

## **Professional and System Administration Services - Section E**

### **1. Services.**

1.1. We agree to undertake and complete the tasks set out in the Order Form in accordance with, and on, the schedule set out therein (Services). We also agree to provide the Goods set out in the Order Form. In some cases these Goods will be licensed to you, rather than sold. You agree to be bound by the terms of any license agreement covering these Goods.

1.2. We will devote reasonable time and effort, skill and attention to the performance of the Services. Provided, however, that we will not be required to perform Services above and beyond those set out in the Order Form unless agreed upon in writing. We are not responsible for the failure to provide Service(s) set out in the Order Form due to technical limitations or configurations or failure by you to provide accurate information necessary to perform the Service(s). You will be billed only for hours of work completed.

1.3. The Services shall be performed by us as an independent contractor. If set out in the Order Form, we shall be your agent solely for the purpose of purchasing, and if necessary entering into license agreements for, the Goods. Other than the specific acts set out in the previous sentence, we shall not have the power to bind or represent you for any other purpose.

### **2. Your Responsibilities.**

2.1. You will furnish us with all the data and information required by us to perform the Services, as well as reasonable access to key personnel who have the requisite knowledge and experience to provide material assistance to us.

2.2. You will promptly obtain, and upon our request provide to us confirmation that you have received all "Required Consents." "Required Consents" means any consents or approvals required to give us, and if necessary, our subcontractors the right or license to access, use and/or modify, the hardware, software and other products, data and content that you provide to us to perform the Services, or that we require to perform the Services. If you fail to provide us with the Required Consents, and we are unable to perform the Services as a result, you will remain responsible for the full amount of the Fees.

### **3. Term and Termination.**

3.1. The Effective Date of this Agreement is the date on which we accept the Order Form. The term of this Agreement shall begin on the Effective Date. It shall continue until we deliver to you a statement that the milestones set out on the Order Form are completed or this Agreement is terminated as otherwise set out herein.

3.2. Either party will have the right to terminate this Agreement in the event that the other party fails to cure any material breach within thirty days after receipt of notice from the other party. A material breach shall be determined from the perspective of a reasonable business person with significant experience conducting business on the Internet. Notices of material breach must

contain sufficient detail for the party against whom the assertion of material breach is directed to identify the breach and attempt to take corrective action.

#### **4. Fees and Expenses.**

4.1. You will pay to us the fees set out in the Order Form (Fees). Prior to commencement of any work, the payment for it must be received in full. If the Order Form is split into multiple sections and/or milestones, prior to commencement of work on any section or milestone, payment for that section or milestone must be received in full. You will make all payments under this Agreement upon receipt of our invoice. Should you fail to make a timely payment, we will charge you a finance charge equal to the lesser of 1.5% per month or the maximum rate permissible under law.

4.2. Should you dispute any of the charges set out on an invoice, you shall notify us within ten days of your receipt of such an invoice. Your notice shall set out in sufficient detail the basis for your dispute. We shall have thirty days from the date of such a notice of dispute to reply. The dispute shall be valid only if the invoice has been paid within ten days of issue; should an invoice not be paid, or be only partially paid, then you waive all rights of dispute and confirm that it is correct and valid. Should we disagree with your notice of dispute, the parties shall resolve the dispute as set out in paragraph [12.5]. You are responsible for all taxes other than those taxes based on our income.

4.3. You will reimburse us for all of our reasonable out-of-pocket expenses in connection with the performance of this Agreement. Any reasonable expenses, such as media, materials, component procurement, product inventory, license fees and other related expenses required by us to perform our obligations under this Agreement will be billed to you at actual cost. Any out of pocket expenses greater than \$100.00 must be approved by you.

#### **5. Warranties.**

5.1. Our Warranty. We represent and warrant that we will use commercially reasonable efforts to perform the Services in a professional and workmanlike manner. Your sole and exclusive remedy for our breach of our warranty will be for us to re-perform the Services, or, at our option, refund the Fees you have already paid to us for the Services that could not be performed.

5.2. Your Warranty. You represent and warrant that you have sufficient authority to enter into this Agreement and to authorize us to perform our obligations hereunder and to provide us with any consents and/or licenses required in this Agreement.

#### **6. Warranty Disclaimer.**

EXCEPT AS EXPRESSLY PROVIDED IN THE SECTION ENTITLED "OUR WARRANTY" THE SERVICES AND/OR GOODS ARE PROVIDED ON AN "AS IS" BASIS AND WE SPECIFICALLY DISCLAIM ALL WARRANTIES AND INDEMNITIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR ANY OTHER WARRANTY ARISING FROM THE COURSE OF PERFORMANCE OR COURSE OF DEALING.

## **7. Limitation of Liability.**

WE SHALL NOT BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, MULTIPLE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT WHETHER BASED IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE) OR ON ANY OTHER LEGAL OR EQUITABLE GROUNDS, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS PROVISION SHALL APPLY TO US, OUR SUBSIDIARIES, AFFILIATES, EMPLOYEES, CONTRACTORS, AGENTS AND MEMBERS OF ANY OF OUR GOVERNING BOARDS. IF ANY APPLICABLE AUTHORITY DOES NOT ALLOW THE DISCLAIMER OR LIMITATION OF LIABILITY STATED HEREIN, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY (EXCEPT FOR THE FEES PAYABLE BY YOU TO US UNDER THIS AGREEMENT) IN THE AGGREGATE WITH RESPECT TO ANY AND ALL BREACHES, DEFAULTS, OR CLAIM OF LIABILITY UNDER THIS AGREEMENT FOR AN AMOUNT GREATER THAN THE FEES PAID BY YOU TO US DURING THE THREE MONTH PERIOD PRECEDING A CLAIM GIVING RISE TO SUCH LIABILITY.

