

SOFTWARE DEVELOPMENT AGREEMENT	COMMENTS
<p>THIS SOFTWARE DEVELOPMENT AGREEMENT (this “<i>Agreement</i>”) is entered into as of _____, 201_ (the “<i>Effective Date</i>”), by and between _____, a _____ company (the “<i>Customer</i>”) and _____, a _____ corporation (the “<i>Company</i>” and collectively with Customer, the “<i>Parties</i>” and each, a “<i>Party</i>”).</p>	<p>[1] For purposes of background information, this agreement was created and used as a form for a company that specialized in the software development field. Specifically, it was a team of engineers that would take a project from a very basic non-technical spec and created a functional application. Another aspect of consideration when drafting and negotiating the agreement was that the team members were not always located within the US borders.</p> <p>This agreement was drafted for a medium-sized project. The template may be modified depending on project size.</p>
<b><u>WITNESSETH:</u></b>	
<p>WHEREAS, Customer is engaged, <i>inter alia</i>, in the development, license, sale, and distribution of certain products and services and is willing to enter into the Agreement with Company on the terms and conditions set forth herein;</p>	<p>[2] This agreement does not contain a “definition section”. Instead, important terms are defined in the body of the agreement. A definition section can be added setting forth, at least certain substantive terms, e.g. “Deliverables”, “Services”, “Software” and etc.</p>
<p>WHEREAS, Company is engaged in providing various software design and development services pursuant to one or more statements of work (“<i>SOW</i>”), substantially in the form attached hereto as <u>Appendix A</u>;</p>	<p>[3] Statement of work appendix can be a form negotiated substantive document or left blank to be drafted when the scope of work becomes clearer. Important items to include in the SOW include detailed deliverables and milestones</p>
<p>WHEREAS, Company is willing to provide certain software design and development Services, as further defined herein, and Customer wishes to retain Company’s Services;</p>	
<p>NOW, THEREFORE, in consideration of the mutual agreements hereinafter contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending legally to be bound hereby, agree as follows:</p>	
<p><b>1. <u>Services.</u></b></p>	
<p>1.1. <u>Engagement.</u> Customer hereby retains Company (i) to perform the services as set forth and</p>	<p>[4] In this provision, language, describing more broadly what should be delivered to the Customer,</p>

<p>agreed pursuant to one or more statements of work (“SOW”) substantially in the form attached hereto as <u>Appendix A</u> and signed by the Parties (collectively, the “Services”); (ii) to develop certain software, its technical design and documentation (the “Software”) and provide such Services as described herein; and (iii) deliver to Customer the Deliverables, including without limitation source code and object code for the Software together with appropriate documentation, Services and other appropriate materials and information comprising the same pursuant to the SOW as indicated therein in accordance with the terms and conditions set forth in this Agreement.</p>	<p>can be added. For example, engineers’ notes and comments that would allow customer’s technical personnel to practice the deliverables, provide technical customer support and other related functions.</p> <p>Source code and documentation are important, particularly if the project personnel might change or the project might be transferred to a new developer.</p>
<p>1.2. <u>Company’s Actions.</u> Company undertakes to invest all necessary planning, infrastructure and resources in respect of the completion of the transactions contemplated hereby.</p>	<p>[5] This section can be extended to include additional terms. For example, whether Customer would supply tools (e.g. computers) or necessary licenses for a third party software, code libraries etc.</p>
<p>1.3. <u>Standard of Service.</u> All Services to be provided by Company shall be performed in a workmanlike manner, and at a level of proficiency to be expected of a developer with the background and experience that Company has represented it has.</p>	
<p>1.4. <u>Non-Exclusive Service.</u> Customer understands and agrees that Company shall not be exclusively devoted to providing Services for Customer and that Company shall have duties and responsibilities to other customers, <i>provided that</i> any such duties and responsibilities shall be subject to the confidentiality obligations of Company pursuant to <u>Section 7</u> hereof.</p>	<p>[6] This provision, in certain circumstances, can provide for exclusive relationship between the Company and Customer. Those, generally, are rare.</p>
<p>1.5. <u>Coordination of Efforts.</u> Customer and Company shall cooperate in the development of a plan of coordination of their respective activities so as to optimize the efficient and productive performance of work and achievement of Customer’s overall goals and objectives.</p>	
<p>1.6. <u>Customer Inspection Rights and Obligations.</u></p>	<p>[7] In an instance when Customer needs to redirect the scope of the services, this section allows Customer to have a certain level of control in ongoing performance of services by Company without Company being in a breach of the agreement.</p>
<p>(a). Customer shall have the right to inspect the ongoing work being performed by Company and to give input</p>	

<p>as to whether such work meets the needs and expectations of Customer. Subject to the limitations of this Agreement, Customer shall have the right to stop or redirect Company's work if it does not appear that Company's efforts are meeting the needs or expectations of Customer.</p>	
<p>(b). Customer shall provided Company the following information in the form mutually agreed by the Parties:</p>	
<p>(i) Software technical requirements and specifications;</p>	
<p>(ii) if the Services rendered hereunder provide for completion or updating of Customer's source code then Customer shall provide Company with the latest version of the applicable source code; and</p>	
<p>(iii) testing and acceptance procedure (if applicable).</p>	
<p>1.7. <u>Meetings and Scheduling</u>. Company shall set his own hours of performing work and Customer shall not have the right to set defined work hours, <i>provided however</i>, Company shall be responsive to Customer's needs and shall be punctual in attending scheduled appointments and conferences with Customer or others as Company's Services require.</p>	
<p>1.8. <u>Acceptance</u>. Unless otherwise agreed by the Parties, the Deliverables shall be subject to written acceptance by Customer in accordance with the applicable SOW. As and when Customer receives from Company the Deliverables in accordance with <u>Section 1.8</u> hereof, Customer will review the same and conduct acceptance testing, as appropriate, for the purpose of determining whether or not they meet with Customer's approval and are in compliance with this Agreement and applicable SOW. If Customer rejects the Deliverables delivered hereunder and determines that changes or modifications are necessary to all or a portion of the Deliverables, as determined at Customer's reasonable discretion, then Customer will notify and advise Company of the desired changes or modifications, <i>provided however</i>, that any rejection shall be (i) reasonable, (ii) substantiated by a rejection notice specifically describing identifiable non-compliance with this Agreement, the applicable</p>	<p>[8] This section is generally heavily negotiated, especially in the software industry, where certain level of "bugyness" is hard to avoid. It is important to keep in mind that the deliverables must be tested against an objective written specification for the deliverables, rather than a random standard.</p> <p>Acceptance provisions are generally advantageous to the Customer, particularly provisions that tie acceptance to payment. The Company may wish to forgo acceptance provisions altogether.</p>

