

u AGREEMENT

THIS AGREEMENT MADE EFFECTIVE AS OF THE u DAY OF u, 200u (the “Effective Date”).

BETWEEN:

VELOCITY SOFTWARE SYSTEMS LIMITED, a corporation continued under the laws of Canada having a place of business at 438 North Springer Avenue, Burnaby, British Columbia, Canada, V5B 1H4;

(“Velocity”)

AND:

u, a corporation incorporated under the laws of u having a place of business at u, u, u;

(“AAAA”)

WHEREAS:

- A. Velocity is a private company in the business of providing software and hardware development and consulting services;
- B. AAAA is a private company in the business of u;
- C. AAAA would like to retain Velocity to provide certain software and hardware development and consulting services and Velocity would like to provide such services to AAAA on the terms and conditions set forth in this Agreement;

Now therefore this agreement witnesses that in consideration of the covenants and agreements herein contained, the parties hereto do covenant and agree (the “Agreement”) each with the other as follows:

1. Representations and Warranties

1.1 In order to induce Velocity to enter into this Agreement and complete its transactions contemplated hereunder, AAAA represents and warrants to Velocity that:

- (a) AAAA was and remains duly incorporated under the laws of u;
- (b) AAAA holds all licences and permits that are required for carrying on its business as contemplated in this Agreement;
- (c) AAAA has the corporate power to carry on its business as contemplated in this Agreement and AAAA is duly qualified to carry on business in all jurisdictions in which its business as contemplated hereunder will be carried on;

- (d) all machinery and equipment of AAAA of any kind whatsoever which shall use or be used with the Products and Services to be provided by Velocity hereunder are in reasonable operating condition and in a state of reasonable maintenance and repair;
- (e) to the best of its knowledge, there are no actions, suits, judgements, investigations or proceedings of any kind whatsoever outstanding, pending or threatened against or affecting AAAA at law or in equity or before or by any Federal, Provincial, State, Municipal or other governmental department, commission, board, bureau or agency of any kind whatsoever which may in any way impact upon AAAA's ability to meet its obligations under this Agreement;
- (f) AAAA has good and sufficient right and authority to enter into this Agreement and complete its transactions contemplated under this Agreement on the terms and conditions set forth herein; and
- (g) to the best of its knowledge, the execution and delivery of this Agreement, the performance of its obligations under this Agreement and the completion of its transactions contemplated under this Agreement will not:
 - (i) conflict with, or result in the breach of or the acceleration of any indebtedness under, or constitute default under, the constating documents of AAAA or any indenture, mortgage, agreement, lease, licence or other instrument of any kind whatsoever to which AAAA is a party or by which it is bound, or any judgement or order of any kind whatsoever of any Court or administrative body of any kind whatsoever by which it is bound; or
 - (ii) result in the violation of any law or regulation of any kind whatsoever by AAAA.

1.2 The representations and warranties of AAAA contained in this Agreement shall be true and remain in full force and effect during the Term of this Agreement for the benefit of Velocity.

1.3 In order to induce AAAA to enter into this Agreement and complete its transactions contemplated hereunder, Velocity represents and warrants to AAAA that:

- (a) Velocity was and remains duly continued under the laws of Canada;
- (b) Velocity holds all licences and permits that are required for carrying on its business as contemplated in this Agreement;
- (c) Velocity has the corporate power to carry on its business as contemplated in this Agreement and Velocity is duly qualified to carry on business in all jurisdictions in which its business as contemplated hereunder will be carried on;
- (d) all machinery and equipment of Velocity of any kind whatsoever which shall be used to produce or provide the Products and Services to be provided by Velocity are in reasonable operating condition and in a state of reasonable maintenance and repair;
- (e) to the best of its knowledge, there are no actions, suits, judgements, investigations or proceedings of any kind whatsoever outstanding, pending or threatened against or

affecting Velocity at law or in equity or before or by any Federal, Provincial, State, Municipal or other governmental department, commission, board, bureau or agency of any kind whatsoever which may in any way impact upon Velocity's ability to meet its obligations under this Agreement;

- (f) Velocity has good and sufficient right and authority to enter into this Agreement and complete its transactions contemplated under this Agreement on the terms and conditions set forth herein; and
- (g) to the best of its knowledge, the execution and delivery of this Agreement, the performance of its obligations under this Agreement and the completion of its transactions contemplated under this Agreement will not:
 - (i) conflict with, or result in the breach of or the acceleration of any indebtedness under, or constitute default under, the constating documents of Velocity or any indenture, mortgage, agreement, lease, licence or other instrument of any kind whatsoever to which Velocity is a party or by which it is bound, or any judgement or order of any kind whatsoever of any Court or administrative body of any kind whatsoever by which it is bound; or
 - (ii) result in the violation of any law or regulation of any kind whatsoever by Velocity.

1.4 The representations and warranties of Velocity contained in this Agreement shall be true and remain in full force and effect during the Term of this Agreement for the benefit of AAAA.

1.5 AAAA is granted a warranty to begin on the date of the delivery of the Products to AAAA and to expire at the earliest of:

- (a) the expiration of 60 days, provided AAAA has not, prior to that date, advised Velocity in writing of any failure of the Products to conform with the Functional Specifications adopted by the parties as provided for herein; or
- (b) the expiration of 30 days from the date of delivery of the corrected Products to AAAA if Velocity has been required to correct identified non-conformities pursuant to this warranty; or
- (c) the date upon which the Products are first used on an operational basis by AAAA.

