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CLDP
COMMERCIAL LAW DEVELOPMENT PROGRAM

INTELLECTUAL PROPERTY MANUAL FOR KOSOVO SOFTWARE DEVELOPERS

Pristina, 2010

Luljeta PLAKOLLI-KASUMI, LL.M.

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FOREWORD

BY MARK S. WALTER, BUSINESS ENABLING ENVIRONMENT ADVISOR, USAID KOSOVO PRIVATE ENTERPRISE PROGRAM

The Intellectual Property Contracting Manual is testimony to the idea that legal tools belong to those who are best able to use them. We often think of Intellectual Property (IP) Protection to be under the exclusive authority of the government. If we apply for protection, the government, based upon the regulatory standards it has developed, may or may not grant the right. If it does, then the government is responsible for enforcing that protection against infringement.

But, there are other ways in which Intellectual Property is protected, especially in a country such as Kosovo where implementation and enforcement of the law is weak. Some self protections are as simple as proving first use of a writing by obtaining a postal date stamp over the seal of an envelop into which the writing is inserted. But the protections available to entrepreneurial creators of intellectual property can be far more sophisticated.

Self protection of intellectual property extends to carefully drafted contracts that provide limited license for use but retain ownership for the licensor. This kind of protection depends ultimately far more on the negotiating and contracting skills of licensor or his/her attorney than it does on the government sponsored protection. It also, of course, requires the existence of a judicial structure capable of adequately enforcing contractual obligations. But, most importantly, it depends on the understanding in the private sector that contractual autonomy – or, the right of parties to negotiate agreements no matter what they are so long as they are within the law – affords business protections that no government can.

The negotiating and contracting skills described in these pages do not come easily. They require a thorough understanding of the principles of contracting and the established best practices in global protection of intellectual property, and to some degree a deep appreciation for the clever ways in which people will attempt to illegitimately reap the benefits accruing from the work of others.

The skill sets described in this manual were developed collaboratively by the USAID Kosovo Private Enterprise Program (USAID-KPEP) and the U.S. Department of Commerce Commercial Law Development Program (CLDP). CLDP began in the Autumn of 2009 with a Workshop for Information Technology professionals. In collaboration with USAID-KPEP, a second workshop was held in the Spring of 2010 that involved both IT professionals and lawyers. USAID-KPEP followed this by formally funding this manual. KPEP deeply appreciates the advisory support given in the development of this manual by CLDP, and looks forward to more capacity building programming.

FOREWORD

BY STEPHEN D. GARDNER, CHIEF COUNSEL, COMMERCIAL LAW DEVELOPMENT PROGRAM, US DEPARTMENT OF COMMERCE

This manual on intellectual property for Kosovo's IT sector is a direct response to a need expressed by Kosovo's software development entrepreneurs. Kosovo's burgeoning IT sector, while still small, has significant competitive advantages: its systems engineers and software developers are very competent and its firms have adopted the most recent technologies. The international and regional demand for Kosovo IT services has also been the basis for significant job creation, increased export of services, and technological entrepreneurship and innovation.

In response to this new business environment and at the behest of the US Embassy in Kosovo, the US Department of Commerce's Commercial Law Development Program (CLDP) conducted workshops for Kosovo software entrepreneurs in September 2009 and March 2010. The year-long program, funded by the US Department of State, was held in partnership with the US Embassy in Kosovo, the Kosovo Association of Information and Communication Technology (STIKK) and USAID's Kosovo Private Enterprise Program. The programs consisted of specially prepared country-specific case studies, roundtable discussions, and interactive working sessions with a focus on software licensing, IP ownership in a joint development model, and IP ownership under a work-for-hire software development model.

The software entrepreneurs who took part in the workshops requested, as a next step, a manual that would be based upon the material discussed during the workshops, with a strong emphasis on the creation and protection of intellectual property by software development firms.

Written by a team of US and EU experts and a Kosovo IP professor and attorney, the present manual combines basic explanations of intellectual property laws and enforcement methods with interactive hypotheticals that help readers address practical situations that are normally encountered in the software development field.

CLDP is part of the Office of the General Counsel at the US Department of Commerce. Helping Kosovo software entrepreneurs create and protect intellectual property, as the CLDP program did, gives Kosovo a vested interest in the enforcement of intellectual property rights. The worldwide enforcement of intellectual property rights is a priority objective of the US Department of Commerce.

The CLDP program and this manual will also help Kosovo software entrepreneurs create a solid intellectual property foundation for their firms' development, thus contributing to the objectives outlined in President Obama's Cairo speech in June 2009 on entrepreneurship and innovation in Muslim-majority countries.

Many of CLDP's programs in Eastern Europe, Eurasia and the Maghreb work to foster entrepreneurship and innovation. CLDP does so by providing technical assistance with academia-to-business technology transfer, as well as by working with entrepreneurs' associations and technology incubators.

It is my hope that this manual, by providing for a deeper understanding of the key aspects of intellectual property rights in the context of software development, will enable readers to further contribute to economic growth and to job creation in Kosovo.

LIST OF ACRONYMS

CLDP	Commercial Law Development Program
CTM	Community Trademark
EPO	European Patent Office
EU	European Union
EULA	End-User License Agreement
IP	Intellectual Property
IPR	Intellectual Property Rights
IPO	Industrial Property Office
KPEP	Kosovo Private Enterprise Program
NDA	Non-disclosure Agreement
OEM	Original Equipment Manufacturer
PCT	Patent Cooperation Treaty
TM	Trademark
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
US	United States
USAID	United States Agency for International Development
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

I. INTRODUCTION

A software development company can control the development of computer software. However, when it comes to issues of software ownership and who should reap the rewards of the software product, complex legal issues arise. Matters are further complicated by the need to identify what intellectual property rights apply to what software. And the complexities do not end there. If the software is developed jointly by two companies belonging to two different countries, choice of law issues also arise.

Different business enterprises nowadays increasingly specialize in a specific type of software to meet increasing market demand—for example, services, games, or technology. Likewise, different countries are known as leaders in different kinds of software development; Japan is known for software games, India is known for software services, Ireland is known for software products and Israel is known for software technology. On the top of this list come the United States with its leading software companies such as Microsoft, IBM, Symantec, Adobe and alike. All these types of software are exported to different parts of the world, thus enabling those countries leading software development to benefit economically from the growth of their respective software industries.

The relationship between software development companies, intellectual property, and economic growth is undeniable. We live in a knowledge-based global economy that is driven by competition in productivity and innovation. Productivity and innovation, in turn, depend on access to information and the ability to transform information into a valuable tool. Developing software is a lengthy and costly process that is undertaken by companies looking to profit from the ultimate sale of the software. In order to benefit economically, the software producer must develop something that is useful to the consumer. Producing software requires knowledge, skills, creativity and access to information—resources protected by intellectual property law.

A software developer's first contact with intellectual property law begins when the developer has gathered information that provides an advantage over other competitors to the extent that the developer deems it worthy of protection. This information can be anything: an idea, a method, a formula or process. Ideas *per se* are not protected by any kind of intellectual property law, but the way ideas are transformed into something useful is. Knowing how to protect one's interests is therefore crucial.

A sole software developer has an easier time protecting information from other competitors because the knowledge is concentrated in one individual. Protecting information becomes more difficult when a developer works for a software company that outsources development or enters into a joint development agreement with another company. The more people involved, the more difficult it becomes to ensure that valuable information is not being communicated to your competitors. Precautionary measures such as establishing confidentiality policies and keeping your confidential information as a trade secret must be taken to maintain a competitive edge.

The next phase, sale of a finished software product, has its own intellectual property issues. In the case of a sole developer, the intellectual property rights belong to the developer. As mentioned previously, this scenario gets more complicated in cases of outsourcing and joint-development agreements. It is very important that the ownership issue is clarified at the outset of development, because the initial agreement will determine who has the right to sell and license the software.

The purpose of this manual is to provide Kosovo software development companies with information on how to protect their intellectual property rights during and after the software development process, and thus contribute to company's profitability and reputation, and ultimately to Kosovo's general economic growth. In become profitable, reputable firms that can contribute to the economic growth of Kosovo.

Although the manual primarily targets software developers, it is also useful for others working in the IT sector.

The manual is structured into six (6) chapters including this introductory chapter.

Chapter II addresses some key software-specific intellectual property issues in Kosovo law, most of which derive from international and European standards in this field. In addition, this chapter also provides information on the existing institutional IP infrastructure in Kosovo.

Chapter III gives practical guidance on how to turn intellectual property into a company's most valuable intangible asset, providing concrete samples for IP auditing and licensing agreements, and other forms of contracts.

Some practical information on employment policies for software development companies are outlined in Chapter IV, including tips on how to draft company employment agreements for both technical and non-technical employees.

Chapter VI provides some hypothetical case studies for analysis.

II. LEGAL FRAMEWORK

A. Kosovo Intellectual Property Legislation- Software Specific

Due to the number of laws passed and the large number of institutional initiatives undertaken to improve Kosovo's IP system, the industry has recently garnered significant interest from the public. Additionally, the European Union set robust intellectual property protection as a precondition for future membership in the European Union. The private sector is becoming aware of the fact that economic advantage vis-à-vis competitors, be they local or foreign, can be preserved only if due consideration is given to intellectual property and the use of written contracts and agreements for preserving IP rights. These practices are becoming a trend for Kosovo's businesses, especially for the technology sector.

Notwithstanding these developments, the Kosovo IP legal framework is not yet complete. It has to be further harmonized with international and European standards, and new laws governing subject-matter that is not yet covered must be passed. Implementation of the legal framework in practice is the greatest challenge of all. The backlog of cases combined with an inadequate number of judges, or rather, a lack of qualified or specialized IP judges, means IP cases are not effectively addressed by the courts.

There are many ways one can benefit from the existing intellectual property framework and institutional infrastructure. Software companies play an important role in advocating for protection of intellectual property product. By educating the end-user on how to use software properly without infringing intellectual property interests, and by helping the courts to address problems more efficiently, software companies are bringing intellectual property issues to the forefront of the political and judicial discussion. Software companies must also be proactive and must make sure to know what protection is available under domestic legislation, what must be secured by contract, and what the governing law provides for. Those steps ensure that the company is properly assuming risks and benefits before moving into a contractual relationship.

Before elaborating on the existing software-specific legislative framework, let us first define Intellectual Property.

Intellectual Property protects creations of the minds such as inventions, literary and artistic works, and symbols, names and, images and designs used in commerce (WIPO). It protects innovation and creativity with an identifiable economic value. Intellectual property is divided into two main categories: (1) **Industrial Property**, which encompasses inventions protected by **Patents**, product names and company names protected by **Trademarks**, confidential information protected by **Trade Secrets**, product and packaging designs protected by **Industrial Design**, ornamental designs of a functional system protected by **Design Patent** and other forms of protections such are **Plant Varieties** and **Integrated Circuits**, and 2) **Copyright**, which protects books, pamphlets, lectures, dramatic works, musical works, choreographic works, cinematographic works, drawings, paintings, architectural works, maps, plans, sketches, photographic works, and the like.

Kosovo offers software developers all the above forms of protection except for patent protection. The form of intellectual property protection that will apply to a particular software product largely depends on the legislation of the country where the software is developed or where it will be sold. Intellectual property laws are country specific. Therefore, it is very important that the differences between different IP regimes around the globe are identified.

Example: *If you have developed software in Kosovo and want to sell it in the United States, the first thing that must be determined is what type of protection is available in each country. In the United States the practical application of the code (software) can be patentable, whereas in Kosovo this is not possible.*

This manual will now address what each of these forms of Intellectual Property protection represents, and what legislation governs them in Kosovo.

Copyright

Copyright in Kosovo is governed by the Law on Copyright and Related Rights (Law No. 2004/45), as promulgated by Regulation No. 2006/46 of 24 August 2006. It is the most common legal protection available for software developers, and its purpose is to ensure that the time and the skills spent on developing software benefit the developers of the software. Copyright protects original works of authorship, both literal and artistic, i.e., books, texts, music, films and other works of art. In terms of software, Copyright protects the software's source or object code. "Original" means that the software could not have been and was not copied from somewhere. "Literal" means written works. Since a software developer has to actually write the source or object code of a program, software is regarded as a literal work similar to books.

The developer of the original software has the exclusive right to use or license his/her software for commercial use and can prohibit others from using or copying this software for commercial use without authorization. These rights are known as economic rights under the Copyright Law.

Copyright does not protect the idea behind a software program, but does protect the machine-readable code in a particular software program. Therefore, it does not prevent others from writing their own different machine-readable code to achieve the same function as the existing software.

A software developer is regarded as an "author." Duration of copyright protection for software is the lifetime of the author, plus 70 years. Under Kosovo law, only natural persons can be authors of copyrighted works. However, if the natural person (software

developer) works for a software company, the software copyright will belong to the company, unless otherwise specified by the employment contract. The software company is the holder of all economic rights such as the right to use, sell, and license software and to prohibit others from using, selling, or licensing the software without prior consent. Examples of employment contract templates that show more precisely how employers preserve their rights with respect to works created by their employees are provided in later chapters

Even if the economic rights of a developer's product belong to their employer, the employee has a right to be recognized as the author or developer of the software. Under Kosovo Copyright Law this is known as author's moral right.

There are also situations where an independent software developer is asked to develop a software program for someone else, be it a natural or legal person. In such cases, the developer is hired to develop a software program, which will then belong to the employer. Like work created under work-for-hire contracts, the economic rights to the software end-product will belong to the person who commissioned the work.

Copyright in software exists from the moment the software is developed. There is no requirement to register software beforehand. Once software is created, the author (developer), or the lawful right holder (employer), can sell or license the software. Software is usually licensed either to individual users or to other organizations or companies. Different types of software licenses are described in greater detail in later chapters.

If another individual or company uses, copies, transforms, adapts, or otherwise misuses software without prior consent, the author (developer) or the lawful right holder can bring a civil action in court. Because most software disputes have to do with claims of software piracy, criminal prosecution may also be commenced. (See the Criminal Code of Kosovo for more details on the offence of piracy.)

Patents

The Law governing patents in Kosovo is Patent Law (Law no. 2004/49) of 27 September 2004 as promulgated by Regulation No. 2004/56 of 21 December 2004, and amended by Law No. 02/L-100, as promulgated by Regulation No. 2007/10 of 6 February 2007.

Because Kosovo's intellectual property law was drafted in accordance with the law of the European Union, computer programs are not protected by Patent Law in Kosovo.

Software patentability has long been one of the most debated topics in the field of intellectual property. Even in countries favoring software patents, certain limitations apply. For example, rules of the European Patent Office provide that the computer programs as

such are not patentable are they are excluded subject matters under Article 52, but one can still patent computer implemented processes. In the United States business methods implemented in software are granted software patent, whereas Japan grants patents for software-related inventions. Other countries such as New Zealand, Australia, South Korea, and Philippines have also different patent regimes and limitations that may vary across software patent-granting countries. Countries who are leaders in software development try to maintain a policy of promoting protection in other countries because the rights inherent in a patent are far broader than the rights inherent in a copyright. Filing for a software patent can be expensive, though. Furthermore, even if software is patentable according to the law of a particular country, if the patent filing price exceeds the cost of software development, then the developer has no incentive to file. The United States has addressed this conflict of incentives by creating the “provisional patent application,” which is less expensive and gives the developer time to evaluate the market cost and revenues of the software before filing for a non-provisional patent application. Provisional patent applications secure priority filing date (provided that certain conditions are met) and give an applicant up to 12 months to file a non-provisional patent application

Regardless of variations in legislation, the following are key concepts regarding software patents to keep in mind when applying for a software patent.

The rights attached to patents are only valid in the country/countries where the patent was granted. In any other country, anyone can manufacture, use or sell the patented new product or process without repercussions. Even in territories where software is patented, the patent is only valid for a limited period. The duration varies depending on the country, but 20 years counted from the filing date is a common timeframe according to Article 33 of the TRIPS Agreement. In most countries, the product or process must meet three conditions in order to be patented:

- it must be new;
- it must involve an inventive step; and
- it must be capable of industrial application (Article 27 of the TRIPS Agreement) .

Once the patent is granted, the inventor (software developer), has the exclusive right to manufacture, use or sell the new product or process, in the country/countries where the patent was granted. No one else may exercise these rights in the country where the patent was granted, unless authorized to do so by the patent holder. Patents can be sold or licensed for specific countries and/or applications. In case of patent infringement, the patent holder can enforce his/her rights through the appropriate courts.

For more factual information regarding software patentability, please visit http://www.factindex.com/s/so/software_patent.html#Opposition%20to%20Software%20Patents

Trademark

While trademark law cannot be used to protect software, it can be used to protect software's commercial name. Trademarks in Kosovo are governed by the Trademark Law No. 02/L-54 of 23 February 2006 as promulgated by Regulation No. 2006/38 of 28 June 2006, although this law is currently being amended.

The purpose of trademarks is two-fold: (1) to avoid consumer confusion with respect to the origin of the goods and services, in this case of software and (2) to provide the owner of the trademark with the exclusive right to use the trademark for its goods and services.

Trademarks can be words, letters, numerals, or any other combination thereof, and may consist of drawings, symbols, signs, colors, sounds and in some countries (not in Europe), even fragrances. Trademark rights can exist through use or through registration, depending on a country's laws. Trademark rights can last in perpetuity as long as the mark is in use and not abandoned. In some countries, trademarks must be registered with a government office to be valid. Before registering the trademark, the office usually consults a database to make sure that a similar or identical trademark has not already been registered. In some countries, the government office publishes the request for registration for about a month to give third-parties with valid reasons for opposing the registration a chance to express and justify their opposition. The owner of the trademark has the exclusive right to use it for its goods and/or services in the country/countries where the trademark is protected. No one else may sell similar goods and services under the trademark in the country/countries where the trademark is protected if such use would be likely to cause confusion as to the source of the goods or services in the minds of the consumers in that jurisdiction..

Trademarks are very important and because they can enhance sales, it is crucial that once software is given a name or logo it is qualified as a trademark. For more useful tips on how to create a protectable and marketable trademark visit: <http://www.registeringatrademark.com/protectable-marketable-trademark.shtml>

Custom Measures for Protection of Intellectual Property Rights (IPR)

Software piracy and counterfeiting are the two most common IPR infringements. Software piracy occurs when fake copies of software are produced in such a way that they appear to be authentic. Counterfeiting includes the illegal copying and distribution of commercial software on CD or DVD, along with any accompanying manuals that the original legitimate software was sold with. Counterfeit software is usually sold at prices well below the retail price of the legitimate software. (Webopedia at http://www.webopedia.com/TERM/C/counterfeit_software.html) Piracy and counterfeiting cause the software industry to suffer huge financial losses each year. Customs authorities play an important role in fighting both piracy and counterfeiting.

The Kosovo Assembly has recently passed the Law on Customs Measures for Protection of Intellectual Property Rights. Law No. 2009/03-L-170 was promulgated by President's Decree DL-004-2010 of 8 January 2010. The law sets out procedures for the Custom authorities to follow when goods that infringe IPR are discovered. Customs authorities can undertake necessary measures whenever there are sufficient grounds to suspect that goods infringe intellectual property rights. In these cases, customs authorities will notify the rightholder of such measures being undertaken, and the right holder must within 3 days declare if he/she wants to submit an application for action. The applicant must also submit a proof that he is the right holder. Once the application is received, the customs authorities will have 30 days in disposal to decide how they are going to proceed with such a request. The applicant will be charged a fee to cover the costs incurred by the process of such application. If the application for action is granted, the Customs will specify the period during which the action is to be taken. If the Customs actions show that the goods infringe intellectual property right, the rightholder must within 10 working days to notify customs whether a court procedure for determining intellectual property infringement has been initiated against the alleged infringer. If such the court procedure is initiated, the period of suspension of the release of goods is extended until the court's decision.

B. Institutional Infrastructure

After promulgation of the Law on Patents, the Ministry of Trade and Industry established the Industrial Property Office (IPO). The IPO is the state office in charge of receiving applications for trademark registration, patents and industrial designs, performing trademark searches, granting trademark and patent rights, and granting rights to industrial designs. Application procedures are regulated by administrative instructions: Administrative Instruction No.2007/10 on registration procedures for patents, Administrative Instruction No. 2007/13 on registration procedures for trademarks, and Administrative Instruction No. 2007/12 on registration procedures for industrial design. The IPO also serves as a certifying authority for IP agents in Kosovo.

With respect to Copyright, the Law on Copyright and Related Rights provides for the establishment of a Copyright Office within the Ministry of Culture, Youth, and Sports. The Office has not yet been established, but it is expected in the near future. At this early stage, the Office's mandate is not clear, nor is it clear if the Office will deal with voluntary registration of copyrighted works. The Office will serve as a certifying authority for collective management associations in Kosovo.

With respect to the judiciary, district courts and commercial courts hear IP disputes. Natural persons can bring civil and criminal actions against each other for IPR infringement before the district court, while disputes between legal entities must be brought before commercial courts.

C. International and European treaties (software-specific)

Although intellectual property laws around the globe are not unified, they are harmonized through international and regional conventions that set minimum IP standards and requirements for contracting states. Apart from international standards, there are also internal European Union standards.

Because Kosovo is not a member of the United Nation, European Union and most other multi-lateral institutions for the moment, it is not a party to any treaties yet.