<p>specifications or the applicable SOW, (iii) not later than ten business (10) days after the delivery of the Deliverables. Company shall use its best efforts to make such changes or modifications promptly but in any event not later than sixty (60) days of such notification and resubmit corrected Deliverables to Customer for acceptance in accordance with the provisions of this <u>Section 1.8</u>. Once Customer has determined that the Deliverables and Services are acceptable, Customer shall notify Company of the same in writing <i>provided however</i> that Customer shall be deemed to have accepted the Deliverables if Customer fails to comply with the requirements of the rejection notice described above within ten (10) business days after the delivery of such Deliverables. If Customer rejects such Deliverables for a second time, either Party shall have the right but not the obligation to terminate this Agreement.</p>	
<p>1.9. <u>Representations, Warranties and Covenants of Company</u>. Company hereby represents and warrants that:</p>	<p>[9] These are general standard warranties that should be drafted with an eye towards a specific transaction and subject matter of deliverables. If under the scope of services, Company delivers a license to its own IP, warranties to that IP are of utmost importance.</p>
<p>(a).it has no obligations, legal or otherwise, inconsistent with the terms of this Agreement or with its undertaking a relationship with Customer;</p>	
<p>(b). its performance of all of the terms of this Agreement does not and will not breach any agreement or obligation of any kind made prior to entering into this Agreement, including agreements or obligations it may have with entities for which it has provided services;</p>	
<p>(c).the performance of the Services called for by this Agreement do not and will not violate any applicable law, rule or regulation, including but not limited to any relevant secrecy law, privacy rights, anti-spam regulations, embargo and export law, or any proprietary or other right of any third party;</p>	
<p>(d).it has not entered into or will not enter into any agreement (whether oral or written) in conflict with this Agreement;</p>	

<p>(e). it shall keep and maintain accurate books, records, reports and customer data relating to the Services and Deliverables;</p>	
<p>(f). Company is the owner and/or authorized licensee of Company Materials or any incidental and or integral programs which are required or necessary under the applicable SOW and which may be incidental or integral to, or are intended to interact or operate with the Deliverables together with the associated documentation;</p>	
<p>(g). Company will take all necessary steps to ensure compliance by its employees or its other representatives with Company’s obligations under this Agreement;</p>	
<p>(h). the Work Product, Services and Deliverables will not contain any protection feature designed to prevent their use, including time bombs, logic bombs, software locks, copy protect mechanisms, encryptions, time-activated disabling devices or other codes, instructions or devices which may disable the Deliverables;</p>	
<p>(i). the Deliverables, to Company’s knowledge, will be free of any “virus,” “worm,” and will not contain any “self destruction,” “disabling,” “lock out” or “metering” devices, as such terms are understood in Computer industry, which could impair Customer’s use of the same;</p>	
<p>(j). Company shall use commercially reasonable efforts to correct and repair any and all defects in workmanship in the Deliverables and any portion thereof that prevents the Deliverables from substantially conforming and performing as warranted in the specifications and/or applicable SOW for six (6) months from the sale to end user, if any, but in no event later than eight (8) months (unless otherwise agreed per SOW) from Customer’s acceptance of the Deliverables (<b>“Warranty Period”</b>),</p>	<p>[10] It is important for the Company to stress the risks of using open source materials should the Customer wish to do so.</p>

<p>provided such defects occur using the same hardware and/or software environment as set forth in applicable SOW, and there were no changes to the Deliverables after it was delivered to Customer. Warranty is not valid for any open source code used in software development in accordance with client's request and specification or in source code provided by client where Company did not make any changes; and</p>	
<p>(k). it shall represent the Services and any information relating to the Services and Deliverables accurately and fairly and shall avoid any misleading or unethical business practices and shall not mask, frame, overlay, impair or otherwise materially alter, affect or impair the images, information, perception, service quality or security obtained from Customer.</p>	
<p>1.10. <u>Representations, Warranties and Covenants of Customer.</u> Customer hereby represents, warrants and covenants that:</p>	<p>[11] Since the Customer provides information and technical specifications, the Company may want the Customer to take responsibility for the information the Customer provides.</p>
<p>(a).it has no obligations, legal or otherwise, inconsistent with the terms of this Agreement or with its undertaking a relationship with Company;</p>	
<p>(b).its performance of all of the terms of this Agreement does not and will not breach any agreement or obligation of any kind made prior to entering into this Agreement, including agreements or obligations it may have with entities for which it has provided services;</p>	
<p>(c).the performance of its rights and obligations under this Agreement do not and will not violate any applicable law, rule or regulation, including but not limited to any relevant secrecy law, privacy rights, anti-spam regulations, or any proprietary or other right of any third party;</p>	
<p>(d).Customer has all necessary rights in the customer's material and applications</p>	

<p>provided to Company to carry out its obligation pursuant to this Agreement; and neither the customer’s materials and/or applications provided to Company infringe or misappropriate any copyright, patent, trademark, trade secret or other proprietary right of any person or entity;</p>	
<p>(e). it will assure, in connection with performance of its obligations pursuant to this Agreement or arising or relating therefrom, no product, documentation, Confidential Information or any portion thereof, and any information relating thereto or to this Agreement, is exported, transshipped or re-exported, directly or indirectly, in violation of any applicable law and ensure that neither the products nor the documentation, underlying information or technology may be downloaded or otherwise exported or re-exported in violation of applicable embargo or export/import law, regulation or treaty;</p>	
<p>(f). it has not entered into or will not enter into any agreement (whether oral or written) in conflict with this Agreement;</p>	
<p>(g). it shall keep and maintain accurate books, records, reports and customer data relating to this Agreement;</p>	
<p>(h). subject to confidentiality obligations hereunder, Customer will promptly provide access of Customer’s proprietary and confidential information and records necessary for Company’s performance of its Services hereunder; and</p>	
<p>(i). it will avoid any misleading or unethical business practices.</p>	
<p><b>2. <u>Contract Administration.</u></b></p>	
<p>2.1. <u>Contract Coordinator.</u> Upon execution of this Agreement, each Party shall notify the other Party of the name, business address, and telephone number of its Contract Coordinator (the “<b>Contact Coordinator</b>”). Contract Coordinators of each Party shall be responsible for arranging all meetings, visits,</p>	<p>[12] Sections 2.1 and 2.2 are important to streamline communications between the parties in connection with agreements and technical parameters of the deliverables and services.</p>

