement and fulfilment, company support, billing, management and operational sub-systems. An assessment of [SPECIFY] service priorities, effort/time-scale for implementation, including estimates of short and long-term costs will also be provided.

For avoidance of doubt, while the above Deliverables will include technical requirements for, specifications of and descriptions of Software (“Specifications”), they will not consist of, nor include any Software.

A significant portion of the work will be performed on-site in [STATE/PROVINCE]. The final Functional Requirements document must be submitted to [SERVICE PROVIDER NAME] by [DATE] for review and approval.