The two most important international conventions that apply to Copyright are the Berne Convention and the WIPO Copyright Treaty. Trademark laws are by international conventions such as the Paris Convention, European Community Trademark, Madrid Protocol, and the Madrid Agreement. Conventions dealing with patents include the Paris Convention, European Patent Convention, Eurasian Patent Convention, Patent Cooperation Treaty, African Regional Industrial Property Organization, and the African Intellectual Property Organization. There is also a TRIPS Agreement that provides certain minimum standards for the protection of the most important forms of intellectual property rights, and obliges countries to comply with the standards set forth by the Berne Convention. The following paragraphs elaborate on these conventions and treaties.

a. International Copyright Protection of Software

Berne Convention and TRIPS Agreement: The Berne Convention is the most important treaty for international protection of copyright. It establishes minimum standards of copyright protection and requires all parties to incorporate the Convention's minimum standards in their domestic law. The Berne Convention is incorporated into the TRIPS Agreement. Both instruments require that contracting states afford the same protection to the works of foreign authors as are provided to works of domestic authors—known as the 'national treatment' requirement. The Berne Convention further eliminates all administrative formalities with respect to copyright, meaning that no member country may condition protection of copyright upon registration. The Berne Convention sets out a "fair use" doctrine that is incorporated in TRIPS Agreement. Under the fair use doctrine, certain individuals, other than the copyright owner, may be entitled to use that material without the owner's consent and without compensating the owner, provided that such use is limited in nature and does not prejudice the rights of the copyright owner. It is important to note that the TRIPS Agreement obligates countries to provide patent protection for inventions in all fields of technology. The TRIPS Agreement is also known for its enforcement mechanism, which requires all parties to the TRIPS Agreement to ensure that a right holder can enforce its rights through domestic legal system.

WIPO Copyright Treaty (1996): The WIPO Copyright Treaty of 1996 is a special addition to the Berne Convention that requires compliance with Berne. This treaty explicitly establishes that computer programs are protected as literary works under Berne. It also states that compilations of data for which the selection or arrangement of the contents are sufficiently original are protected as

compilations. Software makers are granted a right to control rentals of computer programs. One of the most software-oriented provisions requires signatory nations to provide adequate and effective protection against the circumvention of technical measures that restrict the ability of others to exercise the rights owned by the copyright owner.

b. International Patent Protection for Software

When speaking about international patent protection for software, due consideration should be given to the following instruments and offices, namely the European Patent Office (EPO), the Paris Convention and the Patent Cooperation Treaty (PCT).

European Patent Office: (EPO) provides a uniform application procedure for individual inventors and companies seeking patent protection in up to 40 European countries. It is the executive arm of the European Patent Organisation and is supervised by the Administrative Council. EPO is known for promulgating the so-called “technical effects” doctrine that states that a software is patentable if the application of the software has a “technical effect.” EPO provides for grant of software patents related to invention, provided that the “technical effects” requirement is met, in designated (selected) EPO countries by simple application at EPO.

Paris Convention: is important because it sets the so-called priority right by providing that a patent applicant from one contracting State shall be able to use its first filing date (in one of the contracting States) as the effective filing date in another contracting State, provided that the applicant files another patent application within 12 months from the first filing. For instance, if you file for a patent application in the United States on November 5, 2010, you can file for subsequent patent applications in other member countries of the Paris Convention until November 5, 2011. The filing date in this example is November 5, 2011 only if the application is made within 12 months of the original date. There are also provisions for nationals of countries that are not members of the Paris Convention, such as citizens of Kosovo. A Kosovo citizen might be allowed to file patent applications in certain countries under the existing terms and conditions of enforced bilateral treaties.

Patent Cooperation Treaty: is an international patent law treaty that provides for a unified procedure for filing patent applications to protect inventions in each of its member States.

International Trademark Protection

The most important international treaties governing trademark protection are the Paris Convention, the European Community Trademark, the Madrid Protocol, and the Madrid Agreement.

Paris Convention: applies a priority filing date system for trademarks similar to that designed for patents. For example, if a person has applied for trademark registration in the United States on June 2, 2010, the same person can file for the same trademark registration in any other member state of the Paris Convention within six months from home registration, and still claim priority based on the June 2, 2010 filing.

European Community Trademark (CTM): Similar to the Paris Convention, one can obtain trademark protection in all EU member countries with a single application filed with the CTM office in Alicante, Spain.

Madrid Protocol and the Madrid Agreement: These two treaties are not incorporated, meaning that a country can be a member of the Madrid Protocol but not the Agreement, or vice versa, or can be a member of both. Under the Protocol, if someone holds a trademark registration or a trademark application in a member country, that holder can use that registration or application as a basis for applying through the World Intellectual Property Organization (WIPO) and designating (selected) member countries to which the application for registration would be sent for examination. Under the Madrid Agreement, one must first register a trademark in their home country in order to file for simultaneous registration in the Agreement's designated countries. Kosovo is not a member of either the Protocol or the Agreement; however, if a Kosovo national has "*a real and effective industrial or commercial establishment....*" in a Madrid Protocol or Madrid Agreement member country, and holds a trademark registration or application in that member country, that Kosovo national may use the Madrid System to file trademark applications in designated Madrid members via WIPO.

III. CREATING AND COMMERCIALIZING IP : KEY ISSUES

Intellectual property is regarded as an economic asset, but only if it is managed effectively. Effective management of IP benefits the developer, the employer, and society. Intellectual property should not be seen as merely a tool for preventing others from copying or using ideas. Instead, IP should be seen as something that can turn into a valuable asset. The best way of doing this is to create an IP portfolio following the steps below.

- Identify and record the company's assets, (perform an IP audit);
- Create policies for protecting IP assets;
- Take necessary steps to legally protect IP;
- Commercially exploit IP.

Since what should be considered when establishing legal protection for IP has been discussed, the next focus will be on IP auditing and commercial exploitation of IP. Before concluding, internal confidentiality policies for protection of IP that are essential for every software company will also be addressed.

B. IDENTIFYING AND RECORDING YOUR COMPANY’S ASSETS (IP AUDIT)

IP Audits involve creating a list of all IP, i.e., trademarks, inventions, pending patent or granted patent(s), copyrights, trade-secrets, know-how, domains, websites etc. Once a list is made, give the list a price by evaluating the amount of investment used in creating every IP item as well as the cost of acquiring legal rights, and then see what the market value is for each intellectual property item. Note, IP-related products used in conducting its own operations, such as software and other IT products, should be inventoried and managed like other key assets that will depreciate throughout their life cycle. Below are some sample IPR inventory forms borrowed from “Not Just Patents.” (stepstoIPR.com)

Note: These are sample Intellectual Property Inventory Forms (patent inventory or trade secret inventory) that are the property of Not Just Patents. Not Just Patents gives no claims for fitness for use. Your needs will differ, depending on your circumstances.	
Date:	Person completing form:
Sample Copyright Inventory Form Use one for each Copyright, if unregistered leave Copyright Office* data blank	
Title:	Here give the title of copyrighted work
Description:	Give some description of the work if this applies
Type of Work (i.e. literary work, visual arts work, motion picture/audiovisual work, sound recording):	As already mentioned there are different types of works that are protected by copyright. Software falls within literary work.
Copyright Claimant Personal Name (unless work made for hire) or Organization Name (if work made for hire):	Name of the author or the employer
If claimant is not an author, copyright ownership acquired by: Written agreement, Will or inheritance, Other:	As a company you have to specify here whether the employment contract provides that every work created by your employees within the scope of employment is owned by your company.
Document location (contract location if work made for hire, will, or other):	A contract management system is something that will help your company track all the contracts
Date of birth of author:	This is important for the duration of the copyright.

Date of death of author:	This is important for the duration of the copyright
Contributions by all authors (i.e. text, poetry, computer program, editing, compilation, sculpture, jewelry design, 2-dimensional artwork, map/technical drawing, architectural work, photography, script/play/screenplay, music, lyrics, motion picture, audiovisual, sound recording/performance):	Here, give credit to everyone who has contributed in the software developing process, as well as in creation of other copyrighted works that you own.
Copyright Office* Document Number:	Only if you have registered your Copyright with the Copyright Office
Copyright Office* Date of Recordation:	Only if you have registered your Copyright with the Copyright Office
Date of Completion:	Date on when you consider your copyrighted work has been completed
Publication date and country:	Date when you have first made your work public and where
Published as a contribution in a larger work entitled:	In case it was published in a compilation of works
Material excluded from work (not owned by this claimant, material previously registered, previously published):	If you have used any other material owned by someone else in developing your copyrighted work, you have to specify it here.
Previous registrations:	
Valuation and valuation method:	You have to choose your own valuation method
Assignment, license, other?:	
Notes:	
	© 2009-2010 All Rights Reserved. Not Just Patents. Call +248-275-8624 for permission to use.

<p>Note: These are sample Intellectual Property Inventory Forms that are the property of Not Just Patents. Not Just Patents gives no claims for fitness for use. Your needs will differ, depending on your circumstances.</p>	
Date:	Person completing form:
<p>Sample Intellectual Property Inventory form for patents or trade secrets Use one for each Patent or Trade Secret development project</p>	
<p>Activity: Description, location, participating departments, approximate date of conception, ending date (actual or predicted), status, future use (manufacture, license, cross-license, assign, etc.)</p>	<p>Which departments within your company participated in patent or trade secret development project? This is particularly important in exercising you control over the information flow within your company.</p>
<p>Background Technology (prior art):</p>	<p>The prior art consists of everything which before the filing date or, where priority is claimed, the priority date of the application has been made available to the public, anywhere in the world, by means of written or oral description, by use or in any other way (Article 2 of the Kosovo Patent Law).</p>
<p>Pending Patents: Patent application numbers, description of patent, advantages, relevant prior art</p>	<p>Here give information of relevant prior art that applies to other pending patents.</p>
<p>Issued Patents: Patent numbers, description of patent, advantages, relevant prior art</p>	<p>If you have been granted any patent, list it here.</p>
<p>Potential infringement issues and licensing issues:</p>	
<p>Nondisclosure of patent application until (i.e. product launch, publication, issue, other):</p>	<p>If you plan to launch your product, or otherwise make it public give a date.</p>

<p>Trade secret methods being used to protect invention (i.e., nondisclosure agreements, general physical measures, document control, employee controls, computer protection, etc.):</p>	
<p>Additional methods of keeping confidential needed:</p>	
<p>Valuation and valuation method:</p>	
<p>Notes:</p>	
	<p>© 2009-2010 All Rights Reserved. Not Just Patents. Call +248-275-8624 for permission to use.</p>

Note: These are sample Intellectual Property Inventory Forms that are the property of Not Just Patents. Not Just Patents gives no claims for fitness for use. Your needs will differ, depending on your circumstances.

Date:	Person completing form:	
	Sample Trademark or Service Mark Inventory Form Use one for each Trademark or Service Mark	
Patent Office info.	Show Word Mark or Design	
Patent Office info.	ID of Goods and Services (list all):	According to NICE Classification for goods and services
Patent Office info.	Filing Date:	
Patent Office info.	Pending registration?: IPO	
Patent Office info.	IPO Registration Number:	
Patent Office info.	Registration Date:	
Patent Office info.	Owner:	
Patent Office info.	Attorney:	
Patent Office info.	Type of Mark:	Is it an individual collective or certification?
Patent Office info.	Register	
Patent Office info.	Live or Dead:	
Business use	List of places mark is being used:	
	Potential infringement issues and licensing	

	issues:	
Business use	Valuation and valuation method:	
Business use	Notes:	
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Note: There are many methods in place to evaluate IP and there are a number of factors that need to be taken into account. The most commonly used methods are:

- The market based method- this method is based on the assessment of prices and profits achieved by third parties in comparable market transactions. However, this method if used in isolation, might not give best results because of difficulty in finding comparable transactions.
- The cost based method- takes into account the costs related to development, application, maintenance, and commercialization of IPR.
- The profit based method- analyses the nature of the asset, its legal status, its related marketability, as well as market conditions, like performance and potential, and the time value of money.

A. COMMERCIALIZING INTELLECTUAL PROPERTY

Intellectual property assets can be profitable if the company has taken the necessary steps to protect them. Patented inventions can be manufactured, used or sold. Patent licenses are most common for firms and companies. Licenses can be exclusive or non-exclusive. If the use of a transferred patent requires the transfer of know-how as well, except licensing the product, the right holder must also transfer to know-how related to that product.

Rights deriving from copyright can be assigned to third parties either by selling or licensing them. Again, licenses can be exclusive or non-exclusive. If a company has expertise in developing software but not in product marketing and sales, the company may consider licensing the software. Different economic rights are bestowed upon the author under copyright laws. It is important to consult the law of the country where the rights will be exploited and to understand what rights are to be assigned to or restricted from third-parties' use.

Trademarks are valuable assets because they also may be sold or licensed. Just like with other IP assets, when selling or licensing a trademark, it is necessary to be familiar with the applicable laws and how they define trademark owner rights.

Although not true globally, it is important to remember that in some, including Kosovo, a written form of agreement is mandatory. This means that parties cannot claim rights or obligate someone to perform an agreement unless it has been agreed to in writing. Every IPR transaction should be executed with a written contract. In the United States, assignment contracts must be in writing, but copyright licenses do not, except in cases of exclusive license. In Kosovo, a written agreement is needed for both.

An intellectual property contract may be formed under the Law on Obligations of the Republic of Kosovo in the same manner as all other contracts. In addition, certain provisions in the Law on Copyright and Related Rights must be taken into account when drafting a contract, so be sure to consult the relevant provisions of the law.

SELLING YOUR IP

Exploring options for selling IP usually becomes necessary when an individual can no longer effectively exploit the IP. This is often seen in instances where an individual or company is struggling to establish a presence in a desirable market. In the latter scenario, the IP right holder can either assign or license its IP rights. An important thing to understand about the assignment of IP rights is that the buyer can do whatever it wants in exchange for payment. However, if the right holder decides to license its IP rights, the licensee (a person or the company to whom the license is being granted), can exploit the licensed IP rights only to the extent the license permits. Therefore it is important to know whether you want to assign or license your IP rights, because in the latter case geographical limitations are a viable and common way to limit its use.

Only the owner may sell IP, and buyers must be sure they are purchasing IP from the original owner. As mentioned in the first pages of this manual, software development is quite complex, and the process often involves more than one person; therefore it is crucial to identify the true owner(s).

GOOD TO REMEMBER:

- ✓ If the software has been created by multiple people and all of them contributed to the software development, each contributor is a joint author and has a proportionate ownership in the software. The consent of all contributors is needed to sell software and related IP to third parties;
- ✓ If software has been created during the scope of employment or was commissioned (known in the United States as work-for-hire), the owner of the rights to the software will be the company for which the creator worked, or the natural person or legal entity who has commissioned the work.

Once ownership has been established, limitations on scope, territory and time must be determined. These limitations usually determine what form of contract will be used, and what clauses should be included. While there are many different ways to sell IP, consider these:

Non-exclusive license- means that the licensor retains the right to give the right to exercise the copyright owner's rights to more than one person or entity at the same time. This license does not transfer IP ownership. **This type of license cannot be issued for software which has been commissioned by a particular customer.**

Exclusive license- is considered a transfer of ownership because it gives the buyer (the licensee) all the rights related to software and software use, excluding others from such rights or use. Although it is an exclusive license, the developer retains the right to license software in other territories, or even to license the software in the same territory as long as it is for some other use. For instance, while the right to use the software in cell phones can be licensed to a company in the United States, the developer/ owner can exclusively license another company in the same territory the right to use the software in computers. Royalties are much higher when dealing with exclusive licenses.

Assignment/transfer – also represents a transfer of ownership of intellectual property rights from one entity to another. After assignment or transfer, the only way to regain ownership is if the new owner agrees to assign or transfer ownership back. The “buyer” of IP registers the transfer document with the Copyright Office and is listed as the “owner”. When drafting an exclusive license be careful not to effectively grant an assignment/transfer of IP.

The license types just introduced will be further examined in coming sections, but it is important to become familiar with model licensing agreements first.

MODEL LICENSE AGREEMENTS

Model 1: Exclusive/Non Exclusive License Agreement

This Software License Agreement ("Agreement") is made and effective this [date] by and between [developer] ("Developer") and [licensee] ("Licensee").

Explanation: As mentioned, only the author (developer) can license software.

Developer has developed and licenses to users its software program marketed under the name [name of software] (the "Software").

Licensee desires to utilize a copy of the Software.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, Developer and Licensee agree as follows:

1. License

Developer hereby grants to Licensee a perpetual, non-exclusive, limited license to use the Software in the _____ as set forth in this Agreement.

2. Restrictions

Licensee shall not modify, copy, duplicate, reproduce, license or sublicense the Software, transfer or convey the Software or any right in the Software to anyone else without the prior written consent of Developer; provided that Licensee may make one copy of the Software for backup or archival purposes. [list any other restrictions]

3. Fee

In consideration for the grant of the license and the use of the Software, Licensee agrees to pay Developer the sum of license fee].

4. Warranty of Title

Developer hereby represents and warrants to Licensee that Developer is the owner of the Software or otherwise has the right to grant to Licensee the rights set forth in this Agreement. In the event any breach or threatened breach of the foregoing representation and warranty, Licensee's sole remedy shall be to require Developer or to either: i) procure, at Developer's expense, the right to use the Software, ii) replace the Software or any part thereof that is in breach and replace it with Software of comparable functionality that does not cause any breach, or iii) refund to Licensee the full amount of the license fee upon the return of the Software and all copies thereof to Developer.

5. Warranty of Functionality

A. For a period of [*period functionality of software is warranted*] following delivery of the Software to Licensee (the "Warranty Period"), Developer warrants that the Software shall perform in all material respects according to the Developer's specifications concerning the Software when used with the appropriate computer equipment. In the event of any breach or alleged breach of this warranty, Licensee shall promptly notify Developer and return the Software to Developer at Licensee's expense. Licensee's sole remedy shall be that Developer shall correct the Software so that it operates according to the warranty. This warranty shall not apply to the Software if modified by anyone or if used improperly or on an operating environment not approved by Licensor.

B. In the event of any defect in the media upon which the Software is provided arising within [*period media is warranted*] of the date of delivery of the Software, upon return to Developer of the Software upon the original media, Developer shall provide Licensee a new copy of the Software.

6. Software Maintenance

A. Standard maintenance. During the Warranty Period, Developer shall provide to Licensee any new, corrected or enhanced version of the Software as created by Developer. Such enhancement shall include all modifications to the Software which increase the speed, efficiency or ease of use of the Software, or add additional capabilities or functionality to the Software, but shall not include any substantially new or rewritten version of the Software.

B. Optional maintenance

After expiration of the Warranty Period, Licensee may continue to receive maintenance support for successive twelve (12) month periods. The charge for such optional maintenance support shall be Developer's regular list price for maintenance and support for the Software as published from time to time by Developer. Licensor shall notify Developer in writing if it desires to receive optional maintenance. If Licensee fails to take optional maintenance and later elects to receive it, Developer reserves the right to charge Licensee its maintenance fees for the period of the lapse in maintenance. Developer may elect to discontinue maintenance at any time upon notice to Licensee, and refund of any then unearned maintenance fees.

7. Payment

Payment of the license fee shall be made upon delivery of the Software. Payment of any other amount owed by Licensee to Developer pursuant to this Agreement shall be paid within thirty (30) days following invoice from Developer. In the event any overdue amount owed by Licensee is not paid following ten (10) days written notice from Developer, then in addition to any other amount due, Developer may impose and Licensee shall pay a late payment charge at the rate of one percent (1%) per month on any overdue amount.

8. Taxes

In addition to all other amounts due hereunder, Licensee shall also pay to Developer, or reimburse Developer as appropriate, all amounts due for property tax on the Software and for sales, use, excise taxes or other taxes which are measured directly by payments made by Licensee to Developer. In no event shall Licensee be obligated to pay any tax paid on the income of Developer or paid for Developer's privilege of doing business.

9. Warranty Disclaimer

DEVELOPER'S WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

10. Limitation of Liability

Developer shall not be responsible for, and shall not pay, any amount of incidental, consequential or other indirect damages, whether based on lost revenue or otherwise, regardless of whether Developer was advised of the possibility of such losses in advance. In no event shall Developer's liability hereunder exceed the amount of license fees paid by Licensee, regardless of whether Licensee's claim is based on contract, tort, strict liability, and product liability or otherwise.

11. Notice

Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or by certified mail, postage prepaid, or recognized overnight delivery services.

If to Developer:

[*developer's name*]

[*developer's address*]

If to Licensee:

[*licensee's name*] [*licensee's address*]

12. **Governing Law**

This Agreement shall be construed and enforced in accordance with the laws of the state of [*state of governing law*].

13. **No Assignment**

Neither this Agreement nor any interest in this Agreement may be assigned by Licensee without the prior express written approval of Developer.

14. **Final Agreement**

This Agreement terminates and supersedes all prior understandings or agreements on

the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.

15. Severability
If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

16. Headings
Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

IN WITNESS WHEREOF, Developer and Licensee have executed this Software License Agreement on the day and year first above written.