<p>and consultations between the Parties that are of a non-technical nature. Contract Coordinators shall also be responsible for receiving all notices under this Agreement and for all administrative matters such as invoices, payments, and amendments.</p>	
<p>2.2. <u>Technical Coordinator.</u> Each SOW shall state the name, business address, and telephone number of the Technical Coordinators (the “<b>Technical Coordinator</b>”) of each Party. The Technical Coordinators of each Party designated for a particular Work Statement shall be responsible for technical and performance matters, and the transmission and receipt of Deliverables, Services and technical information between the Parties, insofar as they relate to such SOW.</p>	
<p>2.3. <u>Issuance of SOW.</u> The initial SOW agreed to by the Parties is set forth in the <u>Appendix A</u> attached to this Agreement. Additional SOW, if any, regardless of whether they relate to the same subject matter as the initial SOW, shall become effective upon execution by authorized representatives of Customer and Company.</p>	
<p>2.4. <u>Changes.</u> If Customer requests a variation to any Statement of Work, Customer shall:</p>	<p>[13] Change requests can benefit both parties, especially in long term projects. During a development process changes to the deliverable may become necessary that would require additional time and, in some cases, financial commitments that must become part of the agreement. This procedure allows for incorporation of such changes without major agreement overhaul. In other words, when the scope of services needs to be adjusted this section provides for a mechanism for such adjustment.</p>
<p>(a). provide a document specifying in sufficient detail additional features, enhancements or other modifications to the Deliverables and/or Services (“<b>Change Request</b>”) to Company. If Customer requests a Change Request, Company will conduct an analysis of the impact of such Change Request on the price, schedule, Deliverables and/or Services of the relevant Statement of Work and submit a summary in written or electronic form to Customer for its approval. Company reserves the right, for any substantial effort associated with</p>	

<p>such impact analysis for a Change Request, to charge Customer using the time and materials services rates specified in the applicable Statement of Work to which Change Request applies, or as otherwise mutually agreed by Customer and Company. Any impact analysis to be charged to Customer shall require prior approval from Customer, and such approval shall not be unreasonably withheld. Customer shall authorize any impact analysis work in writing.</p>	
<p>(b). Once the impact analysis of a Change Request has been completed, it shall be submitted in writing to Customer for approval. Change Requests shall only be acted upon once they have been agreed and duly authorized in writing by both Company and Customer. Neither Party will have any obligation to execute a Change Request.</p>	
<p>(c). The Parties shall discuss progress made on the Deliverables and issues that may arise with respect to the Services during the status meetings as required under a Statement of Work. Either Party will notify the other promptly upon learning of any event that may impact the Deliverables or the Services.</p>	
<p>2.5. <u>Notice of Delay.</u> Each Party agrees to notify the other Party promptly of any factor, occurrence, or event coming to its attention that may affect Company’s ability to meet the requirements of any SOW issued under this Agreement, or that is likely to occasion any material delay in delivery of Deliverables.</p>	
<p><b>3. <u>Term and Termination.</u></b></p>	
<p>3.1. <u>Term.</u> This Agreement is effective as of the Effective Date and will remain in full force and effect until the later of (i) twelve (12) months from the Effective Date, and (ii) the expiration of the applicable Warranty Period, if any, for the last Deliverable under any Work Statement, unless this Agreement is earlier terminated as provided herein.</p>	<p>[14] Term can be also provided in an applicable SOW. The term of the agreement itself largely depends on the scope of the services and parties intent regarding having an ongoing relationship. For example, if parties foresee undertaking multiple projects, the agreement may have a longer term, where the parties execute several SOWs to set forth</p>

	technical scope of the deliverables and services for each project.
3.2. <u>Termination by Customer.</u> Company hereby expressly agrees that, Customer may terminate this Agreement upon sixty (60) day written notice for any reason, <i>provided that</i> Customer shall (i) fully reimburse Company for any investment and expenses related to the development of the Software and Deliverables pursuant to this Agreement or any applicable SOW; and (ii) pay all outstanding invoices.	
3.3. <u>Termination.</u> The Parties may terminate this Agreement as provided below:	
(a).the Parties may terminate this Agreement by mutual written consent at any time;	
(b).Company may terminate this Agreement by giving notice to Customer at any time, if Customer has breached any material representation, obligation, covenant or warranty contained in this Agreement in any material respect and such breach remains uncured for a period of thirty (30) days after such notice, provided that, the cure period for Customer’s breach of <u>Section 4.1</u> (Compensation) shall be fifteen (15) days;	
(c). Customer may terminate this Agreement by giving notice to Company at any time, if Company has breached any representation, obligation, covenant or warranty contained in this Agreement and such breach remains uncured for a period of thirty (30) days after such notice; and	
(d).each Party may terminate this Agreement (i) if any other Party declares insolvency or bankruptcy, (ii) if a petition is filed in any court and not dismissed in ninety (90) days to declare any other Party bankrupt or for such other Party’s reorganization under bankruptcy, insolvency, reorganization, moratorium, or other laws relating to or affecting the rights of creditors; or (iii) if any other Party consents to the	

<p>appointment of a trustee in bankruptcy or a receiver or similar entity.</p>	
<p>3.4. <u>Effect of Termination.</u> Upon the effective date of any termination of this Agreement, all legal obligation, rights and duties arising out of this Agreement shall terminate except that: (i) Customer shall remain obligated to pay any balance due to Company for Services or Deliverables provided hereunder; (ii) the confidentiality restrictions, ownership of proprietary rights provisions, and independent contractor provisions of this Agreement shall continue to apply and shall survive the termination of this Agreement as ongoing covenants between the Parties; (iii) except if Customer fails to make payments in accordance with <u>Section 4.1</u> of this Agreement, Company shall have the continuing obligation to return to Customer all tangible and intangible property of Customer and all versions of any proprietary products of Customer or developed for Customer during the Term of this Agreement; and (iv) except if Customer fails to make payments in accordance with <u>Section 4.1</u> of this Agreement, Company shall have the ongoing duty and obligation to confirm in writing and take all reasonable steps to secure proprietary right in the proprietary products developed pursuant to this Agreement in the name and exclusive ownership of Customer. Notwithstanding anything to the contrary herein, Customer hereby expressly agrees that, Company may terminate this Agreement upon notice or any reason prior to commencement of Services by Company contemplated hereby without any liability to Company whatsoever, provided that Company shall refund Customer's deposits, if any, less any and all expenses incurred by Company in connection with this Agreement (e.g. licenses acquired etc.).</p>	<p>[15] This section is very pro-Company (developer). The Customer should have taken note that if it fails to pay, the Company can retain the deliverables or at least a portion thereof.</p>
<p><b>4. <u>Compensation.</u></b></p>	
<p>4.1. <u>Compensation.</u> In consideration for Company's performance of its obligations pursuant</p>	<p>[16] Different compensation can be set forth in each SOW. This especially convenient if several</p>