## **8. Indemnification.**

Each party shall indemnify and hold the other harmless from, and at its own expense agrees to defend, or at its option to settle, any claim, suit or proceeding brought or threatened against the other party so far as it is based on a claim that a Good or Service supplied hereunder infringes any U.S. patent, copyright, or registered trademark, or that a Required Consent has not been procured. This paragraph will be conditioned on the party seeking indemnification notifying the other party promptly in writing of the claim and giving the indemnitor full authority, information, and assistance for the defense and settlement thereof. The party seeking indemnification shall have the right to participate in the defense of the claim at their expense. If, in our case, such claim has occurred, or in is likely to occur, you agree to permit us, at our option and expense, either to: (a) procure for you the right to continue using the Good or Service; (b) replace with a product or service, regardless of manufacturer, performing the same or similar function as the infringing Good or Service, or modify the same so that it becomes non-infringing; or (c) if neither of the foregoing alternatives is reasonably available, immediately terminate our obligations (and your rights) under this Agreement with regard to such Good or Service.

## **9. Inventions and Other Information.**

9.1. [Unless set out in the Statement of Work, the Services will be "works made for hire" and/or you shall own all right title and interest in the Services - to the limited extent that such right, title and interest is capable of copyright or patent (Invention/Idea). Subject to any reservation of rights set out in the Order Form, we hereby assign to you our entire right, title and interest (throughout the United States and in all foreign countries), free and clear of all liens and encumbrances, other than a lien for any unpaid Fees, in and to each Invention/Idea, which shall be your sole property. This expressly excludes any open-source or commercial software or scripts used, that are owned by their respective publishers.

9.2. We agree to assist you at any time, and not just during the Term, in consummating, evidencing or otherwise effecting the assignment of each Invention/Idea as provided herein (which shall include any application for or registration or recordation of any patent or copyright),

in any and all countries, which assistance shall include the execution of documents and any assignments to you.]

9.3. Certain elements of the Services may be based on our prior work. We warrant that we currently have a license or other right to use these elements as part of the Services. You expressly understand and agree that certain intellectual property incorporated into the Services may have been used by us in other projects, and will be used by us in subsequent projects (Template Services). You shall have no intellectual property interest in the Template Services, other than a right to use them as incorporated into the Services. You grant to us unlimited, royalty-free, non-exclusive right to use, distribute, license, sub-license, sell and/or create derivative uses of the Template Services, regardless of the fact that they have been incorporated into the Services.

9.4. If set out in the Order Form, we will jointly own any intellectual property that is jointly developed. If this is the case, we each agree to cooperate to facilitate securing our respective rights in the resulting intellectual property. In addition, we each grant to the other unlimited, royalty-free, non-exclusive rights to use, distribute, license, sub-license, sell and/or create derivative uses of the intellectual property.

## **10. Relationship of the Parties.**

Each party is, shall be, and shall act as, an independent contractor. Other than as set out in paragraph [1.3] above, neither party shall represent or hold itself out as the agent of the other.

## **11. Non-solicitation**

11.1. Each party agrees that during the Term, and for a period of two years following termination or expiration, that it will not, directly or indirectly, induce or attempt to induce any employee of the other, or any of its subcontractors, to terminate or abandon his employment, or engagement, with the other for any purpose whatsoever.

11.2. We each agree that the clients, customers, vendors and other entities or individuals with whom we have similar relationships are proprietary relationships. Neither of us shall directly or indirectly, call on, service, solicit or otherwise do business with any customer or vendor of the other.

## **12. Miscellaneous.**

12.1. This Agreement may not be assigned by either party without the express written consent of the other. Notwithstanding this paragraph, you understand that we may delegate all or part of our obligations to subcontractors. However, we agree to remain responsible for the overall completion of the Services.

12.2. The terms of this Agreement, including the Order Form, are intended by the Parties to be the final expression of their agreement with respect to its subject matter and this Agreement may not be contradicted by evidence of any prior or contemporaneous agreement, except as expressly set forth herein. The parties further intend that this Agreement, including the Order Form, shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence

whatsoever may be introduced in any judicial, administrative, or other legal proceeding involving this Agreement.

12.3. This Agreement shall not be varied, altered, modified, changed or in any way amended except by an instrument in writing executed by the parties.

12.4. If any provision of this Agreement, or the application thereof to any person, place, or circumstance, shall be held by an arbitrator or a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement and such provisions as applied to other persons, places, and circumstances shall remain in full force and effect, and such provision shall be enforced to fullest extent consistent with applicable law.

12.5. All disputes shall be brought before the U.S. District Court for the Northern District of Illinois located in Rockford, Illinois (Western District). The parties agree that this court shall have exclusive jurisdiction over all disputes and other matters relating to the interpretation and enforcement of this contract or any other document entered into by the parties. Further, the parties agree that venue shall be proper in the court set out above, and agree that they shall not contest notice from that court. State law issues concerning construction, interpretation and performance of this contract shall be governed by the substantive law of the State of Illinois, excluding its choice of law rules. The United Nations Convention on Contracts for International Sale of Goods shall not apply.

12.6. This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit nor against the party responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of this Agreement.

12.7. Neither party will be in default if its failure to perform any obligation hereunder, other than its obligation to pay the Fees, is caused by supervening conditions beyond that party's reasonable control, including acts of God, civil commotion, interruptions of telecommunications providers, strikes, vandalism or "hacker" attacks, or governmental demands or requirements.

12.8. This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument.

The provisions of paragraphs 6, 7, 8, 9, 11, 12.2, 12.4, 12.5, 12.6, and 12.8 will survive the expiration of this Agreement or its termination for any reason.