[*developer signature*] [*licensee signature*]

[*developer name*] [*licensee name*]

[*developer address*] [*licensee address*]

Model 2: IP Transfer Agreement

THIS INTELLECTUAL PROPERTY TRANSFER AGREEMENT (the “**Agreement**”) is made on [date],

BETWEEN

1. **Company A** (DETAILS HERE)
2. **Company B** (DETAILS HERE)

WHEREAS

(A) Company A has agreed to sell and/or transfer all of its applicable affiliates’ right, title and interest in the Intellectual Property (as defined below) to the Company, and

B) The Company B has agreed to purchase and accept the same for the Consideration (as defined below).

NOW, IT IS AGREED as follows:

1. Definitions and Interpretations

1.1 In this Agreement

Business Day means a day (other than a Saturday or Sunday) on which banks generally are open in Pristina, Kosovo for the transaction of a full range of business.

Buyer means Company B

Completion means completion of the transfer hereunder in accordance with Section 3.

Consideration has the meaning given to it in Section 2.2.

Intellectual Property means the software applications (together with all source and object code and documentation related thereto and all intellectual property rights therein) and other intellectual property rights described on Schedule A.

Transfer Time means close of the Business Day on the date of this Agreement.

1.2 In this Agreement

(a) The **headings** are inserted for convenience only and shall not affect the construction of this Agreement;

(b) A reference to **sell** or **purchase** or **transfer** includes a reference to procure the sale of or procure the purchase of or procure the transfer of, as the case may be; and

(c) General words introduced by the word **other** shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing, nor by the fact that they are followed by particular examples intended to be embraced by the general words.

2. THE TRANSFER

2.1 Effective as of the Transfer Time, Company A hereby sells and transfers and the Company B hereby purchases all of Reuters and its applicable affiliates' right, title and interest in the Intellectual Property

2.2 The price for the sale and transfer in Section 2.1 shall be the sum of _____, as outlined in Schedule A (the "**Consideration**").

2.3 If any sales tax, value added tax or other transfer tax is properly chargeable in respect of the sale and purchase in Section 2.1, the Company shall pay to Reuters the amount of such tax in addition to and at the same time as the Consideration. Reuters will issue to the Company a proper tax invoice in respect thereof.

2.4 THE COMPANY A HEREBY ACKNOWLEDGES THAT COMPANY B MAKES NO REPRESENTATION OR WARRANTY TO THE COMPANY B UNDER THIS AGREEMENT, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE INTELLECTUAL PROPERTY, AND THAT THE ABOVE SALE AND TRANSFER IS MADE TO THE COMPANY ON AN "AS IS" BASIS.

3. COMPLETION

The sale and purchase of the Intellectual Property shall be completed, and the legal title and ownership in respect of the Intellectual Property shall be deemed to pass to the Company, in each case, with effect from the Transfer Time.

COMPANY A shall:

- (a) Cause to be delivered or made available to the Company B such additional documents as the Company B may reasonably require to complete the sale and purchase of the Intellectual Property; and
- (b) Do such other things reasonably necessary to give full effect to this Agreement.

COMPANY B shall

- (a) Timely pay or cause to be paid the Consideration in cash to COMPANY A or to whom and in the manner as COMPANY A may direct; and
- (b) Cause to be delivered or made available to COMPANY A such additional documents as COMPANY A may reasonably require to complete the sale and purchase of the Intellectual Property; and
- (c) Do such other things reasonably necessary to give full effect to this Agreement

4. LICENSES

4.1 COMPANY B acknowledges that, as a current affiliate of COMPANY A, it has a royalty-free, non-exclusive, non-transferable and non-sublicensable right and license to use the third-party software set forth on Schedule B in connection with its business, pursuant to agreements between COMPANY A and/or an affiliate (other than the Company B) and the applicable third parties. The Company A covenants that it shall use all such software in compliance with all terms and conditions of such agreements to the extent that Buyer and/or the Company have been given access to a copy of such agreements.

4.2 COMPANY A grants to the Company B a perpetual, royalty-free, non-exclusive license to use all know-how, techniques, ideas, processes and similar intellectual property that (i) was created, invented or developed by COMPANY A (or its applicable affiliates) prior to the Transfer Time and (ii) relates to the business of the Company B, but is not included in the Transferred Know-How (as defined in Schedule A). The Company B may sublicense this license solely in connection with the operation of its business, and not for the independent use of any third party. The Company B may assign this license only in connection with the merger, reorganization or sale of the business of the Company to which this license relates. Any purported sublicense or assignment by the Company B in violation of the foregoing shall be null and void and of no force or effect. To the extent COMPANY A or any affiliate (other than the Company), on the one hand, and the Company B or any current or future affiliate, on the other hand, enter into any future agreement governing a party's use of specific items of intellectual property of the other party, such specific provisions (and the term of any such permitted use) shall be deemed to supersede and modify accordingly the above general license.

4.3 The Company B grants to COMPANY A and its affiliates (other than the Company) a perpetual, royalty-free, non-exclusive license to use all Transferred Know-How that has a relation or application to the business of COMPANY A or any affiliate other than the Company. COMPANY A and its affiliates may sublicense this license solely in connection with the operation of their businesses, and not for the independent use of

any third party. COMPANY A and its affiliates may assign this license only in connection with the merger, reorganization or sale of any of their businesses to which this license relates. Any purported sublicense or assignment by COMPANY A or an applicable affiliate in violation of the foregoing shall be null and void and of no force or effect. To the extent COMPANY A or any affiliate (other than the Company), on the one hand, and the Company or any current or future affiliate, on the other hand, enter into any future agreement governing a party's use of specific items of intellectual property of the other party, such specific provisions (and the term of any such permitted use) shall be deemed to supersede and modify accordingly the above general license.

5. ENTIRE AGREEMENT

This Agreement (including the Exhibits, which are hereby incorporated in the terms of this Agreement) sets forth the entire understanding and agreement among the parties as to matters covered herein and therein and supersedes any prior understanding, agreement or statement (written or oral) of intent among the parties with respect to the subject matter hereof.

6. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

7. VARIATION

No waiver shall be deemed to have been made by any party, of any of its rights under this Agreement unless the same is in writing and is signed on its behalf by an authorized signatory. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the party granting such waiver in any other respect or at any other time. To be binding, any amendment of this Agreement must be effected by an instrument in writing signed by the parties.

8. NOTICES

All notices, demands, instructions, waivers, consents or other communications to be provided pursuant to this Agreement shall be in writing, shall be effective upon receipt, and shall be sent by hand, facsimile, air courier or certified or registered mail, return receipt requested, as follows:

GIVE CONTACT DETAILS OF BOTH COMPANIES

Or to such other address as a party may specify by notice from time to time in writing to the other parties in the manner specified in this Section.

9. COSTS

Reuters and the Company shall each pay its own costs, charges and expenses incurred in connection with the preparation and implementation of this Agreement and the transactions contemplated by it.

10. GOVERNING LAW; SUBMISSION TO JURISDICTION; APPOINTMENT OF AGENT FOR SERVICE OF PROCESS; WAIVER OF JURY TRIAL.

10.1 THE AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF _____. Each party hereby irrevocably agrees that any legal action or proceeding against it arising out of this Agreement or the transactions contemplated hereby shall be brought only in the _____ Court of _____. COMPANY A hereby designates, appoints and empowers _____, as its lawful agent to receive for and on its behalf service of process in the territory of Kosovo in any such action or proceeding and irrevocably consents to the service of process outside the territorial jurisdiction of said courts in any such action or proceeding by mailing copies thereof by registered Kosovo mail, postage prepaid, to its address as specified in or pursuant to Section 8. Any service made on any such agent or its successor shall be effective when delivered regardless of whether notice thereof is given to the affected party. If any person or firm designated as agent hereunder shall no longer serve as agent of such party to receive service of process in the territory of Kosovo, the party so affected shall be obligated promptly to appoint a successor to serve; and, unless and until such successor is appointed and the other parties notified of the same in writing, service upon the last designated agent shall be good and effective. COMPANY A hereby agrees to at all times maintain an agent to receive service of process in the _____ pursuant to this Section 10.1. The foregoing provisions of this Section 10.1 shall not affect, limit or prevent the parties from serving process in any other manner permitted by law.

10.2 Each party irrevocably waives any objection to the venue of the courts designated in Section 10.1 (whether on the basis of *forum non conveniens* or otherwise), and accepts and submits to the jurisdiction of such courts in connection with any legal action or proceeding against it arising out of or concerning this Agreement.

11. TAXES

Each party represents that it has provided the other party all properly paid taxes related to this Agreement.

12. BANKRUPTCY CODE

Reference should be made to the Law on Liquidation of Legal Entities

AS WITNESS, this Agreement has been signed by or on behalf of the parties the day and year first above written.

DETAILS OF BOTH PARTIES TO THE AGREEMENT

2. KEY CONSIDERATIONS IN LICENSING

- **What is a “License” and which IP rights can be licensed?**

A license is the right or permission to use a designated (licensed) material held by someone other than its owner. As seen in the above examples, the party permitting the use is called the **Licensor and the** party gaining permission to use the licensed material is called the **Licensee**. When creating a software license, different intellectual property forms that apply to the licensed software i.e. patents (right to manufacture software, to use or sell a product, or to practice the method in a method patent, etc.), copyright (make copies, give to another party, modify or rearrange, publicly present a sequential work, to use for any commercial advantage etc), trade secret (make available to a third party etc.) may be licensed. Remember to be specific when drafting a licensing agreement. In particular, make sure to include a definitions paragraph.

A **DEFINITIONS** paragraph lays out the key terms found in the license text. This prevents any ambiguities with respect to the meaning of a particular term from arising in the future. It has become common practice to describe the grant of the license as a “**technology license**” and then under the **DEFINITIONS** heading explain that it “*means collectively, the Licensed Software, the Documentation and all Intellectual Property Rights in and to the Licensed Software, the documentation or any part or component thereof*”.

- **Types of Licenses**

Licenses range from single user license/CPU license, to site license, to enterprise license, to network/multi-user license, to test license. When software is licensed for use by millions of end-users it is being mass-marketed. Developers employ shrink-wrap licenses that are downloaded or used on the internet, or are included in the good’s physical package, such as an envelope with software on a CD. More complex agreements that apply to software include distribution/channel arrangements, joint-venture partnerships, and franchises. Another important type of license is an open-source license, which will be elaborated on in the forthcoming paragraphs.

- **Restrictions**

When entering into licensing agreements, it is important to carefully outline the desired restrictions. The first thing is to clarify whether a non-exclusive or exclusive license is being issued. Second, it should be determined whether it is a transferable or non-transferable license, and if it is sublicenseable or not. By inserting a **RESTRICTIONS** paragraph, the licensor can control the use of the licensed software i.e. single user license, multiple stand-alone computers (state the number of computers allowed), site license (requires information about the site), or network license. In addition to this, territorial restrictions may also be provided.

- **Five Standard Clauses**

There are five standard clauses in every type of software license. Most of the time and effort in negotiating a license is spent on these five standard clauses:

- i. Exclusivity of the license
- ii. Term of the license
- iii. Definition of the Market/Industry
- iv. Royalties and Fees
- v. Geographic Limitations

Term of the license is very important and usually goes into effect on the date the licensed software is delivered. Defining the market/industry is equally important because it provides some risk protection. For instance, before deciding to license software, familiarity with a market's size, competitive landscape, and leading companies should be gained. With the appropriate market information, the licensor can make a confident and informed business decision with a lower risk of making a mistake that might have negative repercussions on the company or the product's image or marketability.

There are many types of payments depending on the rights granted, i.e. license fees, which are payable before the software is provided to the end-user, or installment fees, per-user or per-computer, etc. Geographical restrictions represent an important way to limit the use of software within an area or site. If, for example, a software license is given to a company in territory A, and that company has an affiliate in territory B, the software developer can charge the company in territory A extra money if the company uses the software in territory B.

Other clauses which are important in any software license agreement include warranty of functionality- where a time period during which the warranty lasts is specified; software maintenance- where the licensor can agree to provide one year of maintenance free of charge, and after that, if the licensee requests continuous maintenance, the licensor can charge an annual maintenance fee; confidentiality- if a trade secret applies to the software you license, then to the license can stipulate that the licensee may not to disclose it to third parties, arbitration- to avoid going to court over a dispute, improve efficiency, and decrease cost, and attorney fees- if a dispute arises, the losing party will pay attorney fees to the winning party.

There are several other possible provisions for a licensing agreement depending on what licensor wants to do with the software and the rights attach. Another important thing to consider is when entering into a licensing agreement, the licensor takes a risk. Therefore, it is important to consult a lawyer in order to make sure that all the required elements are included in the licensing agreement. To this end, before deciding to issue a license to a company, the licensor should first investigate the company's reliability and reputation. This is necessary to protect brand integrity.

- **Sample Licensing Agreements with Explanations**

- i. **Test license templates (BETA Software testing agreement)**

This is an agreement, effective upon initial access, between the Creative Decisions Foundation. (www.creativedecisions.net) (the "Company") and you (the "Tester"), in which Tester agrees to test various releases of the Company's Beta (experimental) software program and promptly inform the Company of the test results.

1. Company's obligations:

The Company shall provide Tester with a copy of the software and any necessary documentation and instruct Tester on how to use it and the desired test data to be gained.

2. Tester's Obligation

Tester shall test the software under normally expected operating conditions in Tester's environment during test period. Tester shall gather and report test data as mutually agreed upon with the Company.

3. Software a Trade Secret

Tester acknowledges that the Software is proprietary to, and a valuable trade secret of, the Company and is entrusted to Tester only for the purpose set forth in this Agreement. Tester shall treat the Software in the strictest confidence. Tester agrees that it will not, without the Company's express prior written consent:

1. disclose any information about the software, its design and performance specifications, its code, and the existence of the beta test and its results to anyone other than Tester's employees who are performing the testing;
2. copy any portion of the software or documentation, except to the extent necessary to perform the beta testing; or
3. reverse engineer, decompile or disassemble the Software or any portion of it.
4. Security precautions

Tester shall take reasonable security precautions to prevent the software from being seen by unauthorized individuals. This includes but is not limited to, locking all copies of the software and associated documentation in a desk or file cabinet when not in use, keeping all security codes or passwords in a secure environment and not distributing or sharing any passwords or security codes granted.

5. Disclaimer of Warranty

Tester understands and acknowledges that the Software is a test product and its accuracy and reliability are not guaranteed. Owing to its experimental nature, Tester is

advised not to rely exclusively on the Software for any reason. Tester waives any and all claims it may have against the Company arising out of the performance or nonperformance of the Software.

THE SOFTWARE IS PROVIDED AS IS, AND THE COMPANY DISCLAIMS ANY AND ALL REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO IT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6. Limitation of Liability

The Company shall not be responsible for or liable to Tester or any third party for any loss or damage caused by the Software or by the Company's performance of this Agreement.

7. No Rights Granted

Tester understands and acknowledges that the Software is provided for its own use for testing purposes only. Tester understands and acknowledges its obligation to report testing data to Company in a prompt and timely fashion. Further, Tester acknowledges and understands that Tester shall not be entitled to receive any compensation for any information provided to Company. Compensation includes, but is not limited to, payment of money, granting of rights, acknowledgment of any kind information, or any other form of compensation.

This Agreement does not constitute a grant or an intention or commitment to grant any right, title or interest in the in the Software or the Company's Trade secrets to Tester. Tester may not sell or transfer any portion of the Software to any third party or use the Software in any manner to produce , market or support its own products. Tester shall clearly identify the Software as the Company's property.

8. No Assignments

This Agreement is personal to Tester. Tester shall not assign or otherwise transfer any right or obligation under this Agreement.

9. Testers Authority

Tester warrants and represents that Tester has the authority to enter this Agreement.

10. Breach of the Agreement

The parties acknowledge that the terms, conditions and restrictions contained herein are reasonable, equitable and fairly bargained for. In the event Tester breaches this Agreement, Tester acknowledges that a breach would result in irreparable injury to the Company. Tester agrees that the remedy at law for any breach will be inadequate, and that, in the event of such breach, the Company shall be entitled to preliminary and permanent injunctive relief as well as an equitable accounting of all earnings, profits and

other benefits arising from such violation, which rights shall be cumulative and in addition to any other rights or remedies to which the Company may be entitled.

11. Waiver

Neither the failure, nor any delay on the part of a party to exercise any right or remedy under this Agreement shall operate as a waiver thereof, nor shall any waiver of any right or remedy, with respect to any occurrence be construed as a waiver of such right or remedy with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted the waiver.

12. Entire Agreement

This Agreement contains the entire understanding and agreement of the parties relating to the subject matter hereof. Any representation, promise or condition not explicitly set forth in this Agreement shall not be binding on either party. All additions or modifications to this Agreement must be made in writing and acknowledged by both parties to be effective.

13. Applicable Law

This Agreement and all questions relating to its validity, interpretation, performance and enforcement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, notwithstanding any conflict of laws provisions to the contrary.

14. Signed Copies

The parties agree that checking the "I Agree" button prior to downloading the ANP beta or alpha software constitutes an acknowledgment of and their agreement to the above policy.

NOTES:

BETA Software testing agreements differ from other forms of software licenses in that they are non-exclusive, non-transferable, non-sublicenseable, and non-commercial.

This means that the software developer gives software to the Tester free of charge, and permits him to test software under the terms and conditions provided in the software testing agreement. The company wishing to test software must give assurances that the testing will be conducted by selected group of employees, and that it will undertake all the necessary measures to protect the trade secret of the tested software.

These types of licenses protect software developer from any kind of liability in the future. When issued for testing, software is always given “as is”, meaning that you make no guaranties or warranties about its performance, even if such a testing may harm Tester’s computers. This is why you need to include a paragraph in the Beta Software Testing Agreement that “ *the software is provided as is, and the company disclaims any and all representations or warranties of any kind, whether express or implied, with respect to it, including any implied warranties of merchantability or fitness for a particular purpose*”.

Requirement for a testing report is always one of the clauses in the beta software testing agreements. No other rights, except the right to test software, are granted to the tester. Any other use of software except testing will result in the breach software testing agreement. And last but not the least, Beta software testing agreements can be in the form of an “open beta” when after the end-user has clicked on the “I agree” button gets a right to download software for testing during a trial period, or a “closed beta” for more specialized software. The above given template represents an “open Beta” software testing agreement.

ii. End-User License Template (EULA)

This software product is proprietary software application. Your use of _____ software is subject to the terms and conditions as outlined in the End User License Agreement

End User License Agreement

IMPORTANT - READ CAREFULLY: This End-User License Agreement (EULA) is a legal agreement between you (either an individual or a single legal entity) (Licensee) and _____ to use the Software. This EULA applies after the Licensee has received the Software from a Reseller or _____. An amendment or addendum to this EULA may accompany the Software. The Licensee agrees to be bound by the terms of this EULA by installing, copying, downloading or otherwise using the Software or clicking the "I Accept/ Agree" button if acquiring the Software on-line. If the Licensee does not agree to the terms of this EULA, you may not install, copy, download or otherwise use the Software or if acquiring the Software on-line click the "I Do Not Accept/ Agree" button.

1. Definitions

Accessible Code means source code that is unprotected and accessible.

Authorized User means a person who accesses and uses the Software under a User License.

Embedded Software means any third party software which may contain Accessible Code or Protected Code licensed by _____ from a third party and embedded in the Software.

Fees mean all fees and expenses payable by the Licensee to _____ in acquiring the Software and as applicable any Maintenance or User Licenses.

Maintenance means the provision by _____ to Licensee under separate agreement, of Software updates and/or enhancements made generally available to customers from time to time, and online technical support (and where applicable, phone support) for the sole purpose of addressing technical issues relating to the use of the Software.

OEM Distribution means distribution of the Software as either a bundled add-on to, or embedded component of, another application with such application being made available to its users as, but not limited to, an on-premises application, a hosted application, a Software-as-a-Service offering or a subscription.

Protected Code means any source code that is protected against access by _____ or a third party and is not accessible under this EULA.

Reseller means an entity selling and distributing _____ products which is authorized by _____ to do so.

Software means the _____ software that accompanies this EULA, which includes computer software, Accessible Code and Protected Code and may include associated media, printed materials, "online" or electronic documentation, Internet-based services and Embedded Software.

User License means a license granted under this EULA to the Licensee to permit an Authorized User to use the Software. The number of User Licenses granted to the Licensee is dependent on the Fees paid by the Licensee.

2. Grant of License

Upon Licensee's acceptance of the EULA, _____ grants the Licensee the non-exclusive right to use the Software subject to the following:

Full License

2.1 Authorized Users

The licenses granted are subject to the condition that the Licensee must ensure the maximum number of Authorized Users accessing and using the Software concurrently is equal to the number of User Licenses for which the necessary Fees have been paid to the Reseller or _____. The Licensee may purchase additional User Licenses at any time on payment of the appropriate Fees to the Reseller or _____.

2.2 Backup

The Licensee is permitted to copy the Software for data protection, archiving and backup purposes. However, only the strictly necessary number of backup copies may be made.

2.3 Installation and Use

_____ may provide evaluation copies of the Software for customers to assess the Software, which may not have full functionality. If the Software is only provided for evaluation purposes the rights of the Licensee are limited to this evaluation license which permit the Licensee to EULA 3.0 _____ End User License Agreement download, install, use and operate the Software for a limited period and accessible by a limited number of temporary users as determined by _____ (Evaluation Period). On the expiry of the Evaluation Period the Software will cease to function and the Licensee must remove and delete all copies of the Software in its possession.