<p>hereto, and subject to the terms and conditions of this Agreement and applicable SOW, Customer agrees to pay Company a fee as set forth in the Work Statement.</p>	<p>different projects are undertaken by the same parties.</p>
<p>4.2. <u>Total Value of the Agreement.</u> Subject to <u>Section 4.1</u> hereof and applicable Work Statement(s) pursuant hereto, unless otherwise agreed by the Parties, the total value of the Services provided pursuant to this Agreement shall be fixed according to the SOW(s) or should be provided in reports to Customer based on actual man/hours efforts spent by Company for development of Deliverables.</p>	<p>[17] This Section 4.2 is only applicable and required in certain foreign jurisdictions, e.g. Ukraine.</p>
<p>4.3. <u>Taxes and Other Payments.</u> Each Party is responsible for complying with the collection, payment, and reporting of all taxes imposed by any governmental authority applicable to its activities in connection with this Agreement. Neither Party is responsible for taxes that may be imposed on the other Party.</p>	
<p>4.4. <u>Payments.</u> All payments pursuant to this Agreement shall be made in U.S. dollars and all payment due to Company shall be made by Customer by check drawn on a U.S. bank or electronically to a bank account provided by Company.</p>	
<p>4.5. <u>Invoicing.</u> Company will submit invoices to Customer for payment for work and/or Deliverables at such time or times as payment becomes due under each SOW. Unless the Work Statement provides otherwise, Customer shall pay the invoices within fifteen (15) days after their receipt.</p>	
<p>4.6. <u>Development Rates.</u> Upon mutual agreement of the Parties, Customer shall pay Company the following hourly rates for the Services performed under applicable SOW ("<b><i>Development Rates</i></b>"):</p>	<p>[18] Rates can be moved to SOW to provide for greater flexibility.</p>
<p>(a). <u>Software Engineer</u> [**/per hour]</p>	
<p>(b). <u>Senior Software Engineer -</u> [**/per hour]</p>	
<p>(c). _____</p>	
<p>(d). _____</p>	
<p>5. <u>Mutual Cross-Reference.</u> Any use of Company's or its representative's names in any</p>	<p>[19] Some developers like to use the name of their existing customers in advertisements to attract</p>

<p>printed or published material is hereby approved by Company, <i>provided that</i> Company shall be consulted with regard to the disclosure of the information relating to Company for purposes of verifying its accuracy. Any use of Customer's or its representative's names in any printed or published material by Company is hereby approved by Customer provided that Customer shall be consulted with regard to the disclosure of the information relating to Customer for purposes of verifying its accuracy.</p>	<p>new customers, which may go against certain policies of many companies. Hence, it is preferable to have that point negotiated and be reflected in the agreement.</p>
<p><b>6. <u>Expense Reimbursement.</u></b> Customer shall reimburse Company for all business travel and other out-of-pocket expenses reasonably incurred by Company in the course of performing his duties hereunder this Agreement. All reimbursable expenses shall be appropriately documented and shall be in reasonable detail and in a format and manner consistent with Customer's expense reporting policy, as well as applicable federal and state tax record keeping requirements. For anticipated expenses in excess of \$500, Company shall obtain Customer's prior approval.</p>	<p>[20] Expense reimbursement can be limited to travel and lodging or expanded to include additional expenses.</p>
<p><b>7. <u>Ownership and Use of Proprietary Property</u></b></p>	
<p>7.1. <u>Ownership of Work Product and Deliverables by Customer.</u> Except as otherwise specifically and unequivocally provided in the applicable SOW, all of the Deliverables, as and when developed, and any and all concepts, designs, ideas, inventions, specifications, improvements, and advice of Company, and any computer programs, including source code, object code, documents, enhancements and maintenance modifications any other modifications arising therefrom, all files, including input and output materials, all documentation related to such computer programs and files, all media upon which any such computer programs, files and documentation are located (including tapes, disks and other storage media) and any and all related material, and other proprietary rights, which Company may possess or developed by Company in connection with this Agreement whether complete or incomplete, both as individual items and/or a combination of components shall be deemed, collectively, the "<b><i>Work Product.</i></b>" The Parties hereto hereby agree that the</p>	<p>[21] The structure of Section 7 is as follows:  By default, Customer owns the Deliverables and Work Product described in the SOW. Exceptions to this default rule are provided in Sections 7.2-7.4.  Here, in the event of substantial breach, the Customer agrees to forfeit ownership of Work Product/Deliverables until the breach is cured. The purpose of the above provision is to ensure that the Company gets paid.  In case of a dispute, one possible solution is to place the software in escrow until the dispute is resolved.</p>

<p>Work Product, including without limitation any Deliverables, are works done which have been specially ordered or commissioned by Customer and all right, title and interest therein shall vest in Customer immediately and irrevocably upon creation and shall be deemed as “works made for hire,” and Customer shall have and enjoy any and all proprietary rights in and to the Deliverables under all federal, state, and international intellectual property laws (including, without limitation, the Copyright Act of 1976, as amended) and laws of any other applicable jurisdiction, <i>provided that</i> if Customer substantially breached this Agreement, including without limitation, failed to make payments in accordance with <u>Section 4.1</u> of this Agreement, Customer hereby expressly agrees to forfeit all of its rights to the Work Product and all intellectual property rights arising therefrom in favor of Company until such breach is cured and ratified. To the extent permissible under any applicable law and regulation, Customer shall be considered the author and/or owner, as applicable, of the Work Product for purposes of copyright, patents, trade secrets and other applicable intellectual property rights and shall own all the rights in and to such copyright, patents, trade secrets and other applicable intellectual property arising from or relating to the Work Product and, as between Company and Customer, only Customer shall have the right to obtain a copyright registration on the same which Customer may do in its name, its trade name or the name of its nominee(s). Accordingly, among other things, Customer is the author and owner of the Work Product and shall have the sole and exclusive rights to do and authorize any acts with respect to the Work Product and any derivatives thereof. Notwithstanding anything contrary herein and for avoidance of doubt, Customer hereby expressly agree, that all right, title and interest to Company Material shall solely belong to and owned by Company and shall not be considered as Deliverables or any part thereof.</p>	
<p>7.2. <u>Further Cooperation.</u> Company agrees to execute any and all documents and take all other actions necessary to vest full rights and ownership of such materials and the copyrights, patents, or other proprietary rights therefore in Customer, including but not limited to executing confirmations of the work for hire status of Company, executing copyright assignments irrevocably and fully</p>	<p>[22] Given the distinction between Preexisting Works/Company Materials and Deliverables/Work Product, Customer may require Company to identify specifically which portions of the source code belong to the Company and which portions belong to the Customer.</p>

<p>assigning all copyrights to Customer. Company hereby waives any other rights in and to such proprietary products that may attach or arise under any federal, state, local, international laws or the laws of any other country or jurisdiction, including but not limited to so-called “moral rights.”</p>	
<p>7.3. <u>Preexisting Works.</u> In the event that any Deliverable constitutes a derivative work of any preexisting work, the Parties shall ensure that the Work Statement pertaining to such Deliverable so indicates by references to (1) the nature of such preexisting work; (2) its owner; (3) any restrictions or royalty terms applicable to its use of such preexisting work or any Party’s exploitation of the Deliverable as a derivative work thereof; and (4) the source of a Party’s authority to employ the preexisting work in the preparation of the Deliverable. Unless otherwise specifically agreed in the SOW pertaining to such Deliverable, before initiating the preparation of any Deliverable that is a derivative work of a preexisting work, such authorized Party shall cause the other Party, its successor, and assigns, to have and obtain the irrevocable, nonexclusive, worldwide, royalty-free right and license to (1) use, execute, reproduce, display, perform, distribute internally or externally, sell copies of, and prepare derivative works based upon all preexisting works and derivative works thereof; and (2) authorize or sublicense others from time to time to do any or all of the foregoing. For avoidance of doubt, Customer hereby expressly agrees that Company Materials and any intellectual property associated therewith shall constitute Preexisting Work for purposes of this <u>Section 7.3</u> and Agreement.</p>	<p>[23] The reference to Company Materials is intended to allow the Company to retain its ownership of Company Materials for use in other projects (see Section 7.4). The Customer gets a non-exclusive license (with ability to sublicense) to Company Materials and Company Material Derivatives (see Section 7.4(b)) but full ownership of Work Product and Deliverables (see Section 7.1)</p> <p>A broader version of this provision may require the Company to obtain the approval of the Customer before the Company uses/incorporates previously unspecified preexisting works (not just when derivatives of preexisting works are made).</p>
<p>7.4. <u>Company’s License.</u> Subject to the terms and conditions set forth herein, Company hereby grants to Customer the following rights (the “<i>License</i>”) and Customer hereby accepts such License:</p>	<p>[24] As described above, the Customer gets a non-exclusive license to Company Materials and Company Material Derivatives. Company Materials are described in Appendix B.</p>
<p>(a).a non-exclusive non-transferable license to use, reproduce, modify, integrate Company’s materials listed on <u>Appendix B</u> or applicable SOW (“<i>Company’s Materials</i>”) solely for the purpose of developing, using and distributing the Software and Deliverables in accordance with</p>	<p>[25] Customer may wish to negotiate transferability of the non-exclusive license to Company Materials and its Derivatives in the event that Customer wishes to transfer Deliverables to a third party. (Alternatively, how Deliverables are to be handled might also be handled in the SOW.)</p>

<p>applicable SOW and this Agreement, <i>provided that</i> all Company’s Materials and Software developed hereunder shall retain and maintain all electronic prominent copyright notices and logos referring to Company as originally placed by Company (i.e. “<i>Copyright © 201_*****. and its licensors. All rights reserved</i>”);</p>	
<p>(b). Notwithstanding anything contrary herein and for avoidance of doubt, Customer hereby expressly agree, that all right, title and interest to Company Materials as well as Company Material Derivatives (as such term is defined below) shall (i) solely belong to and owned by Company, and (ii) as to Company Materials Derivatives, vest in Company immediately and irrevocably upon its creation and shall be deemed as “<i>works made for hire,</i>” and Company shall have and enjoy any and all proprietary rights in and to Company Material Derivatives under all federal, state, and international intellectual property laws (including, without limitation, the Copyright Act of 1976, as amended) and laws of any other applicable jurisdiction. For purposes of this Agreement “<i>Company Material Derivatives</i>” shall mean any modifications, enhancements upon Company Materials listed on <u>Appendix B</u>, including without limitations, a revision, modification, translation, abridgement, condensation, expansion, or any other form in which Company Material may be recast, transformed, or adapted, that are NOT expressly set forth in a SOW; and</p>	<p>[26] Customer may seek a more specific description of Company Material Derivatives. Customer may also feel that, as a matter of fairness, it should get what it pays for.</p>
<p>(c). Notwithstanding the foregoing, nothing in the Agreement shall limit Company from (i) developing software based on or derived from any Company Materials not licensed herein and not listed on <u>Appendix B</u> at any time; (ii) developing downloadable versions of software based on Company Materials</p>	

<p>with any third party; and (iii) entering into agreements to develop and distribute such products or software with any third party without any further obligations to Customer.</p>	
<p><b>8. <u>Confidential Information.</u></b></p>	
<p>8.1. <u>Confidential Information.</u> Each Party, (is such capacity, the “<i>Recipient</i>”) hereto agrees to hold in strict confidence and not to disclose to any third party, other than its employees, agents and professional advisors, any information, product, document or other material of any nature relating to or concerning the other Party (the “<i>Disclosing Party</i>”), that is provided or made available to Recipient either before or after the date of execution of this Agreement, directly or indirectly in any form whatsoever, including in writing, orally, and machine readable, and including, but not be limited to, any correspondence, memoranda, notes, e-mails, formulas, samples, equipment, compilations, blueprints, business information, technical information, know-how, information regarding patents, patent applications, software, computer object code or source code, algorithms, high-level structures, graphic user interfaces, ongoing research and development, business plans, business or marketing strategies or plans, products or product development strategies or plans, information concerning current and future products and services, customers, suppliers and markets, price lists and pricing information, financial statements and forecasts, computerized or other magnetically filed data, methods and techniques, manufacturing processes, developments, inventions, designs, drawings, engineering specifications, hardware configuration information, trade secrets, financial information of the Disclosing Party and any other business records and information, including without limitation the information about this Agreement, the use or disclosure of which might reasonably be construed to be contrary to the interests of the Disclosing Party, including information of third parties subject to confidentiality obligations and which the Disclosing Party may share with the Recipient (“<i>Confidential Information</i>”), <i>provided, however,</i> that Confidential Information shall not include information which: (i) that is already in the</p>	<p>[27] Confidentiality provisions prevent unauthorized disclosure and/or use of Confidential Information. Here, Confidential Information is described broadly. Parties may seek greater specificity as to how Confidential Information may be identified (i.e. watermark). Parties may also seek to provide an expiration date for obligations described in this section.</p>