General License Terms

2.4 Scope

Each license granted by _____ under this EULA is unless otherwise specified in this EULA or agreed by _____ in writing; worldwide, non-exclusive, non-transferable and non-sublicensable.

2.5 Duration

Subject to the terms of this EULA and unless terminated earlier in accordance with this EULA, a full license is perpetual and the evaluation license runs for the Evaluation Period.

2.6 Permitted Computers

Except as otherwise agreed in writing by _____ the Licensee must only install the Software and make the Software available for use on hardware systems owned, leased or controlled by the Licensee.

2.7 Responsibility for Non-controlled systems

If _____ permits the Licensee to install the Software or make the Software available for use on hardware systems not owned, leased or controlled by the Licensee (Uncontrolled Systems), the Licensee will ensure the terms of this EULA are complied with by users of such Uncontrolled Systems and the Licensee indemnifies _____ for all costs, damages and loss _____ suffers arising from such installation or use of the Software on Uncontrolled Systems.

3. Fees

The Licensee must pay all Fees by their due date. Failure to pay Fees by the due date will result in the immediate termination of the licenses granted under this EULA.

4. Embedded Software

4.1 Rights

The Licensee acknowledges the Software contains Embedded Software and that in addition to the obligations of this EULA, additional obligations may apply in relation to any use of Embedded Software by the Licensee which is not in accordance with the use of the Software as permitted under the terms of this EULA. In such circumstances the Licensee must consult the relevant third party to acquire any necessary licenses and consents in relation to its use of any Embedded Software.

4.2 Benchmarking

While the Licensee is permitted to conduct “benchmarking” in relation to the Software as a whole, the Licensee must not conduct any “benchmarking” in relation to individual Embedded Software elements.

5. Reservation of Rights and Ownership

_____ reserves all rights not expressly granted to the Licensee in this EULA. The Software and all copies thereof are protected by copyright and other intellectual property laws and treaties. _____ or relevant third parties own the title, copyright, and other intellectual property rights in the Software and all subsequent copies of the Software. The Software is licensed, not sold and the Licensee does not acquire any rights of ownership in the Software.

6. Support and Maintenance

6.1 Additional Software / Services

This EULA applies to updates, supplements, add-on components, or Internet-based services components, of the Software (Supplementary Software) that _____ may provide to the Licensee or make available to the Licensee after the date the Licensee obtains its initial copy of the Software, unless _____ provides other terms along with any Supplementary Software. _____ reserves the right to discontinue any Internet-based services provided to the Licensee or made available to the Licensee through the use of the Software.

6.2 Support and Upgrades

Any support services provided by _____ will be substantially as described in separate written materials provided by _____ to the Licensee and may be the subject to the payment of additional Fees.

7. Licensee Obligations

7.1 Positive Obligations

Licensee must at all times: (a) ensure that only an Authorized User uses the Software and only in accordance with the terms and conditions of this EULA, (b) if the Software is a "Confluence Clustered Product," ensure that the Software is not used for rental, timesharing, subscription service, hosting or outsourcing; and (c) with respect to any use of the Software, include an attribution to _____ to be included on all user interfaces in the following format: "Powered by _____", which must in every case include a hyperlink to _____, and which must be in the same format as delivered in the Software.

7.2 Negative Obligations

Licensee must not, whether through negligent act or omission, or without the prior written consent of _____, which may be withheld at _____ discretion and include certain conditions: (a) decompile, reverse engineer, disassemble, modify, adapt, create derivative works from, or otherwise attempt to derive, any portion of the Software; (b) directly or indirectly access or use any Embedded Software independently of the rest of the Software; (c) sell, sublicense, redistribute, reproduce, transmit, circulate, disseminate, translate or reduce to or from any electronic medium or machine readable form the Software or any data/information not owned by the Licensee which is provided to Licensee through the Software to a person who is not an Authorized User; (d) vary or amend the Software (including any Embedded Software, Protected Code or Accessible Code); (e) except as otherwise permitted in this EULA, publish, promote, broadcast, circulate or refer publicly to the _____ name, trade name, trademark, service mark or logo (f) commit any act or omission the likely result of which is that _____ or any of its third party suppliers reputation will be brought into disrepute or which act or omission could reasonably be expected to have or does have a material and adverse effect on _____ interests; (g) distribute the Software via OEM Distribution without entering into a separate OEM Distribution Agreement with _____ or (h) copy or embed elements of the Accessible Code contained in the Software into other applications.

7.3 Protection Mechanisms

The Software includes license protection mechanisms that are designed to manage and protect the intellectual property rights of _____ and its third party suppliers. Licensee must not modify or alter those features to try to defeat the Software use rules that the license protection mechanisms are designed to enforce. Any such attempt by the Licensee will result in the immediate termination of any license granted under this EULA.

8. Notification

8.1 General

If the Licensee discovers it has breached any of its obligations under this EULA and in particular the obligations in clause 7, the Licensee must immediately report such breach to _____, in writing.

8.2 Penalties

Where a breach involves the distribution or use of Software outside of the User License or any Additional User License or the use and distribution of Embedded Software _____ and/or any third party owner of Embedded Software will be entitled, in addition to any other right or claim that _____ or any third party owner of Embedded Software may have against Licensee, to retroactively charge Licensee, in addition to any other Fees payable by Licensee under this EULA, a fee calculated based on the number of prohibited distributions or uses times the respective list prices

that _____ and/or any third party owner of Embedded Software charges for the Software or Embedded Software respectively.

9. Investigation of Unauthorized Use and Distribution

If _____ reasonably suspects the Software has been distributed to or obtained by any person or party without _____ prior written consent, that Embedded Software is being varied or accessed or used independently of the Software or that Licensee is otherwise breaching a term of this EULA and in particular its obligations under clause 7, _____ reserves the right to require the Licensee to provide an unqualified certificate executed by the Licensee's auditor verifying compliance with the terms of this EULA. Such requests shall be made no more frequently than once per calendar year. If such an unqualified certificate is not received by _____ within ninety (90) calendar days of being required, it will be considered that a breach of this EULA has occurred allowing _____ to terminate the licenses granted under this EULA.

10. Permitted Fixes

Notwithstanding anything else in this EULA but subject to the terms and conditions contained herein, the Licensee is permitted to modify the Accessible Code in the Software to develop bug fixes, customizations or additional features solely for their internal purposes of using the Software.

11. Termination

11.1

Without prejudice to any other rights and in addition to any other termination rights in this EULA, _____ may terminate this EULA if the Licensee fails to comply with the terms and conditions of this EULA. Immediately upon termination of a license granted under this EULA, the Licensee must at its own cost: (a) cease permitting access to and procure that all Authorized Users immediately cease all use of the Software; and (b) remove all copies of the Software from its computer systems or any Uncontrolled Systems; (c) provide _____ with written certification that it has destroyed all copies of the Software including all Accessible Code in its possession, custody or control.

11.2

The decommissioning of the Software by the Licensee will have, as a consequence, the termination of this EULA between _____ and the Licensee.

12. Infringement Indemnification

12.1 Infringement by Software

If the Software becomes, or in the opinion of _____ may become, the subject of a claim of infringement of any third party's intellectual property rights, _____ may, at its option and in its discretion: (i) procure for Licensee the right to use the Software free of any liability; (ii) replace or modify the Software to make it non-infringing; or (iii) refund any License Fees related to this Software paid by Licensee. The foregoing states the sole liability of _____ and the exclusive remedy of Licensee for any infringement of intellectual property rights by the Software or any other items provided by _____ under this EULA.

12.2 Licensee's Use

Licensee will indemnify and hold harmless _____ against all costs, expenses, losses and claims made against _____ as a result of any infringement of a third party's intellectual property rights arising from the Licensee's or its Authorized User's modification to the Software or combination of the Software with other products by Licensee or any of its Authorized Users

12.3 Third Party Products

Licensee acknowledges and agrees that if Licensee breaches this EULA and _____ or any third party owner of Embedded Software suffers any loss, damage cost or expense directly or indirectly in connection with the breach, _____ or the relevant third party owner of the Embedded Software may bring an action directly against Licensee.

13. Exclusion of Warranties

To the maximum extent permitted by applicable law in the jurisdiction in which the Software or any Supplementary Software is supplied or Maintenance provided, _____ and its third party suppliers provide the Software and any Maintenance AS IS AND WITH ALL FAULTS, and except otherwise expressly contained in the EULA, hereby disclaim all other warranties and conditions, whether express, implied or statutory.

14. Limitation of Liability

14.1 Non-excludable Warranties

The Licensee may have remedies against _____ imposed by law or statute which can not be excluded by _____ and its third party suppliers. To the extent the Licensee has such legal remedies _____ or its third party suppliers then to the fullest extent permitted by law _____ and its third party suppliers' liability is

limited (a) at _____ option, to: (i) in the case of the Software: 1) repairing or replacing the Software; or 2) the cost of such repair or replacement; and (ii) in the case of Maintenance services: 1) re-supply of the services; or 2) the cost of having the Maintenance services supplied again or if the above limitation is not applicable then (b) to the greater of the actual damages Licensee incurs in reasonable reliance on the Software up to the amount actually paid by the Licensee for the Software.

14.2 Limitation of Liability for other Losses

Subject to section 14.1, notwithstanding any damages Licensee might incur for any reason whatsoever to the maximum extent permitted by applicable law the entire liability of _____ and any of its third party suppliers under any provision of this EULA and Licensee's exclusive remedy hereunder shall be limited to the greater of the actual damages Licensee incurs in reasonable reliance on the Software up to the amount actually paid by the Licensee for the Software.

14.3 Consequential Loss

Notwithstanding anything else in this section 14, to the maximum extent permitted by applicable law, in no event shall _____ or its third party suppliers be liable for any special, incidental, punitive, indirect, or consequential damages whatsoever arising out of or in any way related to the use of or inability to use the Software, the provision of or failure to provide Maintenance or other services, information, software, and related content through the Software or otherwise arising out of the use of the Software, or otherwise under or in connection with any provision of this EULA, even in the event of the fault, tort (including negligence), misrepresentation, strict liability, breach of contract or breach of warranty of _____ or any third party supplier, and even if _____ or any third party supplier has been advised of the possibility of such damages.

15. Publicity Rights

Licensee grants _____ the right to include Licensee as a customer in Software promotional material. Licensee can deny _____ this right at any time by submitting a written request via email to sales@_____.com, requesting to be excluded from Software promotional material. Requests made after purchasing may take thirty (30) calendar days to process.

16. Amendment

This EULA may not be amended except with the written agreement of _____ whose consent may be withheld in its complete discretion without any requirement to provide reasons.

17. Assignment

Licensee may assign this EULA to: (i) succeeding parties in the case of a merger, acquisition or change of control; or (ii) if Licensee is a supplier to a government agency; provided, however, that in each case, (a) _____ is notified in writing within ninety (90) days of such assignment, (b) the assignee agrees to be bound by the terms and conditions contained in this EULA and (c) upon such assignment the assignee makes no further use of the software licensed under this EULA . _____ may assign its rights and obligation under this EULA without consent of Licensee. Any permitted assignee shall be bound by the terms and conditions of this Agreement.

18. Restrictions

18.1 Australia

If the Software is acquired in Australia by the Licensee, the Licensee must comply with all applicable Australian export control laws and regulations, including without limitation, the laws and regulations administered by the Australian Department of Foreign Affairs and Trade (or any replacement department or authority).

18.2 United States

If the Software is acquired by the Licensee in the United States, the Licensee acknowledges: (a) the Software is subject to U.S. export jurisdiction and agrees to comply with all applicable international and national laws that apply to the Software, including the U.S. Export Administration Regulations, as well as end-user, end-use, and destination restrictions issued by U.S. and other governments and notwithstanding the above; and (b) the provisions of the USA Uniform Computer Information Transaction Act do not apply to this EULA.

18.3 General

The export of the Software from the country of original purchase may be subject to control or restriction by applicable local law. Licensee is solely responsible for determining the existence and application of any such law to any proposed export and for obtaining any needed authorization. Licensee agrees not to export the Software from any country in violation of applicable legal restrictions on such export.

19. Governing Law and exclusions

19.1 Applicable Law

This EULA is governed by the laws of _____, and the parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of _____.

19.2 Arbitration

Except in circumstances where a party seeks urgent injunctive relief, before commencing any court proceedings, if any disputes arises under this EULA the parties will negotiate in good faith to resolve the dispute and if the dispute has not been resolved within sixty (60) calendar days by the relevant parties using their best efforts to resolve the dispute, the dispute will be referred to arbitration and determined under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules with any hearings to be held at _____.

19.3 Exclusion of UN Convention

The terms of the United Nations Convention on Contracts for the Sale of Goods do not apply to this EULA.

20. Entire Agreement and Severability

This EULA (including any addendum or amendment to this EULA which is included with the Software) is the entire agreement between the Licensee and _____ relating to the Software and they supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to the Software or any other subject matter covered by this EULA. If any provision of this EULA is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect.

NOTES:

End-User Licenses are non-negotiable and non-exclusive licenses which apply to software sold online, and are reached between software developers and potential software users. EULA gives permission to use software and some other additional rights, including the right for a back-up copy, it also imposes certain restrictions on how one may use the software. By granting permission to use software, you don't transfer your software ownership, you simply grant the right to use the software. As software developer, you retain all the rights relating to ownership, namely the right to distribute, make copies etc. There are two types of end-user licenses: shrink-wrap and click-wrap licenses.

Shrink-Wrap Licenses- license agreements or other terms and conditions of a (putatively) contractual nature, which are deemed read and accepted by the consumer after opening the product.

Click-Wrap Licenses- is a common type of agreement (often used in connection with software licenses). Such forms of agreement are mostly found on the Internet, as part of the installation process of many software packages, or in other circumstances where agreement is sought using electronic media.

iii. Distribution/Channel Arrangement Templates

This Software Distribution Agreement ("Agreement") is made and effective this date, _____ by and between YOUR_COMPANY_NAME ("Developer"), and _____ ("Distributor"). Developer has developed certain software it desires to distribute. Distributor is in the business of marketing and distributing software products. Developer and Distributor desire to arrange for Distributor to market Developer's software as set forth herein.

NOW, THEREFORE, it is agreed:

1. Distribution of Software.

A). Appointment. Subject to the terms of this Agreement, Developer appoints Distributor as a nonexclusive distributor for Developer's software (the "Software"). Distributor shall market copies of the Software supplied by Developer to customers during the term of this Agreement. Distributor shall have no right to make copies of the Software. Distributor shall not distribute any copy of the Software without Developer's end-user software license agreement. Distributor will use its best efforts to promote, market and sell the software to end users.

B). Orders for Copies of Software. Any and all orders by Distributor for copies of the Software shall be pursuant to the terms and conditions of this Agreement. Such terms and conditions shall supersede any additional or conflicting terms or conditions contained in any purchase order or other communication from Distributor.

C). New Versions. In the event that Developer releases a new version of any Software product during the term of this Agreement, Distributor may return or destroy, within 30 days after first shipment of the new version to Distributor, any copies of the old version of such Software product held by Distributor in inventory and obtain a copy of the new version of such Software product for each copy of the old version returned by Distributor to Developer. Distributor shall not have the right to return any copies of the old version that have been sold by Distributor prior to release of the new version.

D). Returns. Distributor may return any units of the Software that are delivered with defective media or damaged packaging or documentation, provided such defects or damage are not the fault of the Distributor. Distributor may otherwise return any unopened units of Software during the term of this Agreement provided that the copies returned by Distributor are current versions of the Software at the time of such return. Distributor must request and receive a return of materials authorization number before returning any materials.

E). Suggested Retail Price. If Developer reduces its suggested retail price of the Software, Developer shall grant an adjustment for Distributor on any then unsold Software in Distributor's physical inventory. The amount of the adjustment will be equal, pro rata, to the amount of change in the suggested retail price. This adjustment will be provided only in the form of a credit against later purchases of the Software by Distributor.

F). Marketing Funds. Developer may agree to provide Distributor with funding for various marketing activities on a case-by-case basis. Developer recognizes the importance of promoting its products and will assist Distributor to do so. Reimbursement of marketing expenditures requires prior written authorization by Developer. All terms of the marketing agreements shall be specified in the authorizations. Claims for payment shall be submitted with proof-of-performance and a copy of the authorization. Developer specifically states, and Distributor recognizes, that Developer does not offer a CO-OP marketing fund entitling Distributor to accrue dollars for marketing based upon sales.

2. Advertising.

A). Distributor may use Developer's logo, images, slogan, texts for the sole purpose of promoting Developer's software on Distributor's website and other advertising media such as newsletters, fliers and paper advertisement.

B). Developer has the right to review and comment on the website and the published media and the Distributor must make necessary changes after receiving written notice from the Developer.

3. Prices and Payment.

For each copy (license) of the Software sold by Distributor, Distributor shall pay to Developer the price set forth as follows minus the payment transaction fee and shipping cost:

70% of the sale price excluding taxes, shipping and handling charges for each transaction between Euro 50 and Euro 200.

75% of the sale price excluding taxes, shipping and handling charges for each transaction between Euro201 and Euro 500.

80% of the sale price excluding taxes, shipping and handling charges for each transaction between Euro501 and Euro1,000.

85% of the sale price excluding taxes, shipping and handling charges for each transaction over Euro1,000.

The prices shall be subject to change at Developer's sole option upon written notice to Distributor. The payment to Developer shall made within (30) days of the sale.

4. Term and Termination.

A). Term. The "Initial Term" of this Agreement shall commence on January 1, 2009 and shall continue for a period of (1) year, unless terminated earlier as provided herein. Either party may terminate this Agreement effective upon the end of the Initial Term by written notice to the other at least ninety (60) days prior to the end of the Initial Term. If not terminated at the end of the Initial Term, the Agreement shall automatically renew for successive periods of 1 year each, unless terminated by either party at least ninety (60) days before the end of any renewal term.

B). Termination. This Agreement may be terminated at any time: (i) by either party if there is a default of a material obligation which is not cured within thirty (30) days following notice from the non-defaulting party; (ii) by Developer if Distributor ceases to function as an ongoing concern or to conduct its operations in the normal course of business; (iii) by Developer if Distributor shall become insolvent or bankrupt or Distributor shall make an assignment for the benefit of creditors or a trustee or receiver shall be appointed for Distributor. Except for a termination for cause, neither party shall be liable to the other or to any other person for any loss or damage occasioned by the termination of this Agreement as provided herein; or (iv) by either party with a thirty (30) day written notice to other party.

5. Indemnification of Distributor. Developer shall be solely responsible for the design, development, supply, production, validity of copyrights and patents claimed by Developer, and performance of the Software. Distributor, in case of legal action seeking remedy from Distributor concerning Developer's warranty, infringement of copyright, patent, trade secret, or other proprietary right, will immediately notify Developer by Registered Mail of such action. Developer may, at its sole discretion, elect to undertake the defense of said action and will assign its attorney to the case. Developer agrees to indemnify and hold Distributor harmless from and against any claim, loss, damage, expense or liability (including attorney's fees and costs) that may result in whole or in part, from: A. any infringement or any claim of infringement, of any patent, trademark, copyright, trade secret or other proprietary right with respect to the Software. B. and warranty or product liability claim with respect to the Software.

6. Disclaimer. EXCEPT AS PROVIDED IN THIS AGREEMENT, DEVELOPER DOES NOT MAKE AND DISTRIBUTOR DISCLAIMS, ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Developer provides a limited warranty to the end user of the Software as set forth in the license agreement that accompanies the Software.

7. Limitation of Remedies and Liability. A. Damages. IN NO EVENT SHALL DEVELOPER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS) WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY, EVEN IF DEVELOPER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. B. Further limitation. In the event that any disclaimer of warranty or limitation of liability is found to be unlawful or inapplicable, or to have failed of its essential purpose, Developer's liability shall be limited to the amount paid by Distributor for the specific Software copy that caused such liability. C. Indemnification. Distributor agrees to indemnify and hold harmless Developer from and against any claim, loss, suit or damage, including reasonable attorney's fees and costs, arising out of any failure of Developer to perform any obligation in this Agreement or to properly deliver any Software to anyone purchasing from Distributor. D. Reliance. Developer is willing to license the Software to Distributor only in consideration of and in reliance upon the provisions of this Agreement limiting Developer's exposure to liability, such as are contained in this Section 5. Such provisions constitute an essential part of the bargain underlying this Agreement and have been reflected in the license fees and other consideration specified in this Agreement.