<p>possession of the Recipient before receipt from the Disclosing Party; (ii) is or becomes rightfully in the public domain without no fault of the Recipient; (iii) is received by the Recipient from a third party who or which is not under any obligation of confidentiality or restriction on use or disclosure concerning such information, or (iv) is disclosed under operation of law to the public or to a third party without a duty of confidentiality. If the Recipient asserts one of the four exceptions to Confidential Information above, then the Recipient shall prove such assertion by proper forms of documentary evidence.</p>	
<p>8.2. Recipient understands and agrees, except as otherwise provided in this Agreement:</p>	
<p>(a).use the Confidential Information only for the purposes of the Agreement,</p>	
<p>(b).not disclose or permit disclosure of any of the Confidential Information to any third party without the Disclosing Party's prior written approval <i>provided however</i> that Recipient may disclose Confidential Information to any employee of Recipient who has a need to know such Confidential Information in accordance with customary business practice, to professional advisors of the Disclosing Party (unless such disclosure is restricted or withheld by the Disclosing Party), and to professional advisors of Recipient in connection with the Agreement provided that they observe confidentiality in accordance with this Agreement;</p>	
<p>(c).not make copies, photocopies, facsimiles or other reproductions of any of the Confidential Information unless authorized by the Disclosing Party;</p>	
<p>(d).not remove any notice on or in any Confidential Information of the Disclosing Party or remove any trademark, trade name, logo, or notice affixed to such confidential Information;</p>	
<p>(e).take all reasonable measures to protect the secrecy of the Confidential Information and to avoid disclosure or use of the Confidential Information to</p>	

<p>prevent it from falling into the public domain or into the possession of persons other than those persons authorized hereunder to have such information. Such measures shall require the degree of care that Recipient utilizes to protect its own Confidential Information of a similar nature, and shall be no less than reasonable care;</p>	
<p>(f). notify the Disclosing Party in writing of any misuse or misappropriation of Confidential Information which comes to Recipient's attention;</p>	
<p>(g). notify the Disclosing Party if disclosure of Confidential Information by Recipient is necessary to comply with the requirements of any law, government order, regulation or legal process prior to such disclosure and at the Disclosing Party's request use best efforts to seek an appropriate protective order in connection with such legal process and, if unsuccessful, to use best efforts to assure that confidential treatment will be granted to the disclosed Confidential Information; and</p>	
<p>(h). return any Confidential Information to the Disclosing Party within fifteen (15) days of receipt of a written request for the return of such Confidential Information by the Disclosing Party.</p>	
<p>8.3. <u>Ownership of Confidential Information.</u> The Recipient further agrees that all of the Confidential Information or any derivatives thereof, is and shall continue to be the exclusive property of the Disclosing Party, whether or not prepared in whole or in part by Company and disclosed to or entrusted to the Recipient's custody.</p>	
<p><b>9. <u>Indemnification; Limitations on liability.</u></b></p>	<p>[28] Indemnification Provision is very broad. This can be further negotiated based on the scope of a transaction.</p> <p>It is important to remember that if Deliverables infringe third party IP, defending the infringement action can be costly endeavor. In most cases, the party that uses the Deliverables (i.e. Customer in</p>

	<p>this instance) would be likely the first party to get sued for IP infringement arising out of the use of the Deliverables. Accordingly, each party has to be mindful of the risks associated with the use of the Deliverables when negotiating indemnification and limitation of liability clauses.</p>
<p>9.1. Each Party (<b><i>“Indemnifying Party”</i></b>) agrees to indemnify, defend and hold harmless the other and their respective officers, directors, employees, agents, successors, and assigns (<b><i>“Indemnified Party”</i></b>), from any and all losses, liabilities, damages and claims, and all related expenses (including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties) and costs related to, arising from, or in connection with any third-party claim related to, arising from, or in connection with the actual or alleged:</p>	
<p>(a). infringement by the Services, in the case where Company is the Indemnifying Party,</p>	
<p>(b). infringement by Customer trademarks, Work Product, Deliverables, or any materials, products, services or documents provided to Company, end users and public by Customer, in the case where Customer is the Indemnifying Party, of any third-party intellectual property and/or proprietary rights;</p>	
<p>(c). personal injury (including death) or property damage due to the gross negligence or intentional misconduct of the Indemnifying Party; and/or</p>	
<p>(d). breach by the Indemnifying Party of any of its representations, warranties, obligations, and/or covenants set forth herein.</p>	
<p>9.2. Indemnified Party shall promptly notify Indemnifying Party in writing after it becomes aware of any such claims, but failure to give such notice shall not relieve Indemnifying Party of its indemnity obligations hereunder unless the Indemnifying Party has been materially prejudiced by such failure. Indemnifying Party shall have exclusive control over the</p>	

<p>settlement or defense of such claims or actions, except that Indemnified Party may appear in the action, at its own expense, through counsel reasonably acceptable to Indemnifying Party, only in the event it is mutually determined by the Parties that an actual conflict of interest would exist by Indemnifying Party's representation of Indemnified Party and Indemnifying Party in such action. The Indemnified Party will, if requested by the Indemnifying Party, give reasonable assistance (in a manner consistent with the Parties' respective confidentiality obligations and preservation of attorney/client, work product and other privileges) to the Indemnifying Party in defense of any claim. The Indemnifying Party will reimburse the Indemnified Party for any reasonable attorney expenses directly incurred from providing such assistance. Indemnifying Party shall be entitled to retain all monetary proceeds, attorneys' fees, costs and other rewards it receives as a result of defending or settling such claims. The Indemnifying Party will have the right to consent to the entry of judgment with respect to, or otherwise settle, an indemnified claim with the prior written consent of the Indemnified Party. In the event Indemnifying Party fails to promptly indemnify and defend such claims and/or pay Indemnified Party's expenses, as provided above, Indemnified Party shall have the right to defend itself, and in that case, Indemnifying Party shall reimburse Indemnified Party for all of its attorneys' fees, costs and damages incurred in settling or defending such claims within thirty (30) days of each of Indemnified Party's written requests.</p>	
<p>9.3. Except for a party's obligation to indemnify the other as set forth herein and/or except for damages arising from a party's breach of a confidentiality obligation set forth herein and intellectual property rights, should a dispute as between the Parties arise against either Party, damages payable by one Party to the other shall under no</p>	