8. Maintenance and Support. Maintenance and support for the Software are provided by Developer.

9. Notices. Any notice or other communication under this Agreement shall be deemed given if delivered in writing to the intended recipient either in person or mailed, certified or registered, postage prepaid, or by recognized overnight delivery service, to the intended recipient at the address specified herein: If to Developer: Your Company Address here If to Distributor: Company's address here

10. Governing Law. This Agreement shall be governed, construed and enforced according to the laws of the _____.

11. Final Agreement. This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.

12. Headings. Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

13. Severability. If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Signatures here

NOTES:

Software Distribution Agreements are used whenever a company that produces software gives its software to another company that produces or sells computer hardware and other equipment needed to install the software (onto appropriate hardware or equipment) and thus making it available for sale. These types of agreements are also optionally exclusive and non-exclusive. The main elements of a software distribution agreement include the term, territory and liability of the agreement. If the use of such hardware or equipment requires particular training for a software distributor, a clause outlining a detailed training schedule for the distributor (staff and employees) must be added to the contract. Other clauses that the software distribution agreement must contain include: copyright, patents, trademarks and other intellectual property rights, confidentiality, changes in distributor (in case this changes during the term of the agreement), relationship of the distributor to the supplier (this is particularly important if the supplier wants to limit its liability with respect to disputes that may arise between distributor and its clients), end-user licenses (under which terms can the distributor allow end-users to use supplier's software integrated within distributor's computer hardware or any other equipment) etc.

iv. Original Equipment Manufacturer (OEM)

This Agreement is made between _____ ("**Manufacturer**") and Company ("**Licensor**") to authorize Manufacturer to bundle certain Licensed Software (as specified in Attachment A) with certain products ("HARDWARE") produced and/or marketed by Manufacturer. Therefore, in consideration of the mutual promises, the parties agree as follows:

1. LICENSE DESCRIPTION

Licensor grants to Manufacturer a worldwide, non-exclusive license to reproduce, have reproduced, market and distribute the Licensed Software solely for use as bundled software with retail unit sales of Manufacturer's branded Hardware products. OEM sublicensing of the Licensed Software is expressly restricted, and shall be subject to Licensor's advance written approval and execution by Sublicensee of an OEM Sublicensing Agreement in a form provided by Licensor.

2. LICENSE TERMS

In exchange for the grant of this license, Manufacturer agrees to pay to Licensor the royalty fees set forth in Attachment B and to comply with the license terms and conditions contained herein. The volume pricing set forth in Attachment A is based upon Manufacturer's commitment to the following:

a) Manufacturer agrees to make its user registration data base available to Licensor for use in Licensor direct marketing programs, and further agrees to cooperate in implementing certain joint marketing activities as set forth in Attachment C herein;

b) Manufacturer agrees to include a copy of Licensor's product catalog, User Registration Card and Audit Label with each unit of Licensed Software included with Manufacturer's Hardware products. Such items will be supplied by Licensor and will be subject to Manufacturer's approval;

c) Manufacturer agrees to review with Licensor the details of production and packaging of all Licensed Software, including outer box copy, disk screening, and any printed user documentation and collateral materials;

d) For use in hardware compatibility testing and development, Manufacturer agrees to provide Licensor with two (2) units each of any Hardware product in which a Licensor Licensed Software product is to be bundled.

3. PURCHASE COMMITMENT

Manufacturer agrees to license an agreed number of units of Licensed Software at the specified royalty rates, and further agrees to pay certain non-refundable license fees against future royalties, due and payable per Attachment B as non-recoverable advances against unit license royalties under this Agreement. Royalties due for units produced in excess of prepaid units shall be payable monthly, net 30 days after the conclusion of each monthly shipping period. Manufacturer shall provide Licensor with a written accounting of all units produced and shipped during each month within 30 days after the completion of each monthly shipping period. Licensor may request and shall be provided substantiating information to verify and audit the accuracy of the royalty accounting reports for any royalty period(s). Licensor may at its option and expense

conduct an on-site audit of Manufacturer's records once per year. In the event such audit should disclose a deficiency in reported units for any period(s) exceeding 10%, Manufacturer shall reimburse Licensor for any and all reasonable expenses incurred and related to conducting such audit and collection of any deficiency amounts (including attorney's fees and interest, as applicable).

4. PRODUCT DELIVERY

Licensor agrees to deliver master production disks of the Licensed Software and associated printed materials in accordance with the Project Schedule specified in Attachment B, conditioned upon Licensor's timely receipt of applicable royalty advances and required Hardware test units. Licensor shall have the right at any time during the effectiveness of this Agreement to replace any master production disks with updated versions with equal or greater capability, reflecting bug fixes, enhancements and updates to collateral information occurring after delivery of the previous version, and Manufacturer agrees to utilize such revised master as soon as reasonably practicable.

5. REPARATION OF DEFECTS

Licensor agrees to use its best efforts to correct any reported defects in the Licensed Software. Defects are defined as functional or operational differences between the Licensed Software as described in any user documentation and the actual performance thereof, where such difference substantially impairs the use or performance of such Licensed Software. Upon receipt of written notification of a defect(s) from Manufacturer, Licensor will use its best efforts to correct such and ship to Manufacturer a corrected master production disk within sixty (60) days. However, in the event Manufacturer experiences a critical defect(s) which renders the Licensed Software unusable (a "stop ship" defect), then in such case Licensor will use its best efforts to deliver a corrected disk within 7 days (or less as possible). Licensor's sole liability shall be to replace any defective Licensed Software or refund the license fee for unused portions, at Licensor's option. Licensor makes no warranties other than this express warranty, and specifically excludes any warranties of merchantability or fitness for a particular purpose. Licensor shall not be liable for any indirect, special, incidental or consequential damages in connection with any items supplied under this Agreement.

6. TERM OF AGREEMENT

Upon acceptance by both parties, this Agreement shall be effective for a term of 12 months, or such other term as is specified in Attachment A. Either party shall have the right to terminate this Agreement in the case of a material breach by the other party, by providing such party written notice of the breach, and upon the breaching party's failure to cure its breach within thirty (30) days after its receipt thereof. Further, Licensor shall have the right to terminate this Agreement in the event Manufacturer is adjudged bankrupt, placed in receivership, or changes its ownership or legal structure. Neither party shall be liable to the other for damages, losses, or expenses as a result of any permitted termination of the Agreement; provided that such termination or expiration shall not affect any claim, demand, or liability of either party created or arising under this Agreement prior to such termination. Termination of this Agreement solely as a result of Manufacturer's default shall result in acceleration of Manufacturer's obligation to pay all sums Manufacturer has contracted to pay under this Agreement.

7. COPYRIGHT & TRADEMARK

Materials supplied by Licensor under this Agreement contain proprietary information and trade secrets of Licensor and Licensor licensors, and are governed by U.S. and International copyright laws. Title and ownership rights shall in all cases remain exclusively with Licensor, and Manufacturer agrees to place the following notice on all media and documentation containing Licensor proprietary information: "(c) year Licensor Inc. All rights reserved." Licensor warrants to Manufacturer that Licensed Software under this Agreement does not infringe upon or violate any U.S. or foreign patents, copyrights, trade secrets or any other proprietary right of any third party. Licensor's entire obligation and liability under this warranty shall be to indemnify and hold Manufacturer harmless from and against any claims for damages, including reasonable legal fees and expenses, resulting from any breach of this warranty. Manufacturer agrees to promptly notify Licensor upon learning of any such claim and will cooperate fully in its defense or settlement.

8. SERVICE & SUPPORT

Manufacturer is directly responsible for all warranty and other end-user support for all Licensed Software distributed by Manufacturer. Manufacturer's Customer Support staff are encouraged to contact Licensor Technical Services for assistance on technical questions concerning the Licensed Software, however, Manufacturer is not permitted within the scope of this agreement to instruct their users to contact Licensor directly for technical matters. In instances where Manufacturer has attempted to remedy a customer technical problem related to the Licensed Software and has been unsuccessful, Manufacturer may communicate a contact name to Licensor's Technical Services staff for processing directly by Licensor, or in combination with Manufacturer's staff. Spash agrees to provide reasonable materials for sales, technical and marketing support, as available.

9-14 MISCELLANEOUS CONDITIONS

9. Manufacturer is an independent contractor and shall at no time have the power to bind Licensor or to vary the terms and conditions or warranties or covenants, or to create any rights in favor of any person which Licensor has not previously authorized in writing, and the relationship under this Agreement shall not create any form of legal association between the parties which would impose liability upon the other. This Agreement is not assignable by Manufacturer. If any provision of this Agreement is held improper or unenforceable, the remaining portions shall remain in full force and effect.

10. Manufacturer agrees that the terms of this Agreement, including prices, are highly confidential and acknowledges that disclosure thereof can be highly damaging to Licensor's general marketing efforts of retail products and OEM products, and therefore acknowledges that such will not be disclosed to third parties, including OEM partners, without the written consent of an officer of Licensor.

11. All notices under this Agreement shall be delivered in writing, either: (a) mailed via certified mail to the other party at its contact address or at such address as the party may give notice; or (b) delivered personally to an officer of the other party. Any mailed notice is effective when deposited in the U.S. mail, properly addressed with postage prepaid.

Licensor Contact: name: _____ tel: _____
 title: _____ fax: _____
 address: _____ email: _____
 city/state: _____

Manufacturer Contact: name: _____ tel: _____
 title: _____ fax: _____
 address: _____ email: _____
 city/state: _____

12. This Agreement is made subject to any applicable regulations, of other restrictions on the export from the U.S.A. of controlled commodities, technical data, or of information concerning such technical data, which may be imposed from time to time by the U.S. Government. Manufacturer will not export, directly or indirectly, any Licensed Software or information pertaining thereto to any country for which the U.S. Government or any agency thereof requires export licenses or approval without first obtaining such.

13. This Agreement shall be governed and construed in accordance with the Laws of the State of [State], U.S.A.. Should the parties be unable to resolve any disagreement relating to this Agreement, it is agreed to submit such issue(s) to a panel of three (3) arbitrators familiar with the resolution of software disputes appointed by the American Arbitration Association. Such arbitration will take place in [City], [State], with each of the parties sharing all costs and expenses directly related thereto. Neither party hereto shall have the right to further appeal or redress in any court or tribunal, except solely for the purpose of enforcement of any arbitral award tendered by the selected panel of arbitrators. In a legal action to enforce such arbitral award, the prevailing party shall be entitled to reasonable attorneys' fees and expenses.

14. Manufacturer and Licensor agree that these terms and conditions and associated attachments are the complete statement of the agreement between the parties, superseding all oral or written proposals and all negotiations, conversations, and other communications between the parties with respect to the subject matter hereof, except that any Non-Disclosure Agreements shall continue in effect. Both parties represent and warranty that their entry into this Agreement is rightful and does not violate any other agreement to which they are a party.

IN WITNESS WHEREOF, the parties have executed this Agreement of the ____day of _____, 19__.

For Licensor:

For Manufacturer:

Accepted By:

Accepted By:

Name/Title

Name/Title

ATTACHMENTS:

- Attachment A - Listing of Licensed Software and Bundles
- Attachment B - Project and Payment Schedules
- Attachment C - Marketing and Promotional Plan

NOTES: OEM refers to the company that originally manufactured a product that has been later purchased by another company and is then sold by that purchasing company under its brand name. The issue of branding and control needs to be clearly examined in OEM agreements.

v. Joint-venture partnerships

Onyx Japan Joint Venture Agreement

Between

ONYX SOFTWARE CORPORATION

And

PRIME SYSTEMS CORPORATION

DATED SEPTEMBER 14, 2000

*Certain confidential information contained in this document, marked by brackets, has been omitted and filed with the Securities and Exchange Commission pursuant to Rule 406 of the Securities Act of 1933, as amended.

Schedule 1: Matters requiring unanimous consent of Board of Directors

Schedule 2: Items not considered to be day-to-day operation matters

2 Joint Venture Agreement

This Joint Venture Agreement is executed on this 14th day of September 2000 by and between:

ONYX SOFTWARE CORPORATION, a company duly organized and existing under the laws of Washington with its principal place of business located at 3180 139th Avenue SE, Suite 500, Bellevue, WA 98005-4091, USA (hereinafter "Onyx");

and

PRIME SYSTEMS CORPORATION, a corporation duly organized and existing under the laws of Japan with its principal place of business located at Sakurai Building, 3F 2-8-1 Fukagawa, Koto-ku, Tokyo, 135-0033 Japan (hereinafter "Prime");

(Hereinafter, each of Onyx and Prime shall be individually referred to as the "Party" and, both of the two jointly as the "Parties")

1 Recitals

WHEREAS Onyx is in the business of developing, marketing and licensing computer SOFTWARE;

WHEREAS Prime is in the business of providing system solutions, developing

and marketing computer SOFTWARE etc.;

WHEREAS Onyx and Prime entered into a non-binding term sheet dated May 27, 2000 for the purpose of the consideration of the establishment of a Joint Venture in Japan;

WHEREAS pursuant to the Interim Agreement dated August 8, 2000 (the "Interim Agreement"), Onyx and Prime established a legal entity, Onyx SOFTWARE Co., Ltd. ("Onyx Japan") on August 31, 2000 with a paid in capital of JPY86,000,000 of which Onyx has invested JPY61,900,000 and Prime, JPY24,100,000; and

WHEREAS the Parties anticipate, and intend to exert their reasonable best efforts to cause, Softbank Investment Corporation ("Softbank") to invest in Onyx Japan by September 15, 2000;

Onyx and Prime enter into this Agreement to define the terms of the Joint Venture vehicle, Onyx Japan, for the purpose of ensuring a cooperative, mutually beneficial relationship and the successful realization of the purposes of the Joint Venture as set forth in Clause 3 below.

2 Effect of this Agreement

This Agreement will take effect on the occurrence of the later of (i) the execution of this Agreement; or (ii) Investment by Softbank into Onyx Japan (the "Effective Date"). On the Effective Date, all terms of the Interim Agreement will be superseded by this Agreement and this Agreement and the Schedules comprised herein shall from the Effective Date constitute the entire agreement relating to the relationship of the Parties with respect to Onyx Japan.

The Parties understand and agree that there are no other oral or written

collateral promises, representations, agreements or understandings between them concerning the subject matter of this Agreement other than those expressly stated herein.

3 Purpose

Onyx Japan is established for the purpose of successfully expanding Onyx technology and SOFTWARE products in Japan. Onyx Japan is organized for the purpose of product localization, sales, marketing and consulting as well as servicing the SOFTWARE and solutions provided by Onyx or developed independently by Onyx Japan, and for the purpose of engaging in all activities and transactions that are necessary in furtherance of that purpose. Unless otherwise agreed upon by the Parties in writing, Onyx Japan shall not engage in any other activities except those set forth above.

4 Definitions

"Agreement" refers to this Joint Venture Agreement unless specified otherwise.

"Affiliate" means any entity, other than Onyx Japan, in which a Party owns or controls more than 50% of the outstanding capital stock of such entity or any entity which owns or controls more than 50% of one of the Parties.

"Arrangements" means this Agreement and other arrangements relating to the establishment of Onyx Japan and the ongoing Joint Venture.

"Board of Directors" means the board of directors of Onyx Japan unless expressly specified otherwise.

"Business Day" means any day which is not Saturday, Sunday or a national holiday in the place where the performance of an obligation required under this Agreement is to be

undertaken.

"Chairman" means the chairman and representative director of Onyx Japan.

"Confidential Information" means the terms and conditions of this Agreement and any information disclosed by either Party or their Affiliates to the other Party or to Onyx Japan, either directly or indirectly, in writing, orally or by inspection of tangible objects or SOFTWARE or Intellectual Property, which information is designated, orally or in writing, as "Confidential," "Proprietary" or some other designation. Confidential Information shall not, however, include any information which (i) was publicly known prior to the time of disclosure by the disclosing Party, (ii) becomes publicly known after disclosure by the disclosing Party to the receiving Party through no action or inaction of the receiving Party, (iii) is already in the possession of the receiving Party at the time of disclosure by the disclosing Party, or (iv) is obtained by the receiving Party from a third party without a breach of any obligations of confidentiality of such third party to the Party wishing to keep such information confidential.

"Fair Market Value" is the value determined in accordance with the procedure contained in Clause 14 of this Agreement.

"Intellectual Property" means any intellectual property in any jurisdiction including, without limitation, any and all patents, utility models, designs, logos, trademarks, service marks, trade names, copyrights (including SOFTWARE), know-how and domain names, and any rights to obtain any of the foregoing where applicable under pending applications for intellectual property rights.

"Interim Period" means the period from when the Interim Agreement was

entered into until this Agreement takes effect pursuant to Clause 2.

"IPO" means the initial public offering of Onyx Japan by listing on a recognized technology-related stock exchange market in Japan such as "TSE Mothers" or "Nasdaq Japan", in this case anticipated to be conducted during the calendar year [*] or as soon as optimal thereafter as described in Clause 9.1.

"Joint Venture" is the arrangement referred to in this Agreement to create, operate and manage Onyx Japan between Onyx and Prime and with investment by Softbank.

"Material Default" means default or non-performance of any obligations under this Agreement causing material damage to Onyx Japan or any Party to this Agreement.

"Par Value" is the price at which the Shares were originally issued, which is JPY50,000 per Share.

"President" means the president and representative director of Onyx Japan.

"Share" means a share in Onyx Japan represented by stock certificate or other security instrument.

"Shareholder" means a shareholder in Onyx Japan.

"Softbank Investment" means the investment in 14% of the Total Capital of Onyx Japan by Softbank anticipated to occur on or before September 15, 2000 or such other date thereafter as agreed upon in writing by the Parties.

"Territory" means Japan.

"Total Capital" means the capital in Onyx Japan during the operational period of JPY800,000,000 inclusive of the investment of Onyx, Prime and

Softbank, as provided in Clause 5.

5 Structure

5.1 The Parties agree that the Joint Venture contemplated by this Agreement shall be carried out by Onyx Japan, as established by Onyx and Prime on August 31, 2000.

5.2 The anticipated ownership structure of Onyx Japan after the Softbank Investment (and inclusive of investments made prior to or during the Interim Period) is as follows:

Shareholder	%	Paid in Capital (JPY)
Onyx	58%	464,000,000
Prime	28%	224,000,000
Softbank	14%	112,000,000

5.3 The Parties shall complete all necessary arrangements and cooperate with each other to cause Onyx Japan to issue to Softbank, Onyx and Prime, at par value, the number of Shares necessary to ensure that the allocated Shares and Paid-in-Capital amounts provided above are attained prior to September 15, 2000. The Parties shall subscribe for such number of Shares and transfer the requisite capital to the bank account designated by Onyx Japan on or before the date of the Softbank Investment and shall use their reasonable best efforts to cause Softbank to provide the above noted capital and to subscribe for Shares by September 15, 2000. In the event that the Softbank Investment does not occur by September 15, 2000, the Parties shall confer in good

----- [*] Confidential treatment requested.

5.4 The Parties agree that they will

consider, from a practical viewpoint for the effective development of the business of Onyx Japan, the possibility of the further equity participation in Onyx Japan by an appropriate company that is determined by mutual agreement between Prime and Onyx. Both Parties shall not unreasonably withhold their consent in this respect and, subject to Clause 5.5, agree that they will, in principle, decrease their respective Shareholding ratio on a pro rata basis as necessary to effect such participation.

5.5 At no time shall Onyx's shareholding fall below 50.01% of the total issued Shares (including any potential stock (senzai kabushiki)), before or after the IPO is conducted.

6 Roles of the Parties

6.1 Onyx shall provide Onyx Japan with all necessary or appropriate advice and guidance for effective operations, technical and marketing staff with outstanding ability that is necessary or appropriate for effective operations and all necessary or appropriate information on Onyx's strategies and vision. Onyx shall assist Onyx Japan in setting-up systems and processes for all operational departments which utilize the existing infrastructure of Onyx's departments. Onyx shall provide Onyx Japan with marketing materials and collateral, PR templates and marketing campaign templates for Onyx Japan to leverage in Japan. Onyx shall create, and provide Onyx Japan with, the core or base code for products that are to be localized into Japanese versions and sold by Onyx Japan. In the event the services to be provided by Onyx hereunder, with the exception of such minor services as mutually agreed upon by the Parties, require that any efforts or out-of-pocket costs, including, but not limited to, salaries and any other

payments and costs relating to Onyx's employees to be seconded or transferred to Onyx Japan, shall be incurred by Onyx, the Parties shall mutually determine any fees to be paid to Onyx by Onyx Japan for the provision of such services.

6.2 Prime shall provide Onyx Japan with a sales network and relevant connections, press and PR connections, market information and advice on effective Japanese operations. Prime shall also assist Onyx Japan with the localization and creation of localized Japanese versions of Onyx products, including provision of technical resources and staff. Prime shall provide Onyx Japan and its partner and customers with consulting and system integration services and will be one of the main system integrators for Onyx Japan's implementations. In the event the services to be provided by Prime hereunder, with the exception of such minor services as mutually agreed upon by the Parties, require that any efforts or out-of-pocket costs, including, but not limited to, salaries and any other payments and costs relating to Prime's employees to be seconded or transferred to Onyx Japan, or costs related to system integration, system management, development thereof or localizing of Onyx's products, shall be incurred by Prime, the Parties shall mutually determine any fees to be paid to Prime by Onyx Japan for the carrying out of such services.

7 Intellectual Property

7.1 Onyx Japan will enter into a Distribution Agreement, which is mutually acceptable to the Parties, with Onyx providing for the license of all Intellectual Property owned by Onyx relevant to the Joint Venture

("Onyx Intellectual Property") within the Territory and the payment of reasonable compensation to Onyx by Onyx Japan.