<p>circumstances exceed the amount paid or otherwise payable to Company by Customer for the Services.</p>	
<p>9.4. <u>EXCLUSIONS OF DAMAGES AND LIABILITY.</u> IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY FORM OR THEORY OF ACTION WHATSOEVER, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, EQUITY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, OVERHEAD, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF PROVIDED THAT NOTHING HEREIN SHALL BE CONSTRUED AS LIMITING ONE PARTY’S LIABILITY FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF THE OTHER PARTY. THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO LIABILITY FOR DEATH OR PERSONAL INJURY TO THE EXTENT THAT APPLICABLE LAW PROHIBITS SUCH LIMITATION. FURTHERMORE, BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO ALL CIRCUMSTANCES.</p>	
<p>9.5. <u>DISCLAIMER.</u> EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT OR APPLICABLE SOW, THE DELIVERABLES AND SERVICES HEREUNDER ARE PROVIDED BY COMPANY “AS IS AND WITH ALL FAULTS” AND, TO THE MAXIMUM EXTENT PERMITTED BY LAW, COMPANY DISCLAIMS ALL OTHER WARRANTIES, OF ANY KIND, EITHER EXPRESS, OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. COMPANY DOES NOT WARRANT THAT THE DELIVERABLES AND SERVICES HEREUNDER WILL MEET</p>	<p>[29] See Section 1.8 for Acceptance and warranties for Deliverables.</p>

<p>CUSTOMER'S OR END USERS' REQUIREMENTS OR WILL OPERATE IN THE COMBINATIONS WHICH MAY BE SELECTED BY CUSTOMER OR USER OR THAT THE SERVICES HEREUNDER OR THE OPERATION OF THE DELIVERABLES WILL BE SECURE, ERROR-FREE, OR UNINTERRUPTED, AND COMPANY HEREBY DISCLAIMS ANY AND ALL LIABILITY ON ACCOUNT THEREOF TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW.</p>	
<p>9.6. <u>LIMITATION ON LIABILITY.</u> IF THE AGREEMENT IS EXPIRED OR TERMINATED PURSUANT TO ANY PROVISION OF HEREOF, NEITHER PARTY SHALL BE LIABLE TO THE OTHER BECAUSE OF SUCH TERMINATION, FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS OR GOODWILL. TERMINATION SHALL NOT, HOWEVER, RELIEVE EITHER PARTY OF ITS LIABILITY OR OBLIGATION FOR ANY BREACH OR DEFAULT OCCURRING BEFORE THE TERMINATION. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, UPON ACCEPTANCE OF THE DELIVERABLES IN WHOLE OR IN PART IN ACCORDANCE WITH <u>SECTION 1.8</u> HEREOF OR APPLICABLE SOW BY THE CUSTOMER, CUSTOMER EXPRESSLY AGREES THAT SUBJECT TO WARRANTY OBLIGATIONS SET FORTH IN <u>SECTION 1.9(j)</u>, COMPANY FULFILLED AND COMPLETED ITS TECHNICAL AND LEGAL OBLIGATIONS TO THE CUSTOMER, AND CUSTOMER HAS NO CLAIMS AGAINST COMPANY IN CONNECTION WITH THE DELIVERABLES, INCLUDING, WITHOUT LIMITATION, ASSOCIATED THEREWITH SOURCE CODE AND OBJECT CODE FOR THE SOFTWARE TOGETHER WITH OTHER MATERIALS COMPRISING THE DELIVERABLES PURSUANT TO THE APPLICABLE SOW AND THIS AGREEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, COMPANY'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE THIRTY (30%) OF TOTAL AMOUNT OF PAYMENTS THERETOFORE PAID</p>	<p>[30] This Limitation on Liability provision is very pro-Company with a view if the deliverables are accepted the claims against the company should be very limiting.</p>

<p>BY CUSTOMER DURING THE PREVIOUS TWELVE MONTH PERIOD TO COMPANY IN CONNECTION WITH THE DELIVERABLES OR SERVICES RELATING TO SUCH LIABILITY.</p>	
<p><b>10. Miscellaneous Provisions.</b></p>	
<p>10.1. <u>Survival</u>. The provisions of <u>Sections 7, 8, 9 and 10</u> hereof shall survive the termination or expiration of this Agreement.</p>	
<p>10.2. <u>Non-solicitation</u>. For so long as Company is performing its duties on behalf of Customer hereunder, and for a period of the shorter of (i) the maximum period allowed under applicable law or (ii) two (2) years thereafter, Customer and its affiliates, shall not, without the prior written consent of Company, either directly or indirectly, for itself or on behalf of or in conjunction with any other person endeavor or attempt in any way to communicate with or solicit any person or entity who is or during such period becomes a customer, supplier, employee, agent or representative of Company, in any manner which interferes or might interfere with such person or entity's relationship with Company, or in an effort to obtain such person as a customer, supplier, employee, agent or representative of any business in competition with Company.</p>	<p>[31] Consider whether the non-compete provisions would be enforceable under the relevant state laws.</p>
<p>10.3. <u>Injunctive Relief</u>. Each Party agree that a breach of any of the promises or agreements contained herein will result in irreparable and continuing damage to a Party for which there will be no adequate remedy at law, and such Party shall be entitled to injunctive relief and/or a decree for specific performance, and such other relief as may be proper (including monetary damages if appropriate).</p>	<p>[32] Injunctive relief is important provision when dealing with confidential information exchange and transfer and license of the intellectual property.</p>
<p>10.4. <u>Independent Contractor</u>. Both Customer and Company agree that the relationship of Customer and Company established by this Agreement is that of independent contractors and, except as otherwise specifically provided herein, nothing contained in this Agreement shall be construed to (i) give either Party the power to direct and control the day-to-day activities of the other, (ii) constitute the Parties as partners, joint venturers, franchisor-franchisee, co-owners or otherwise as participants in a joint or common undertaking, or (iii) allow Company to create or assume any obligation on behalf of Customer for any purpose whatsoever.</p>	