7.2 All right, title and interest in and to any Intellectual Property provided, supplied or licensed by Onyx, or proprietary rights relating thereto, and the media on which the same are furnished, provided, supplied or licensed by Onyx, including any developments, adaptations, versions or modifications shall, to such extent, belong exclusively to Onyx or its exclusive suppliers at all times. Any Intellectual Property developed independently by Onyx Japan without any reference or connection to Onyx Intellectual Property or Confidential Information whatsoever and without any reference or connection to Intellectual Property owned by, or Confidential Information of Prime relevant to the Joint Venture whatsoever will be the property of Onyx Japan ("Onyx Japan Intellectual Property"). Onyx shall be entitled, at its option, to non-exclusive perpetual world-wide or regional licenses to use, modify, adapt or develop Onyx Japan Intellectual Property with reasonable charge based on the fair market standard.

7.3 All right, title and interest in and to any Intellectual Property provided, supplied or licensed by Prime, or proprietary rights relating thereto, and the media on which the same are furnished, provided, supplied or licensed by Prime, including any developments, adaptations, versions or modifications shall, to such extent, belong exclusively to Prime or its exclusive suppliers at all times. Prime shall be entitled, at its option, to non-exclusive perpetual world-wide or regional licenses to use, modify, adapt or develop Onyx Japan Intellectual Property with reasonable charge based on the fair

market standard.

7.4 Both Parties acknowledge that this Agreement and any license granted by Prime or Onyx to Onyx Japan under Clauses 7.2 or 7.3 above does not and shall not grant rights to any Party to use the SOFTWARE or Intellectual Property for any purpose other than in pursuance of the Onyx Japan Joint Venture. All Intellectual Property will be treated as Confidential Information by the Parties unless (i) there is a label or mark to indicate that the information or Intellectual Property is not to be treated as proprietary and/or confidential, (ii) it is agreed otherwise in writing by the provider of such Confidential Information or (iii) the contrary is clearly implied by the nature of the Intellectual Property and the context of its use.

8 Operation and Management

8.1 Each Party agrees to take all actions necessary to ensure that Onyx Japan shall be operated in accordance with,

and complies with the terms of, this Agreement and applicable law and shall vote all Shares held by it to give complete and timely effect to the terms of this Agreement.

8.2 Onyx Japan shall be constituted with seven Directors and at least to Statutory Auditors as per the Articles of Incorporation. Of these, Onyx shall nominate 4 Directors and Prime shall nominate 3 Directors. Mr. Tadashi Sensu shall be one of Prime's initial 3 Directors. Onyx and Prime shall be entitled to nominate one Statutory Auditor each. One additional Statutory Auditor shall be elected at the annual general meeting of Shareholders of Onyx Japan with regard to the first period for settlement of accounts. Should the shareholding ratio between Onyx and Prime be altered by the transfer of Shares by Prime to any third party without the written approval of Onyx, the number of Directors shall be adjusted to reflect the proportional

NOTES:

A Joint-venture partnership is a contractual business undertaken between two or more companies. This is where intellectual property issues related to the development of software become tricky. Joint-ventures are based on a single business transaction and they are reached between companies in order to minimize risk and increase competitive advantages in the marketplace. A joint-venture agreement must clearly provide for the rights and duties of all the parties to the agreement, and must specify the parties' intentions. Key provisions that a joint-venture partnership agreement must contain are : clearly defined business objectives (what is the purpose of the joint-venture), degree of participation and management roles of each party to the joint venture (what are the roles, obligations, rights and duties of the parties), contribution of capital and ownership rights to property/division of the profits and losses (who will be responsible for losses, when shall the profits be shared and how), dispute resolution mechanisms, termination/liquidation of the joint-venture, and the buy-out provisions (the parties must provide a termination date, at which time contractual arrangements will terminate or one party will buy the other's equity stake), confidentiality and intellectual property (how to allocate, control and protect confidential information and other intellectual property that is contributed to their business relationship, and who will own intellectual property in case the entity is dissolved).

IV. RELATIONSHIP BETWEEN SOFTWARE COMPANIES AND EMPLOYEES

Software companies must regulate employee relationships through employment contracts. Using written contracts reduces the risks involved with exposing confidential information to the people who work for you. First, identify what information is regarded as confidential, and then make it clear from the outset that any intellectual property related to the software developed by your employees belongs to your company and is confidential. Finally, impose restrictions to your employee's right to compete with your company after the employment contract terminates.

Employment contracts usually contain clauses on the duration of the job, information about employee's rights and duties, benefits (health insurance, vacation leave, disability leave, and maternity leave), grounds for termination, and dispute resolution.

There are different types of agreements that can be used to regulate company-employee relationships.

- 1) Employment agreements with current employees
- 2) Employment agreement with technical employees
- 3) Employment agreements with non-technical employees
- 4) Non-Disclosure Agreements
- 5) Post-employment non-competition agreement
- 6) Independent contractors

Templates are available for each of the above-mentioned agreements.

1. Standard Employment Agreement

This AGREEMENT, entered into this ___ day of [Month], 20__, between [Business], a [state of incorporation] (the "Company"), and [name of employee] (the "Employee"),

WITNESSETH THAT:

WHEREAS, the parties hereto desire to enter into this Agreement to define and set forth the terms and conditions of the employment of the Employee by the Company;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, it is hereby covenanted and agreed by the Company and the Employee as follows:

1. Position; Employment Period

The Company hereby employs the Employee as its [position], and the Employee hereby agrees to serve in such capacity, for the period beginning [start date], 20__, and ending on the date on which the Employee's employment is terminated in accordance with paragraph 8 below (the "Employment Period").

2. Performance of Duties

The Employee agrees that during the Employment Period he shall devote his full business time to the business affairs of the Company and shall perform his duties faithfully and efficiently subject to the direction of the [President] of the Company; provided that the foregoing shall not limit or prevent the Employee from serving on the board of directors of charitable organizations or other business corporations not in competition with the Company. The Employee shall not be assigned duties and responsibilities that are not generally within the scope and character associated or required of other employees of similar rank and position.

3. Compensation

(a) Subject to the following provisions of this Agreement, during the Employment Period the Employee shall be compensated for his services as follows:

(b) He shall receive an annual salary, payable in monthly or more frequent installments, in an amount which shall initially be [\$ amount] per annum, subject to such increases as may from time to time be determined by the [President] of the Company.

[specify pension and other non-salary benefits.]

(c) He shall be entitled to vacations of not less than [amount] per year.

(d) He shall be entitled to such other perquisites as may be customarily granted by the Company to employees of similar rank and position.

4. Disability

Subject to the provisions of paragraph 8, if the Employee's employment is terminated during the Employment Period by reason of his Disability (as defined below), the Employee shall continue to receive an annual salary and benefits in accordance with paragraphs 3(a) and 3(b) through the end of the [number] full calendar month of such disability but not in any event beyond the end of the Employment Period. For purposes of this Agreement the term "Disability" means a physical or mental disability which renders the Employee incapable of performing his duties under this Agreement and which disability has existed for at least [number] months, as determined by an independent physician selected by the Company and agreed to by the Employee. Any salary payments to the Employee shall be reduced by the amount of any benefits paid for the same period of time under the Company's disability insurance programs.

5. Competing Businesses

During the period of his employment under this Agreement, the Employee shall not be employed by or otherwise engage in or be interested in any business in competition with the Company, or with any of its subsidiaries or affiliates, except that the Employee's investment in any such business shall not be considered a violation of this paragraph if either (a) the Employee owns less than [number]% of the equity thereof, or (b) such business is not in competition with the Company.

6. Confidentiality

During and after the Employment Period, the Employee will not divulge or appropriate to his own use or to the use of others, in competition with the Company, any secret or confidential information or knowledge pertaining to the business of the Company, or of any of its subsidiaries, obtained by him in any way while he was employed by the Company or by any of its subsidiaries.

7. Remedies

If at any time the Employee violates to a material extent any of the covenants or agreements set forth in paragraphs 5 and 6, the Company shall have the right to terminate all of its obligations to make further payments under this Agreement. The Employee acknowledges that the Company would be irreparably injured by a violation of paragraph 5 or 6 and agrees that the Company shall be entitled to an injunction restraining the Employee from any actual or threatened breach of paragraph 5 or 6 or to any other appropriate equitable remedy without any bond or other security being required.

8. Amendment and Termination This Agreement may be amended or cancelled by mutual agreement of the parties without the consent of any other person and, so long as the Employee lives, no person, other than the parties hereto, shall have any rights under or interest in this Agreement or the subject matter hereof. The Employment Period shall terminate as of the earliest of:

(a) [date];

(b) the last day of the month in which the date of the Employee's death occurs; or the date on which the Company gives notice to the Employee if such termination is for Cause or Disability.

(c) For purposes of this Agreement, "Cause" means the Employee's gross misconduct resulting in material damage to the Company or willful and material breach of this Agreement.

9. Notices

Any notice required or permitted to be given under this Agreement shall be sufficient if in writing and if sent by registered mail to the Company at its principal executive offices or to the Employee at the last address filed by him in writing with the Company, as the case may be.

10. Non-Assignment

The interests of the Employee under this Agreement are not subject to the claims of his creditors and may not be voluntarily or involuntarily assigned, alienated or encumbered.

11. Successors

This Agreement shall be binding upon, and inure to the benefit of, the Company and its successors and assigns and upon any person acquiring, whether by merger, consolidation, purchase of assets or otherwise, all or substantially all of the Company's assets and business.

12. Applicable Law

The provisions of this Agreement shall be construed in accordance with the laws of the State of Illinois.

13. Counterparts

The Agreement may be executed in two or more counterparts, any one of which shall be deemed the original without reference to the others.

IN WITNESS WHEREOF, the Employee has hereunto set his hand, and the Company has caused these presents to be executed in its name and on its behalf, all as of the day and year first above written.

[Employee Name]

[name of business] Inc.

By: _____
Its: Duly Authorized Representative

NOTES: Some provisions must be included in employment agreements by law, and there are also a number of minimum conditions that must be met regardless of whether they are included in agreements. Employment law also provides a framework for negotiating additional entitlements. You must consult UNMIK Regulation 2001/27 on Essential Labor Law in Kosovo. The new Labor Law is still in the draft stage and is awaiting formal approval by the Kosovo Assembly, therefore, until then the UNMIK Regulation 2001/27 is the governing law.

2. Employment agreement with technical employees

[Choose one]

[] In consideration of the commencement of my employment with _____ (the "Company") and the compensation hereafter paid to me, I agree as follows:

[] In consideration of my continued employment with _____ (the "Company") and also in consideration of [Choose one: the amount of \$_____/stock options to purchase _____ shares of the Company's stock/_____[list other form of consideration]], the receipt and sufficiency of which I hereby acknowledge, I agree as follows:

1. Company's Trade Secrets

I understand that in performance of my job duties with the Company, I will be exposed to the Company's trade secrets. "Trade Secrets" means information or material that is commercially valuable to the Company and not generally known in the industry. This includes:

- (a) any and all versions of the Company's proprietary computer software (including source code and object code), hardware, firmware and documentation;
- (b) technical information concerning the Company's products and services, including product data and specifications, diagrams, flow charts, drawings, test results, know-how, processes, inventions, research projects and product development;
- (c) information concerning the Company's business, including cost information, profits, sales information, accounting and unpublished financial information, business plans, markets and marketing methods, customer lists and customer information, purchasing techniques, supplier lists and supplier information, and advertising strategies;
- (d) information concerning the Company's employees, including their salaries, strengths, weaknesses and skills;
- (e) information submitted by the Company's customers, suppliers, employees, consultants or coventurers with the Company for study, evaluation or use; and
- (f) any other information not generally known to the public which, if misused or disclosed, could reasonably be expected to adversely affect the Company's business.

2. Nondisclosure of Trade Secrets

I will keep the Company's trade secrets, whether or not prepared or developed by me, in the strictest confidence. I will not use or disclose such secrets to others without the Company's written consent, except when necessary to perform my job. However, I shall have no obligation to treat as confidential any information that:

- (a) was in my possession or known to me, without an obligation to keep it confidential, before such information was disclosed to me by the Company;
- (b) is or becomes public knowledge through a source other than me and through no fault of mine; or
- (c) is or becomes lawfully available to me from a source other than the Company.

3. Confidential Information of Others

I will not disclose to the Company, use in the Company's business, or cause the Company to use, any information or material that is a trade secret of others. My performance of this Agreement will not breach any agreement to keep in confidence proprietary information acquired by me prior to my employment by the Company.

4. No Conflicting Obligations

I have no other current or prior agreements, relationships or commitments that conflict with this Agreement or with my relationship other than the following: _____.

5. Return of Materials

When my employment with the Company ends, for whatever reason, I will promptly deliver to the Company all originals and copies of all documents, records, software programs, media and other materials containing any of the Company's trade secrets. I will also return to the Company all equipment, files, software programs and other personal property belonging to the Company.

6. Confidentiality Obligation Survives Employment

I understand that my obligation to maintain the confidentiality and security of the Company's trade secrets remains with me even after my employment with the Company ends and continues for so long as such material remains a trade secret.

7. Intellectual Property Ownership

I understand that as part of my job duties I may be asked to create, or contribute to the creation of, website pages, website content, computer programs, documentation, and other copyrightable works. I agree that any and all website pages, website content (including HTML script, designs, forms, text, music, graphics, photographs and videos), computer programs, work-up files, documentation and other copyrightable materials that I am asked to prepare or work on as part of my employment with the Company shall be "works made for hire" and that the Company shall own all the copyright rights in such works. IF AND TO THE EXTENT ANY SUCH MATERIAL DOES NOT SATISFY THE LEGAL REQUIREMENTS TO CONSTITUTE A WORK MADE FOR HIRE, I HEREBY ASSIGN ALL MY COPYRIGHT RIGHTS IN THE WORK TO THE COMPANY.

8. Disclosure of Developments

While I am employed by the Company, I will promptly inform the Company of the full details of all my inventions, discoveries, improvements, innovations and ideas (collectively called "Developments")—whether or not patentable, copyrightable or otherwise protectable—that I conceive, complete or reduce to practice (whether jointly or with others) and that:

- (a) relate to the Company's present or prospective business, or actual or demonstrably anticipated research and development; or
- (b) result from any work I do using any equipment, facilities, materials, trade secrets or personnel of the Company; or
- (c) result from or are suggested by any work that I may do for the Company.

[In Washington State, add the following: The Company will maintain a written record of all such disclosures for at least five years.]

9. Assignment of Developments

I hereby assign to the Company or the Company's designee, my entire right, title and interest in all of the following, that I conceive or make (whether alone or with others) while employed by the Company:

- (a) all Developments;
 - (b) all copyrights, trade secrets, trademarks and mask work rights in Developments;
- and

(c) all patent applications filed and patents granted on any Developments, including those in foreign countries.

10. Post-Employment Assignment

I will disclose to the Company any and all computer programs, inventions, improvements or discoveries actually made, or copyright registration or patent applications filed, within _____-months after my employment with the Company ends. I hereby assign to the Company my entire right, title and interest in such programs, inventions, improvements and discoveries, whether made individually or jointly, which relate to the subject matter of my employment with the Company during the _____-month period immediately preceding the termination of my employment.

11. Notice Pursuant to State Law:

[Choose one, if applicable; otherwise delete this entire clause and renumber subsequent clauses]

[California employees] I understand that this Agreement does not apply to any invention that qualifies fully under the provisions of California Labor Code Section 2870, the text of which is attached as Exhibit A. This section shall serve as written notice to me as required by California Labor Code Section 2872.

[Illinois employees] I understand that this Agreement does not apply to any invention that qualifies fully under the provisions of Illinois Revised Statutes, Chapter 140, Sections 302(1) and (2), the text of which is attached as Exhibit A. This section shall serve as written notice to me as required by Illinois Compiled Statutes, Chapter 765, Section 1060/2.

[Kansas employees] I understand that this Agreement does not apply to any invention that qualifies fully under the provisions of Kansas Statutes Annotated Sections 44-130(a) and (b), the text of which is attached as Exhibit A. This section shall serve as written notice to me as required by Kansas Statutes Annotated Section 44-130(c).

[Minnesota employees] I understand that this Agreement does not apply to any invention that qualifies fully under the provisions of Minnesota Statutes Annotated Sections 181.78(1) and (2), the text of which is attached as Exhibit A. This section shall serve as written notice to me as required by Minnesota Statutes Annotated Section 181.78(3).

[Washington state employees] I understand that this Agreement does not apply to any invention that qualifies fully under the provisions of Washington Revised Code Annotated Section 49.44.140(1), the text of which is attached as Exhibit A. This section shall serve as written notice to me as required by Washington Revised Code Annotated Section 49.44.140(3).

12. Execution of Documents

Both while employed by the Company and afterwards, I agree to execute and aid in the preparation of any papers that the Company may consider necessary or helpful to obtain or maintain any patents, copyrights, trademarks or other proprietary rights at no charge to the Company, but at its expense.

If the Company is unable to secure my signature on any document necessary to obtain or maintain any patent, copyright, trademark or other proprietary rights, whether due to my mental or physical capacity or any other cause, I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agents and attorneys-in-fact to execute and file such documents and do all other lawfully permitted acts to further the prosecution, issuance and enforcement of patents, copyrights and other proprietary rights with the same force and effect as if executed by me.

13. Prior Developments

As a matter of record, I have identified all prior developments [*Optional: relevant to the subject matter of my employment by the Company*] ("Prior Developments") that have been conceived or reduced to practice or learned by me, alone or jointly with others, before my employment with the Company, which I desire to remove from the operation of this Agreement. The Prior Developments consist of: _____.

I represent and warrant that this list is complete. If there is no such list, I represent that I have made no such Prior Developments at the time of signing this Agreement.

14. Conflict of Interest

During my employment by the Company, I will not engage in any business activity competitive with the Company's business activities. Nor will I engage in any other activities that conflict with the Company's best interests.

[] 15. Post-Employment Noncompetition Agreement

I understand that during my employment by the Company I may become familiar with the Company's Confidential Information. Therefore, it is possible that I could gravely harm the Company if I worked for a competitor. Accordingly, I agree that, while I am employed by Company, and for a period of _____ thereafter, I shall not:

- plan for, acquire any financial interest in or perform services for (as an employee, consultant, officer, director, independent contractor, principal, agent or otherwise) any business that would require me to use or disclose any of Company's Confidential Information; or
- perform services (as an employee, consultant, officer, director, independent contractor, principal, agent or otherwise) that are similar to my current duties or responsibilities for any person or entity that engages in any business activity in which Company is then engaged or proposes to be engaged.

Geographic Restrictions: I acknowledge and agree that the products and/or services developed by the Company are, or are intended to be, distributed to customers nationally throughout the United States. Accordingly, I agree that these restrictions on my post-employment competitive activity shall apply throughout the entire United States.

[] 16. Additional Post-Employment Noncompetition Terms

The following post-employment noncompetition term(s) shall apply:

(a) **Written Consent:** I understand that I will be permitted to engage in the work or activity described in this Agreement if I provide the Company with clear and convincing written evidence, including assurances from my new employer and me, that the contribution of my knowledge to that work or activity will not cause me to disclose, base judgment upon, or use any of the Company's confidential information. The Company will furnish me a written consent to that effect if I provide the required written evidence. I agree not to engage in such work or activity until I receive such written consent from the Company.

(b) **Inability to Secure Employment:** If, solely as a result of this noncompetition agreement, I am unable to secure employment appropriate to my abilities and training, despite my diligent efforts to do so, the Company shall either: (1) release me from my noncompetition obligations to the extent necessary to allow me to obtain

such employment, or (2) pay me a periodic amount equal to my monthly base pay at termination for the balance of the term of this noncompetition agreement.

If and while the Company elects to pay me the amounts described above, I promise to diligently pursue other employment opportunities consistent with my general skills and interests. I understand that the Company's obligation to make or continue the payments specified above will end upon my obtaining employment, and I will promptly give the Company written notice of such employment.

[] 17. Nonsolicitation

While employed by the Company and for _____ afterwards, I will not:

- (a) employ, attempt to employ or solicit for employment by any other person or entity, any Company employees;
- (b) encourage any consultant, independent contractor or any other person or entity to end their relationship or stop doing business with Company, or help any person or entity do so or attempt to do so;
- (c) solicit or attempt to solicit or obtain business or trade from any of Company's current or prospective customers or clients or help any person or entity do so or attempt to do so; or
- (d) obtain or attempt to obtain any Confidential Information for any purpose whatsoever except as required by Company to enable Employee to perform his or her job duties.

18. Enforcement

I agree that in the event of a breach or threatened breach of this Agreement, money damages would be an inadequate remedy and extremely difficult to measure. I agree, therefore, that the Company shall be entitled to an injunction to restrain me from such breach or threatened breach. Nothing in this Agreement shall be construed as preventing the Company from pursuing any remedy at law or in equity for any breach or threatened breach.

19. General Provisions

- (a) Successors: The rights and obligations under this Agreement shall survive the termination of my service to the Company in any capacity and shall inure to the benefit of and shall be binding upon: (1) my heirs and personal representatives, and (2) the successors and assigns of the Company.
- (b) Governing Law: This Agreement shall be construed and enforced in accordance with the laws of the State of _____.
- (c) Severability: If any provision of this Agreement is determined to be invalid or unenforceable, the remainder shall be unaffected and shall be enforceable against both the Company and me.
- (d) Entire Agreement: This Agreement supersedes and replaces all former agreements or understandings, oral or written, between the Company and me, except for prior confidentiality agreements I have signed relating to information not covered by this Agreement.
- (e) Modification: This Agreement may not be modified except by a writing signed both by the Company and me.
- (f) Assignment: This Agreement may be assigned by the Company. I may not assign or delegate my duties under this Agreement without the Company's prior written approval.