<p>10.5. <u>No Prior Agreements.</u> Each Party, as to itself, represents and warrants to the other that its execution of this Agreement, this engagement, and the performance of these duties hereunder do not and will not violate or be a breach of any agreement with any other person.</p>	
<p>10.6. <u>Assignment; Binding Effect.</u> Neither Party may assign or transfer this agreement without the prior written consent of the other Party. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the Parties hereto and their respective heirs, legal representatives, successors, and assigns.</p>	
<p>10.7. <u>Complete Agreement; Waiver.</u> This Agreement is intended to fully reflect the terms of the original agreement of engagement of Company's Services. No provision of the Agreement will be considered waived unless such waiver is in writing and signed by the Party that benefits from the enforcement of such provision. No waiver of any provision in the Agreement, however, will be deemed a waiver of a subsequent breach of such provision or a waiver of a similar provision. In addition, a waiver of any breach or a failure to enforce any term or condition of the Agreement will not in any way affect, limit, or waive a Party's rights under the Agreement at any time to enforce strict compliance thereafter with every term and condition of the Agreement.</p>	
<p>10.8. <u>Notices.</u> All claims, instructions, consents, designations, notices, waivers, and other communications in connection with the Agreement ("<b>Notifications</b>") will be in writing. Such Notifications will be deemed properly given (a) when received if delivered personally, (b) if delivered by facsimile transmission when the appropriate telecopy confirmation is received; (c) upon the receipt of the electronic transmission by the server of the recipient when transmitted by electronic mail, or (d) within three (3) days after deposit with an internationally recognized express delivery service, in each case when transmitted to a Party at the following address or location:</p>	
<p><u>If to Customer:</u></p>	
<p>_____</p>	
<p>_____</p>	
<p>_____</p>	

<u>attention:</u>	
<u>facsimile:</u>	
<u>email:</u>	
<u>If to Company:</u>	
_____	
_____	
<u>attention:</u>	
<u>facsimile:</u>	
<u>email:</u>	
Each Party may send any Notifications or other communication hereunder to the intended recipient at the address set forth above using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail, or electronic mail), but no such notice, request, demand, claim, or other communication will be deemed to have been duly given unless and until it actually is received by the intended recipient. Each may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other notice in the manner herein set forth.	
10.9. <u>Severability.</u> If any one or more of the provisions of this Agreement is ruled to be wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction then: (a) the validity and enforceability of all provisions of this Agreement not ruled to be invalid or unenforceable shall be unaffected; (b) the effect of the ruling shall be limited to the jurisdiction of the court or other government body making the ruling; (c) the provision(s) held wholly or partly invalid or unenforceable shall be deemed amended, and the court or other government body is authorized to amend and to reform the provision(s) to the minimum extent necessary to render it valid and enforceable in conformity with the Parties' intent as manifested in this Agreement and a provision having a similar economic effect shall be substituted; and (d) if the ruling and/or the controlling principle of law or equity leading to the ruling is subsequently overruled, modified, or amended by legislative, judicial, or administrative action, then the provision(s) in question as originally set forth in the Agreement shall be deemed valid and enforceable to the maximum	

<p>extent permitted by the new controlling principal of law or equity.</p>	
<p>10.10. <u>Headings</u>. The Sections headings herein are for reference purposes only and are not intended in any way to describe, interpret, define, or limit the extent or intent of this Agreement or of any part hereof.</p>	
<p>10.11. <u>Publicity</u>. The Parties shall work together to issue publicity and general marketing communications concerning their relationship and other mutually agreed-upon matters. In addition, none of the Party shall issue such publicity and general marketing communications concerning their relationship without the prior written consent of the other Party (not to be unreasonably withheld or delayed).</p>	<p>[33]This provision requires the issuance of publicity materials.</p>
<p>10.12. <u>Governing Law</u>. This Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Virginia without reference to conflicts of law rules and principles. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.</p>	<p>[34]Choice of law provision.</p>
<p>10.13. <u>Arbitration</u>.</p>	
<p>(a). In the event of a dispute between the Parties arising out of or in connection with this Agreement, the Parties hereto shall use their best efforts to resolve the dispute on an amicable basis. If an amicable settlement cannot be reached, either Party hereto may request, by written notice, that the dispute be resolved by arbitration by a panel of three (3) arbitrators administered by the American Arbitration Association in accordance with its “Procedures for Cases under the UNCITRAL Arbitration Rules” (the “<i>Rules</i>”)</p>	<p>[35] Arbitration is a typical option in cross-border transactions. Generally, an order of arbitration body is more readily enforced in a foreign jurisdiction than of a foreign court.</p>
<p>(b). In the event of any conflict between the Rules and the provisions of this Agreement, the provisions of this Agreement shall prevail.</p>	
<p>(c). The place of the arbitration shall be ***** , USA.</p>	

<p>(d). The claimant Party shall appoint an arbitrator and the respondent Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint the third arbitrator, in accordance with the provisions of the Rules.</p>	
<p>(e). The English language shall be used as the written and spoken language for all matters connected with all references to arbitration.</p>	
<p>(f). The decision of the arbitrators shall be made by majority vote and shall be made in writing.</p>	
<p>(g). The decision of the arbitrators shall be final and binding on the Parties, save in the event of fraud, manifest mistake or failure by any of the arbitrators to disclose any conflict of interest.</p>	
<p>(h). The decision of the arbitrators may be enforced by any court of competent jurisdiction and may be executed against the person and assets of the losing Party in any jurisdiction. For the avoidance of doubt, such court includes any court that is authorized to make such an order by virtue of any treaty or legislation relating to the reciprocal enforcement of foreign arbitral awards or judgments.</p>	
<p>(i). Nothing in this <u>Section 10.12</u> shall prevent a Party from seeking or obtaining equitable relief from a court of competent jurisdiction, whether before, during or after arbitration proceedings.</p>	
<p>10.14. <u>Legal Expenses.</u> The prevailing Party in any legal action, including arbitration, brought by one Party against the other and arising out of this Agreement shall be entitled, along with any other rights and remedies it may have, to reimbursement for its expenses, including court costs and reasonable attorney’s fees. Such fees may be set by the court in the trial of such action or may be enforced in a separate action brought for that purpose. Such fees shall be in addition to any other relief that may be awarded.</p>	
<p>10.15. <u>Signatures.</u> This Agreement and any written notice, Consent, agreement or document</p>	

<p>provided for in this Agreement shall be deemed signed and/or bearing the original signature of a given person, if such person's name and/or adopted signature is placed by such person on the document whether by manual signature, electronic transmission or facsimile transmission by the person. Delivery of a copy of this Agreement or such other document bearing an original signature by facsimile transmission or a scanned image of the original signature, by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.</p>	
<p>10.16. <u>Counterparts.</u> The Agreement and any documents pursuant hereto may be separately executed by the Parties in two (2) or more counterparts and all such counterparts shall be deemed an original, but all of which together shall constitute one and the same instrument and will be binding on the Parties as if they had originally signed one copy of the Agreement.</p>	
<p>[SIGNATURE PAGES FOLLOW]</p>	
<p>execution page 1 of 1</p>	
<p>IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.</p>	
<p>THE CUSTOMER _____</p> <p>By: _____</p> <p>Name:</p> <p>Title:</p> <p>COMPANY: *****</p> <p>By: _____</p> <p>Name:</p> <p>Title:</p>	