I have carefully read and considered all provisions of this Agreement and agree that all of the restrictions set forth are fair and reasonably required to protect the Company's interests. I acknowledge that I have received a copy of this Agreement as signed by me.

(Employee's Signature)

(Typed or Printed Name)

Date: _____

Witness:

(Signature)

(Typed or Printed Name)

Title: _____

Date: _____

3. Employment agreements with non-technical employees

[Choose one]

[] In consideration of the commencement of my employment with _____ (the "Company") and the compensation hereafter paid to me, I agree as follows:

[] In consideration of my continued employment with _____ (the "Company") and also in consideration of *[Choose one: the amount of \$_____/stock options to purchase _____ shares of the Company's stock/_____ [list other form of consideration]_____]*, the receipt and sufficiency of which I hereby acknowledge, I agree as follows:

1. Company's Trade Secrets

I understand that in performance of my job duties with the Company, I will be exposed to the Company's trade secrets. "Trade secrets" means information or material that is commercially valuable to the Company and not generally known in the industry. This includes, but is not limited to:

- (a) any and all versions of the Company's proprietary computer software, hardware, firmware and documentation;
- (b) technical information concerning the Company's products and services, including product data and specifications, know-how, formulae, diagrams, flow charts, drawings, source code, object code, program listings, test results, processes, inventions, research projects and product development;
- (c) information concerning the Company's business, including cost information, profits, sales information, accounting and unpublished financial information, business plans, markets and marketing methods, customer lists and customer information, purchasing techniques, supplier lists and supplier information and advertising strategies;

- (d) information concerning the Company's employees, including salaries, strengths, weaknesses and skills;
- (e) information submitted by the Company's customers, suppliers, employees, consultants or coventurers with the Company for study, evaluation or use; and
- (f) any other information not generally known to the public which, if misused or disclosed, could reasonably be expected to adversely affect the Company's business.

2. Nondisclosure of Trade Secrets

I will keep the Company's trade secrets, whether or not prepared or developed by me, in the strictest confidence. I will not use or disclose such secrets to others without the Company's written consent, except when necessary to perform my job. However, I shall have no obligation to treat as confidential any information that:

- (a) was in my possession or known to me, without an obligation to keep it confidential, before such information was disclosed to me by the Company;
- (b) is or becomes public knowledge through a source other than me and through no fault of mine; or
- (c) is or becomes lawfully available to me from a source other than the Company.

3. Confidential Information of Others

I will not disclose to the Company, use in the Company's business, or cause the Company to use, any information or material that is a trade secret of others.

4. Return of Materials

When my employment with the Company ends, for whatever reason, I will promptly deliver to the Company all originals and copies of all documents, records, software programs, media and other materials containing any of the Company's trade secrets. I will also return to the Company all equipment, files, software programs and other personal property belonging to the Company.

5. Confidentiality Obligation Survives Employment I understand that my obligation to maintain the confidentiality and security of the Company's trade secrets remains with me even after my employment with the Company ends and continues for so long as such material remains a trade secret.

6. Conflict of Interest

During my employment by the Company, I will not engage in any business activity competitive with the Company's business activities. Nor will I engage in any other activities that conflict with the Company's best interests.

7. Enforcement

I agree that in the event of a breach or threatened breach of this Agreement, money damages would be an inadequate remedy and extremely difficult to measure. I agree, therefore, that the Company shall be entitled to an injunction to restrain me from such breach or threatened breach. Nothing in this Agreement shall be construed as preventing the Company from pursuing any remedy at law or in equity for any breach or threatened breach.

8. General Provisions

- (a) **Successors:** The rights and obligations under this Agreement shall survive the termination of my service to the Company in any capacity and shall inure to the

benefit, and shall be binding upon: (1) my heirs and personal representatives, and (2) the successors and assigns of the Company.

(b) Governing Law: This Agreement shall be construed and enforced in accordance with the laws of the State of _____.

(c) Severability: If any clause of this Agreement is determined to be invalid or unenforceable, the remainder shall be unaffected and shall be enforceable against both the Company and me.

(d) Entire Agreement: This Agreement supersedes and replaces all former agreements or understandings, oral or written, between the Company and me, except for prior confidentiality agreements I have signed relating to information not covered by this Agreement.

(e) Modification: This Agreement may not be modified except by a writing signed both by the Company and me.

(f) Assignment: This Agreement may be assigned by the Company. I may not assign or delegate my duties under this Agreement without the Company's prior written approval.

I have carefully read and considered all clauses of this Agreement and agree that all of the restrictions set forth are fair and reasonably required to protect the Company's interests. I acknowledge that I have received a copy of this Agreement as signed by me.

(Employee's Signature)

(Typed or Printed Name)

Date: _____

4. Non-Disclosure Agreement (NDA)

This Nondisclosure Agreement (the "Agreement") is entered into by and between _____, with its principal offices at _____, ("Disclosing Party") and _____, located at _____ ("Receiving Party") for the purpose of preventing the unauthorized disclosure of Confidential Information as defined below. The parties agree to enter into a confidential relationship with respect to the disclosure of certain proprietary and confidential information ("Confidential Information").

1. Definition of Confidential Information. For purposes of this Agreement, "Confidential Information" shall include all information or material that has or could have commercial value or other utility in the business in which Disclosing Party is engaged. If Confidential Information is in written form, the Disclosing Party shall label or stamp the materials with the word "Confidential" or some similar warning. If Confidential Information is transmitted orally, the Disclosing Party shall promptly provide a writing indicating that such oral communication constituted Confidential Information.

2. Exclusions from Confidential Information. Receiving Party's obligations under this Agreement do not extend to information that is: (a) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Receiving

Party; (b) discovered or created by the Receiving Party before disclosure by Disclosing Party; (c) learned by the Receiving Party through legitimate means other than from the Disclosing Party or Disclosing Party's representatives; or (d) is disclosed by Receiving Party with Disclosing Party's prior written approval.

3. Obligations of Receiving Party. Receiving Party shall hold and maintain the Confidential Information in strictest confidence for the sole and exclusive benefit of the Disclosing Party. Receiving Party shall carefully restrict access to Confidential Information to employees, contractors and third parties as is reasonably required and shall require those persons to sign nondisclosure restrictions at least as protective as those in this Agreement. Receiving Party shall not, without prior written approval of Disclosing Party, use for Receiving Party's own benefit, publish, copy, or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of Disclosing Party, any Confidential Information. Receiving Party shall return to Disclosing Party any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to Confidential Information immediately if Disclosing Party requests it in writing.

4. Time Periods. The nondisclosure provisions of this Agreement shall survive the termination of this Agreement and Receiving Party's duty to hold Confidential Information in confidence shall remain in effect until the Confidential Information no longer qualifies as a trade secret or until Disclosing Party sends Receiving Party written notice releasing Receiving Party from this Agreement, whichever occurs first.

5. Relationships. Nothing contained in this Agreement shall be deemed to constitute either party a partner, joint venturer or employee of the other party for any purpose.

6. Severability. If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement shall be interpreted so as best to effect the intent of the parties.

7. Integration. This Agreement expresses the complete understanding of the parties with respect to the subject matter and supersedes all prior proposals, agreements, representations and understandings. This Agreement may not be amended except in a writing signed by both parties.

8. Waiver. The failure to exercise any right provided in this Agreement shall not be a waiver of prior or subsequent rights.

This Agreement and each party's obligations shall be binding on the representatives, assigns and successors of such party. Each party has signed this Agreement through its authorized representative.

(Company)

Title: _____

(Signature)
Date: _____

(Signature)
Date: _____

(Typed or Printed Name)

(Typed or Printed Name)

Title:

5. Independent contractors

This Agreement is made between _____ ("Client"), with a principal place of business at _____ and _____ ("Consultant"), with a principal place of business at _____.

1. Services Performed by Consultant

[Choose one]

- Consultant agrees to perform the following services for Client: _____.
- Consultant agrees to perform the services described in Exhibit A, which is attached to and made part of this Agreement.

2. Consultant's Payment

[Choose one]

- Consultant shall be paid \$_____ upon completion of the work as detailed in Clause 1.

- Client shall pay Consultant a fixed fee of \$_____, in ___ installments as follows:

(a) \$_____ upon completion of the following services: _____.

(b) \$_____ upon completion of the following services: _____.

[Add additional installment schedule clauses as needed, taking care to number appropriately.]

(c) \$_____ upon completion of all the work to be performed and the services to be rendered in accordance with the schedule set forth in Clause 1 above, and written acceptance by Client.

- Consultant shall be compensated at the rate of \$_____ per *[Choose one]* hour/day/week/month. *[Optional: Unless otherwise agreed upon in writing by Client, Client's maximum liability for all services performed during the term of this Agreement shall not exceed \$_____.]*

3. Expenses

[Choose one]

- Consultant shall be responsible for all expenses incurred while performing services under this Agreement.

- Consultant will not be reimbursed for any expenses incurred in connection with the performance of services under this Agreement, unless those expenses are approved in advance in writing by Client.

4. Invoices

Consultant shall submit invoices for all services rendered. Client shall pay Consultant within *[Choose one]* 30/45/60 days after receipt of each invoice.

5. Consultant an Independent Contractor

Consultant is an independent contractor, and neither Consultant nor Consultant's staff is, or shall be deemed, Client's employees. In its capacity as an independent contractor, Consultant agrees and represents, and Client agrees, as follows:

- (a) Consultant has the right to perform services for others during the term of this Agreement, subject to noncompetition provisions set out in this Agreement, if any.

- (b) Consultant has the sole right to control and direct the means, manner and method by which the services required by this Agreement will be performed.

(c) Consultant has the right to perform the services required by this Agreement at any place or location and at such times as Consultant may determine.

(d) Consultant will furnish all equipment and materials used to provide the services required by this Agreement, except to the extent that Consultant's work must be performed on or with Client's computer or existing software.

(e) The services required by this Agreement shall be performed by Consultant, or Consultant's staff, and Client shall not be required to hire, supervise or pay any assistants to help Consultant.

(f) Consultant is responsible for paying all ordinary and necessary expenses of its staff.

(g) Neither Consultant nor Consultant's staff shall receive any training from Client in the professional skills necessary to perform the services required by this Agreement.

(h) Neither Consultant nor Consultant's staff shall be required to devote full-time to the performance of the services required by this Agreement.

(i) Client shall not provide insurance coverage of any kind for Consultant or Consultant's staff.

(j) Client shall not withhold from Consultant's compensation any amount that would normally be withheld from an employee's pay.

6. Intellectual Property Ownership

[Choose one]

Work Product includes, but is not limited to, any computer code (in object code and source code form), programming code, data, specifications, work-up files, website content (including HTML script, designs, forms, text, music, graphics, photographs and videos) and other materials, in whatever form, developed solely for Client under this Agreement.

Consultant hereby assigns to Client its entire right, title and interest, including all patent, copyright, trade secret, trademark and other proprietary rights, in the Work Product.

Consultant shall, at no charge to Client, execute and aid in the preparation of any papers that Client may consider necessary or helpful to obtain or maintain—at Client's expense—any patents, copyrights, trademarks or other proprietary rights. Client shall reimburse Consultant for reasonable out-of-pocket expenses incurred under this provision.

Work Product includes, but is not limited to, any computer code (in object code and source code form), programming code, data, specifications, work-up files, website content (including HTML script, designs, forms, text, music, graphics, photographs and videos) and other materials, in whatever form, developed solely for Client under this Agreement.

Client agrees that Consultant shall retain any and all rights Consultant may have in the Work Product. Consultant hereby grants Client an unrestricted, nonexclusive, perpetual, fully paid-up, worldwide license to use and sublicense the use of the Work Product for the purpose of developing and marketing its products and services, but not for the purpose of marketing Work Product separate from its products and services.

7. Ownership of Consultant's Materials

"Consultant's Materials" means all copyrightable materials that:

- do not constitute Work Product;
- are incorporated into the Work Product; and

- are owned solely by Consultant or licensed to Consultant with a right to sublicense.

Consultant's Materials include, but are not limited to, the following: _____.

Consultant shall retain any and all rights Consultant may have in Consultant's Materials. Consultant hereby grants Client an unrestricted, nonexclusive, perpetual, fully paid-up worldwide license to use and sublicense the use of Consultant's Materials for the purpose of developing and marketing its products and services.

8. Confidential Information:

[] (a) Consultant agrees that the Work Product is Client's sole and exclusive property. Consultant shall treat the Work Product on a confidential basis and not disclose it to any third party without Client's written consent, except when reasonably necessary to perform the services under this Agreement.

(b) Consultant will not use or disclose to others without Client's written consent Client's confidential information, except when reasonably necessary to perform the services under this Agreement. "Confidential information" includes, but is not limited to:

- the written, printed, graphic or electronically-recorded materials furnished by Client for use by Contractor;
- Client's business plans, customer lists, operating procedures, trade secrets, design formulas, know-how and processes, computer programs and inventories, discoveries and improvements of any kind;
- any written or tangible information stamped "confidential," "proprietary" or with a similar legend; and
- any written or tangible information not marked with a confidentiality legend, or information disclosed orally to Consultant, that is treated as confidential when disclosed and later summarized sufficiently for identification purposes in a written memorandum marked "confidential" and delivered to Consultant within 30 days after the disclosure.

(c) Contractor shall not be restricted in the use of any material which is publicly available, already in Contractor's possession or known to Contractor without restriction, or which is rightfully obtained by Contractor from sources other than Client.

(d) Contractor's obligations regarding proprietary or confidential information extend to information belonging to customers and suppliers of Client about whom Contractor may have gained knowledge as a result of Client's services to Client.

[] (e) All information concerning the existence of this Agreement and the existence of any business relationship between Consultant and Client shall be kept in confidence.

(f) Consultant will not disclose to Client information or material that is a trade secret of any third party.

(g) The provisions of this clause shall survive any termination of this Agreement.

[] **9. Noncompetition**

Consultant agrees that during performance of the services required by this Agreement [Optional: "and for [six months to two years] after completion"], Consultant will not perform the same services for any competitor of Client in the specific field in which Consultant is performing services for Client.

10. Term of Agreement

This Agreement will become effective when signed by both parties and will end no later than _____.

11. Termination of Agreement

(a) Each party has the right to terminate this Agreement if the other party has materially breached any obligation herein and such breach remains uncured for a period of 30 days after notice thereof is sent to the other party.

(b) If at any time after commencement of the services required by this Agreement, Client shall, in its sole reasonable judgment, determine that such services are inadequate, unsatisfactory, no longer needed or substantially not conforming to the descriptions, warranties or representations contained in this Agreement, Client may terminate this Agreement upon [5 to 30 days] days' written notice to Consultant.

12. Return of Materials

Upon termination of this Agreement, each party shall promptly return to the other all data, materials and other property of the other held by it.

13. Warranties and Representations

Consultant warrants and represents that:

(a) Consultant has the authority to enter into this Agreement and to perform all obligations hereunder.

(b) The Work Product and Consultant's Materials are and shall be free and clear of all encumbrances including security interests, licenses, liens, or other restrictions except as follows: _____.

(c) The use, reproduction, distribution or modification of the Work Product and Consultant's Materials does not and will not violate the copyright, patent, trade secret or other property right of any former client, employer or third party.

(d) For a period of _____ days following acceptance of the Work Product, the Work Product will be:

- free from reproducible programming errors and defects in workmanship and materials under normal use; and
- perform substantially in conformance with the specifications and functions set forth in this Agreement.

14. Indemnification

Consultant agrees to indemnify and hold harmless Client against any claims, actions or demands, including without limitation reasonable attorney and accounting fees, alleging or resulting from the breach of the warranties contained in this Agreement. Client shall provide notice to Consultant promptly of any such claim, suit or proceeding and shall assist Consultant, at Consultant's expense, if defending any such claim, suit or proceeding.

15. Employment of Assistants

[Choose one]

(a) Consultant may, at Consultant's own expense, employ such assistants or subcontractors as Consultant deems necessary to perform the services required by this Agreement. However, Client shall have the right to reject any of Consultant's assistants or subcontractors whose qualifications in Client's good faith and reasonable judgment are insufficient for the satisfactory performance of the services required by this Agreement.

(a) Consultant may neither subcontract nor hire persons to aid in the performance of the services required by this Agreement without Client's prior written consent.

(b) Consultant warrants and represents that the Work Product shall be created solely by Consultant, Consultant's employees during the course of their employment or independent contractors who assigned all right, title and interest in the work to Consultant.

16. Mediation and Arbitration

If a dispute arises under this Agreement, the parties agree to first try to resolve it with the help of a mutually agreed upon mediator in the following location _____ . Any costs and fees other than attorney fees associated with the mediation shall be shared equally by the parties.

If it proves impossible to arrive at a mutually satisfactory solution through mediation, the parties agree to submit the dispute to binding arbitration at the following location _____ under the rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered in any court with jurisdiction to do so.

17. Attorney Fees

If any legal action is necessary to enforce this Agreement, the prevailing party shall be entitled to reasonable attorney fees, costs and expenses.

18. General Provisions

(a) Sole agreement: This is the entire Agreement between Consultant and Client.

(b) Severability: If any part of this Agreement is held unenforceable, the rest of the Agreement will continue in full force and effect.

(c) Applicable law: This Agreement will be governed by the laws of the State of _____.

(d) Notices: All notices and other communications given in connection with this Agreement shall be in writing and shall be deemed given as follows:

- When delivered personally to the recipient's address as appearing in the introductory paragraph to this Agreement;
- Three days after being deposited in the United States mails, postage prepaid to the recipient's address as appearing in the introductory paragraph to this Agreement; or
- When sent by fax or electronic mail. Notice is effective upon receipt provided that a duplicate copy of the notice is promptly given by first-class or certified mail, or the recipient delivers a written confirmation of receipt.

Any party may change its address appearing in the introductory paragraph to this Agreement by giving notice of the change in accordance with this paragraph.

(e) No partnership: This Agreement does not create a partnership relationship. Consultant does not have authority to enter into contracts on Client's behalf.

(f) Assignment: Consultant may not assign its rights or obligations under this Agreement without Client's prior written consent. Client may freely assign its rights and obligations under this Agreement.

Client

(Signature)

(Typed or Printed Name)

Title: _____

Date: _____

Consultant:

(Signature)

(Typed or Printed Name)

Date: _____

6. Post-employment non-competition agreement

1. _____ is obligates, for a period of _____ year(s) after the termination of the employment relationship to refrain from participating in any enterprise which is a competitor of the Company or any enterprise that is connected to such competitor, whether self-employed or in the employment of another, whether directly or indirectly, nor on a foreign account, whether occasionally or professionally. The above principles apply also to participation or under-participation in an enterprise, a silent partnership, a consulting relationship, a favor or accommodation, a supervisory board (committee) involvement, or honorary post that competes with the Company.

2. This non-compete provision shall apply if this Agreement terminates upon extraordinary termination by the _____ caused by the company. The non-compete provision shall also not apply in the event _____'s participation in securities ventures which are publicly trades and are obtained for the purpose of capital investment.

3. For each violation of the non-compete agreement, the _____ must pay a penalty for breach of contract in an amount equal to two times his earnings over the previous month. If no longer employed by the company, the last monthly payment he received will serve the same purpose. In the even of continuous breach of the non-compete agreement, each prohibited activity during a month will count as a separate breach of contract within the meaning of paragraph 1.

NOTES: This type of agreement generally prohibits employees from competing with their former employers in a specified geographic region for a specified period of time. The nature of "competitive activity" may be defined in the agreement itself, or left for judicial interpretation.

V. CASE STUDIES

A. ASMATEK

Case Study 1 created by the U.S. Department of Commerce/Commercial Law Development Program, with input from Ms. Heather Meeker, Esq.

Notice: The present case study was created by the US Department of Commerce/Commercial Law Development Program (CLDP), with input from Ms. Heather Meeker, Esq., for the workshop organized with the US Embassy in Kosovo in September 2009. This exercise is entirely fictitious. Any similarity with existing persons, organizations, or firms is purely coincidental. In addition, this case study is not scientifically accurate.

Asthma, especially among children, is an important health problem in Kosovo for two main reasons:

- The population migrations and the disruption in health care services linked to the war.
- The high level of pollution caused by Kosovo's older power plants.

In November 2007, four friends met in Prishtina for dinner: Luljeta L., Ahmetaj A., Isa I., and Violeta V. The four friends knew each other from their days as science students in the clandestine University of Prishtina before and during the war.

Since then:

- Luljeta had become a medical doctor; she worked in Prishtina's central hospital, department of pulmonary disease.
- Violeta had done a doctorate in physics in the USA at Alexander Hamilton University (AHU). At AHU, Violeta wrote her thesis on cascade lasers. She is now teaching at the University of Prishtina.
- Ahmetaj studied in Germany where he obtained a Ph.D. in electrical engineering, with a specialization in microprocessors. He is now teaching at the University of Prishtina.
- Isa, after his return from Austria, created a small software development firm in Prishtina.

During the dinner, the four friends were discussing the recently created National Research Council of Kosovo and the fact that, while there was little research and development conducted in Kosovo, there were important local needs that could be addressed by local research and development.

As an example, Luljeta explained the following to her friends:

- Asthma, especially among children, is an important health problem in several regions of Kosovo, such as the Malesheve region.
- The earlier asthma is detected in a child, the greater the chance of curing the child.
- Modern techniques that use lasers make early detection and determining the dosage of medicine appropriate for each child possible.
- These techniques are based upon measuring the content of nitrous oxide (NO) in a person's breath, which makes it possible to determine whether or not the person suffers, or is likely to suffer, from asthma.
- These techniques, derived from gas chromatography, measure the nitrous oxide (NO) content of a patient's breath, thanks to a microprocessor that analyzes the signal sent by an infrared laser.
- The content of NO is therefore a biological marker for asthma.
- The devices that measure the NO content of patient's breath are called breath analyzers (BA). Several firms around the world manufacture and sell BAs. However, all of these BA's have two main drawbacks: they are heavy and cumbersome, and they are expensive, costing around 20,000 euros per unit.

- If a light, portable, and less expensive BA were developed, it would make it possible to detect asthma in children in a larger number of facilities and, in particular, in rural areas.

Luljeta then showed her friends a picture of a typical BA that she happened to have brought back from the hospital that day (*please see Appendix I*).

Violeta said that there might be a way to develop a light, portable, and less expensive BA. She explained the following:

- At AHU, she had done her Ph.D. in the laboratory of Professor Frisch, a global authority on lasers.
- In 2004, after several years of research work funded by the US National Science Foundation, Professor Frisch and his team developed a cascade laser which made it possible to detect traces of organic compounds (benzene and toluene) in water. A patent was applied for and granted.
- Among its claims, the patent application mentioned the “detection, thanks to a cascade laser, of organic or inorganic compounds in liquid or gaseous environments.”
- In Professor Frisch's laboratory, Violeta had worked on using cascade lasers to detect traces of inorganic compound such as cyanide (CN), as well as traces of nitrites.

Violeta added that she thought that cascade laser might be used to detect NO in children's breath. If this were the case, it might be possible to design light and portable BAs, which would cost only a fraction of existing BAs.

The four friends decided that the development of a portable BA would be very beneficial for Kosovo. They agreed to meet a week later.

During the meeting a week later:

- Violeta and Ahmetaj said that they would volunteer their time to work on such a project and that the heads of their departments at the University had agreed that they could propose work on such development as independent research projects for graduate students.
- Luljeta said that the head of her department at the hospital was very interested in the project and that the department would provide all the assistance possible.
- Isa said that he, too, would volunteer his time and that two of his co-shareholders working in his firm would also do so.

In September 2009, after close to two years of research, development, and testing, the four friends had developed a rough prototype of a portable, robust, reliable BA, the main characteristics of which are presented in Appendix II.

This outcome had been made possible thanks to several innovations:

(1) After much modeling work, using modern CAD techniques, Violeta and her students had designed a new way to assemble the opto-electronics components in the casing. This new method made it possible to quickly dissipate the heat generated by these components, which meant to major consequences:

- It made it possible to have a compact BA; and
- It increased the BA's reliability and its MTBF (mean time between failures).

2/ Ahmetaj and his students had decided to use a RISC microprocessor rather than the CISC microprocessor used in existing BAs; they had developed, in assembler language, programming for this microprocessor that was very effective to measure the NO content in children's breath.

3/ With constant interaction with Luljeta's department at the hospital, Isa and his colleagues had developed a very efficient software that converts the information on NO content in a patient's breath into: (a) asthma detection information directly usable by a medical doctor or a nurse, and (b) recommendations on the appropriate dosage of asthma medicine for the patient.

The four friends decided to call the prototype (hardware and software) ASMATEK.

QUESTIONS

1/ In developing ASMATEK, did the four friends create any intellectual property?

2. If yes:

(a) How should it be protected?

(b) Whom does the intellectual property belong to?

3/ While they do not intend to change their activities nor to create a firm, the four friends would like to see ASMATEK manufactured and sold, so that children's asthma can be detected and treated in rural areas. The four friends would like to see ASMATEK manufactured in Kosovo. They think that this could help create many jobs because portable BAs manufactured in Kosovo could have a large market worldwide. Besides NO, a marker for asthma, other markers can be found in breath: for instance C₂H₆ for breath cancer, C₃H₆O for diabetes, CS₂ for schizophrenia. In theory, all these biological markers can be detected by laser-based technologies.

If ASMATEK is to be manufactured in Kosovo and sold worldwide:

a) What intellectual property must be provided to a manufacturer of ASMATEK?

b) What intellectual property must be provided to a distributor of ASMATEK?

c) What intellectual property must be provided to a customer of ASMATEK?

APPENDIX II

ASMATEK: MAIN FEATURES

1/ Reliability of diagnosis: 96%

2/ Portability: Light (less than 1.5 pound) and portable; please see prototype below.



(Note: The case study is fictitious; the prototype shown above was in fact developed at the Georgia Institute of Technology)

3/ Estimate by of unit cost if produced in series of at least 150 units: 400 to 600 euros (component + labor; does not include plant and machinery depreciation).

4/ Maintenance required: every six months, checking of opto-electronics components and recalibration.

KB (KOSOVO BAXHO)

Case Study 2 created by the US Department of Commerce/Commercial Law Development Program, in collaboration with Heather Meeker, Esq. and Michel Jaccard, Esq.

***Notice:** The present case study was created by the US Department of Commerce/Commercial Law Development Program (CLDP), Heather Meeker, Esq., and Michel Jaccard, Esq., specially for the workshop organized with the US Embassy in Kosovo in September 2009. This exercise is entirely fictitious. Any similarity with existing persons, organizations, or firms would be purely coincidental. In addition, this case study is not scientifically accurate.*

The dairy sector is very important in Kosovo since it contributes about 10 percent of Kosovo's GNP. Yet, a recent study conducted by the Department of Livestock and Veterinary Sciences, Agriculture Faculty of Prishtina, shows that Kosovo women prefer to buy imported milk (mostly from Slovenia), especially when buying for their children.

Mr. Mehmeti M. is the manager of Kosovo Baxho (KB), a mid-size dairy in Kosovo. KB is one of the 19 dairies that exist in Kosovo. While KB meets all of Kosovo Food and Veterinary Services (KFVA) standards, Mr. Mehmeti M. thinks that if KB's milk products met the most exacting international standards, Kosovo consumers would prefer KB's products to imported products. Meeting the most exacting international standards

requires full traceability and full automation of production. Mr. Mehmeti M. decides, therefore, that KB needs its own customized Enterprise Resource Planning (ERP) and production automation software. In January 2008, Mr. Mehmeti contacts a friend of his, Mr. Gjergjizi G., who manages KERP (Kosovo ERP), a Kosovo software development firm that has much experience developing RFID-based traceability software for the agribusiness sector. In March 2008, KB and KERP agree on specifications, a price, and a timetable for a comprehensive system. Since KERP does not have much experience with plant automation, in April 2008, KERP enters into a subcontract with ASK (Automation Software Kosovo). In August 2009, a fully functional and tested system is developed by KERP with ASK's contribution. No other dairy in Kosovo has such a comprehensive, reliable, and efficient system. Moreover, the system, based upon a general architecture with programmable parameters, specially developed by KERP with ASK's support, can be customized not only for dairies but also for other agribusiness firms where production requires constant cold temperatures.

A/ Questions for group discussion:

1/ By August 2009, has IP been created in the sequence described above?

2/ If yes, who owns the IP?

B/ Exercise:

You will be divided into three subgroups:

KB (1/4 of the group)

KERP (1/2 of the group)

ASK (1/4 of the group)

Assume that you are in 2008 and that there is full agreement on prices between KB and KERP on the one hand, and KERP and ASK on the other hand.

Your task will be to negotiate the key parameters of:

1/ A contract between KB and KERP

2/ A contract between KERP and ASK

B. KB (KOSOVO BAXHO); Part II

Case Study 3 created by the US Department of Commerce/Commercial Law Development Program.

***Notice:** The present case study was created by the US Department of Commerce/Commercial Law Development Program (CLDP), specially for the workshop organized with the US Embassy in Kosovo in September 2009. This exercise is entirely fictitious. Any similarity with existing persons, organizations, or firms would be purely coincidental. In addition, this case study is not scientifically accurate.*

The dairy sector is very important in Kosovo since it contributes about 10 percent of Kosovo's GNP. Yet a recent study conducted by the Department of Livestock and Veterinary Sciences, Agriculture Faculty of Prishtina, shows that Kosovo women prefer to buy imported milk, especially when buying for their children.

A key issue is that some dairies in Kosovo, while they meet all of Kosovo Food and Veterinary Services (KFVA) standards, do not meet the most exacting international standards. Meeting the most exacting international standards requires full traceability and full automation of production.

The managers of KERP (Kosovo ERP), a Kosovo software development firm that has much experience developing RFID-based traceability software for the agribusiness sector, thought that if KERP could develop a system that could ensure full traceability and full automation of production, there could be a significant market for such a system in Kosovo and, possibly, in some neighboring countries.

Since KERP does not have much experience with plant automation, it reached out to another Kosovo company, ASK (Automation Software Kosovo), and presented the project. ASK's managers were interested. The two firms decided to join forces to develop a system that could ensure full traceability and full automation of production, initially in dairies, but eventually in other sectors of the agribusiness industry. They now have to agree on a co-development contract.

Exercise:

You will be divided into two subgroups:

KERP (1/2 of the group)

ASK (1/2 of the group)

Each group will prepare, separately, the key points it would like to see in a joint development contract.

The two groups will then reconvene and prepare the contents of the joint development contract.

Assume that:

1/ The managers of KERP and the managers of ASK are close friends.

2/ KERP and ASK agree, at the outset, that neither KERP nor ASK could develop a system on its own. Each firm needs the other firm's expertise to develop a complete system.

3/ KERP and ASK agree, at the outset, that in order to develop a complete system, KERP's software developers will need to spend 1.5 more development time than ASK's software developers.

Question:

If KERP and ASK had decided to conduct a joint development but had not entered into a contract, and if the joint development had been successful, who would own the IP rights resulting from the joint development?

C. PROGRESSOFT

Case Study 4 created by the US Department of Commerce/Commercial Law Development Program.

Notice: The present case study was created by the US Department of Commerce/Commercial Law Development Program (CLDP), specially for the workshop organized with the US Embassy in Kosovo in September 2009. This exercise is entirely fictitious. Any similarity with existing persons, organizations, or firms would be purely coincidental. In addition, this case study is not scientifically accurate.

I. BACKGROUND

Progressoft is a mid-size Kosovo software development firm. It was created in 2005 by a group of computer science engineers who wanted to develop applications in Linux and in other open source software.

In early 2006, Progressoft responded to a request for proposals (RFP) from a civil engineering firm, CECI, which had won an international tender to repair, over the course of several years, some of Kosovo's civil infrastructure damaged during the war or in bad state of repair for lack of maintenance (e.g., bridges, tunnels, power transmission infrastructure).

Because of the number of sites to be visited and of their often very remote location, CECI was looking for a system that would make it possible:

- a) For a CECI technician to go to a site, to make measurements with a portable ultrasonic non-destructive testing (NDT) testing system, and to send the results to CECI's headquarters via cell phone along with a close picture of the infrastructure and with a completed questionnaire and short verbal comment by the technician.
- b) For a CECI expert located at the headquarters to look at the information sent by the technician and to get back promptly to the technicians via cell phone with instructions about what to do.

Progressoft was the lowest bidder on CECI's RFP and won the contract. As partial compensation for its low bid, Progressoft stated that it would retain all the intellectual property rights resulting from its development from the project for all countries except for

countries of the former Yugoslavia, where CECI would have an exclusive license to use Progressoft system and all its subsequent improvements.

By mid-2007, Progressoft had developed a prototype system; it was tested by CECI, and after several modifications suggested by CECI, met all specifications.

Progressoft named its system ReDiMa (Remote Diagnosis and Maintenance). ReDiMa is based upon an open-source platform with a camera equipped with a telephoto lens that makes it possible to zoom-in on objects and a cell phone for information transmission. Procedures and NDT readings are uploaded via GPRS or WIFI to a Java-developed Linux server application that interacts with an open-source records database.

In order to finalize ReDiMa, Progressoft's software developers made several technical advances in packetization, synchronization, and multimodal communications.

In 2008, Progressoft presented ReDiMa at the Mobile World Congress, in Barcelona.

Given the high amount of interest at the tradeshow for ReDiMa, Progressoft then realized that, because of its technical advances, ReDiMa has significant advantages over existing systems, not just for NDT applications but, in fact, whenever information must be transmitted by a technician by cell phone from isolated locations to a central location where experts can analyze the information and send instructions back to the technician.

Based upon discussions at the Barcelona trade show, it appeared, in particular, that ReDiMa could be most useful in the following domains:

- Inspection, for structural integrity, of remote and isolated civil infrastructure (e.g., bridges, tunnels)
- Inspection, for structural integrity, of remote and isolated energy producing or transmitting installations (e.g., power lines, power substations, windmills)
- Remote medical diagnosis
- Remote reading of RFID chips and tags
- Remote reprogramming of sensors

After the Barcelona trade show, several companies contacted Progressoft to explore the possibility of entering into an OEM license agreement.

Progressoft considers that RZP would be the best licensee among all the companies that have expressed an interest. RZP, a joint-venture between several cell phone manufacturers, is focused on developing cell phones and applications that can meet the needs of professional users. Moreover, RZP is very profitable.

Without discontinuing its contacts with other potential users, Progressoft has agreed to meet with RZP in Kosovo in late September 2009, to negotiate the key points of a licensing agreement

II. EXERCISE

You will be divided into two groups: Group A (Progressoft) and Group B (RZP). Each group will prepare its position for what it considers to be the key points of a licensing agreement. The two groups will then meet to negotiate.

Please assume:

1/ That there is a tentative agreement between Progressoft and RZP on the increased market share that RZP will gain within 3 years if it can offer ReDiMa as an application with its phones, and on the corresponding increase in RZP's profit for the next five years.

2/ That this increased profit is X euros over five years.

Caregivers' Cooperative

Case Study 5 created by Heather Meeker, Greenberg Traurig LLP.

Notice: The present case study is entirely fictitious. Any similarity with existing persons, organizations, or firms would be purely coincidental. In addition, this case study is not factually accurate.

I. BACKGROUND

Caregivers' Cooperative is a group of nurses, medical technicians, and others with medical training who are performing outreach to rural areas of Kosovo. The members of CC often work in remote locations, and are concerned about short supply of medicines and medical supplies. Wishing to pool their knowledge, CC members have developed an informal network to share information about the location and stock of essential medical items like vaccines, syringes, hydration supplies, insulin, and certain over-the-counter medications that are difficult to acquire in rural areas. Some of these supplies are perishable and cannot easily be transported far without refrigeration—so finding the nearest supply can be crucial.

Newborn Development is a development company formed by two friends, Ardit and Zameer. Ardit and Zameer have learned computer programming in university, on consulting projects, and by self-instruction. They have recently attended a software camp in the United States that was hosted by Apple Computer. At that camp, developers were provided with an intensive one-week course in developing iPhone applications. To those who attended the camp from areas struggling with economic development, Apple has offered the ability to purchase iPhones—just the device, with no service—at a price just above cost.

CC has approached Newborn about developing a mobile application to help its members share inventory information about the location of medical supplies. Ardit and Zameer considered such an application to be well within their capability to develop. However, CC is in informal organization without much in the way of funds. The members have enough to pay for their own iPhones if they can take advantage of the special offer extended to Ardit and Zameer. Newborn is willing to do the development work as a demonstration of its skill. Newborn already has a development server and other equipment necessary for the development, but has no iPhones.

Newborn downloaded Apple's iPhone SDK agreement, which is available here: http://developer.apple.com/iphone/terms/registered_iphone_developer.pdf. They noticed a few important terms in that agreement and in other information they found:

- Applications can be distributed in three ways: through the App Store, through deployment to the developer company's employees only, and on an "Ad-hoc" basis to up to 100 iPhones.
- The iTunes Store is the only channel through which an app can be delivered to end users and installed. Apple signs the apps it approves with a cryptographic key. Unsigned apps won't run on the iPhone.
- Section 3 of the document is a nondisclosure agreement (NDA). It defines "all information disclosed by Apple to you that relates to Apple's products, designs, business plans, business opportunities, finances, research, development, know-how, personnel, or third-party confidential information" as "Confidential Information." You must agree not to "disclose, publish, or disseminate" any of the aforementioned Confidential Information, and not to use it "in any way, including, without limitation, for your own or any third party's benefit without the prior written approval of an authorized representative of Apple in each instance." Publicly releasing source code that uses the iPhone APIs as documented in the SDK and Developer Program is thought to violate these terms.

Newborn would like to market the app, once CC has tested it out, to other paying customers, so it can recoup its investment.

II. EXERCISE

You will be divided into two groups: Group A (Caregivers' Cooperative) and Group B (Newborn). Each group will prepare its position for what it considers to be the key points of a licensing agreement. The two groups will then meet to negotiate.

You should be prepared to discuss:

1. What kind of financial or barter arrangement will allow each group to meet its objectives?
2. What concerns should Newborn have about the terms of the Apple SDK agreement? What concerns should Caregivers have?
3. Who should own the app that is developed? Why?

D. Skilled Resources

Case Study 6 created by Michel Jaccard, BCCC Attorneys LLC.

I. BACKGROUND

1Way is a famous global IT and services provider company. It has recently secured a global integration agreement with a leading European media group for the deployment of a mobile software solution allowing access and distribution of content among national members of the global franchise network set up by the media group. The solution will go live globally on June 30, 2010 (part of a marketing event), and is considered by the media network as key to its future growth, as it will allow every member journalist to access, and tap in real time on, a huge database to produce content for the network.

In its global agreement with the media group, 1Way takes responsibility for the success of the project and its successful implementation in time/ in scope/ in budget. In Kosovo, 1Way has delegated the management of the project to its subsidiary, 1W KS. 1W KS, which was only incorporated a few months ago and does not have sufficient resources (nor frankly, the skills) to complete the work, has kept the overall responsibility of the project but wants to subcontract some code writing for local customization, as well as the detailed design of the function specifications of the solution to be agreed with the Kosovo franchise of the media network.

Local software development company Skilled Resources (SR) has been approached by 1W KS and offered the subcontracted work under the following terms:

- a) All work to be done on a fixed price basis, all payments to occur after the go-live date, and provided 1W has been fully paid by customer.
- b) 1W KS to acquire immediate and full ownership on all development work by SR.
- c) SR to meet with customer's representative only in presence of 1W KS's project management.
- d) Prohibition by SR to provide further work to customer after termination or expiry of the project, unless 1WKS consents.

II. EXERCISE

You will be divided into two groups: Group A (1W KS) and Group B (SR). Each group will prepare its position for what it considers to be the key points of the subcontracting agreement. The two groups will then meet to negotiate.

You should be prepared to discuss the risks/ benefits of the proposed arrangement for each side.

VI. LIST OF REFERENCES

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Case Study 4 created by the US Department of Commerce/Commercial Law Development Program, PROGRESSOFT

Case Study 3 created by the US Department of Commerce/Commercial Law Development Program, KB (KOSOVO BAXHO); Part II

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Model Intellectual Property Guidelines for Business - Overview and guidance, International Chamber of Commerce (October 2007- Draft 3.2)

VII. LINKS

International Legal Protection for Software, Fenwick & West LLP found at:
<http://www.softwareprotection.com/patent.htm>

<http://www.jurisdiction.com/dmc0003.htm>

http://www.fact-index.com/s/so/software_patent.html#Opposition%20to%20Software%20Patents

Creating a protectable and marketable trademark found at;
<http://www.registeringatrademark.com/protectable-marketable-trademark.shtml>

WEBOPEDIA found at: http://www.webopedia.com/TERM/C/counterfeit_software.html

SAMPLE IPR INVENTORY FORMS found at:
<http://www.stepstoipr.com/sampleinventoryforms.html> (permission to use granted)

IP Valuation-Scope and Models, IPR HelpDesk found at: http://www.ipr-helpdesk.org/documents/ES_IPValuation_0000006482_00.xml.html#N2004C

http://lawsmart.com/documents/software_license.shtml

<http://www.jian.com/software/business-contracts/sample-contract/Custom-Software-License.pdf>

Introduction to software licensing found at:
http://www.utahbar.org/sites/midyear/html/introduction_to_software_licen.html

<http://www.pr-inside.com/market-report-software-global-industry-r1894504.htm>

How to negotiate your software licence found at: <http://knol.google.com/k/how-to-negotiate-your-software-license#>

IP Healthcheck Series, Licensing Intellectual Property found at:
<http://www.ipo.gov.uk/licensingbooklet.pdf>

CREATIVE DECISIONS BETA SOFTWARE TESTING AGREEMENT found at:
<http://www.superdecisions.com/license.php3>

Simply Docs found at: <http://www.simplydocs.co.uk/Document.aspx?documentID=2071>

Atlasian, <http://www.atlassian.com/about/licensing/license.jsp>

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LAWS

Law On Copyright and Related Rights, Law No. 2004/45

Law on Trademarks, Law No. 02/L-54

Law on Patents, Law No, 2004/49

Law on Obligations of 30 March 1978 found at:

http://www.avokatia.com/sh/docs/ligjet/LIGJI_MBI_DETYRIMET.doc

Law on Custom Measures for Enforcing Intellectual Property Rights