During the warranty period, Velocity warrants that upon receipt of AAAA's written explanation of any failure of the Products to conform with the Functional Specifications, including sufficient detail to permit Velocity to correct them, Velocity will use its best efforts to correct the nonconformities. Upon delivery of the corrected Products, the warranty period will be extended pursuant to paragraph 1.5(b) above. If, during the warranty period, any nonconformity of the Products cannot be corrected by Velocity within 60 days of the commencement of Velocity's attempt to correct same, AAAA shall elect either to:

- (a) extend the time for correction of nonconformities, with the consent of Velocity (in which case AAAA will have to make the election referred to above prior to the expiry of the extension); or

- (b) retain the work in progress, in which case paragraph 4.3 shall apply.

The warranty will not apply if the Products have been subjected to malfunctioning computer hardware or abnormal operating conditions, or have been damaged accidentally (electrically or otherwise) or if any problem in respect of the performance of the Products is caused in whole or in part by modifications to the Products made by AAAA or any third party. In the event that AAAA requests correction of a nonconformity in accordance with the foregoing provisions and the cause of the reported nonconformity is determined by Velocity to be the result of any deed or thing referred to above, then AAAA will pay for the time and expense which Velocity shall have incurred to investigate the reported nonconformity, at Velocity's rates for such services then in effect.

1.6 If Velocity is providing any Services to AAAA hereunder, Velocity warrants that the Services to be provided by Velocity to AAAA will be performed to the standards of care and diligence normally practised by software/hardware development firms performing services of a similar nature. The sole remedy of AAAA for any breach of this warranty will be the right to require Velocity to reperform the services.

1.7 THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS. VELOCITY MAKES NO OTHER WARRANTY OR CONDITION, EXPRESS OR IMPLIED, AND THERE ARE EXPRESSLY EXCLUDED ALL IMPLIED OR STATUTORY WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE. THE STATED EXPRESS WARRANTIES ARE IN LIEU OF ALL LIABILITIES OR OBLIGATIONS FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE, PERFORMANCE OR LICENSING OF THE PRODUCTS OR IN CONNECTION WITH ANY SERVICES PERFORMED UNDER THIS AGREEMENT. IN NO EVENT WHATSOEVER SHALL VELOCITY BE LIABLE FOR INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL, INDIRECT OR OTHER SIMILAR DAMAGES INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST BUSINESS REVENUE, FAILURE TO REALIZE EXPECTED SAVINGS, OTHER COMMERCIAL OR ECONOMIC LOSS OF ANY KIND OR ANY CLAIM AGAINST AAAA BY ANY OTHER PARTY ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE, PERFORMANCE OR LICENSING OF THE PRODUCTS OR IN CONNECTION WITH ANY SERVICES PERFORMED UNDER THIS AGREEMENT OR ANY BREACH OF THIS AGREEMENT, EVEN IF VELOCITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

1.8 AAAA agrees that Velocity does not represent or warrant that the operation of the Products will be error free or that the operation of the Products will not be interrupted by reason of any defect therein. AAAA agrees that the liability of Velocity and its associates and their agents and employees arising out of contract, negligence, strict liability, tort or warranty, or for breach or default entitling AAAA to rescind or for breach of condition or fundamental term or fundamental breach or otherwise shall not exceed in total the amounts paid by AAAA to Velocity under this Agreement. No action, regardless of form, arising out of this Agreement may be brought by AAAA against Velocity more than one year after the completion of the Term.

2. The Products and Services

2.1 The term (the "Term") of this Agreement shall commence on the Effective Date and terminate at 11:59 p.m. P.S.T. on the Payment Date on which the last Payment is made.

2.2 Velocity shall provide to AAAA the products (the "Products") and services (the "Services") described on Schedule "A" in accordance with the time line described on Schedule "B". The Products will be delivered F.O.B. in Vancouver, British Columbia.

2.3 In exchange for the Products and Services, AAAA shall pay to Velocity the sum of \$u (the "Contract Price"), plus all applicable federal, provincial and state tariffs, duties, sales and use taxes of any kind whatsoever which shall be added to and from part of the Contract Price. The Contract Price shall be paid in u separate payments (the "Payments") as provided for on Schedule "B". In the event that any Payment is not made when due, AAAA shall pay to Velocity interest on the balance unpaid at a rate of 1.5% per month, compounded monthly (equivalent to 19.56% per annum) until paid. Each Payment will be made in the form of cash, certified cheque, bank draft, money order or wire transfer payable to "Velocity Software Systems Ltd."

3. Additional Covenants, Agreements and Acknowledgements

3.1 AAAA covenants and agrees with Velocity that AAAA shall:

- (a) u;
- (b) u;
- (c) during the Term of this Agreement, do all such acts and things necessary to ensure that all of the representations and warranties of AAAA contained in this Agreement remain true and correct; and
- (d) during the Term of this Agreement, keep confidential all discussions and communications (including all information communicated therein) between the parties, and all written and printed materials of any kind whatsoever exchanged by the parties, and, if so requested by Velocity, AAAA shall arrange for any director, officer, employee, authorized agent or representative of AAAA to enter into and AAAA itself shall enter into a non-disclosure agreement with Velocity in a form acceptable to Velocity acting reasonably.

3.2 Velocity covenants and agrees with AAAA that Velocity shall:

- (a) u;
- (b) u;
- (c) during the Term of this Agreement, do all such acts and things necessary to ensure that all of the representations and warranties of Velocity contained in this Agreement remain true and correct; and
- (d) during the Term of this Agreement, keep confidential all discussions and communications (including all information communicated therein) between the parties, and all written and printed materials of any kind whatsoever exchanged by the parties, and, if so requested by AAAA, Velocity shall arrange for any director, officer, employee, authorized agent or representative of Velocity to enter into and Velocity itself shall enter into a non-disclosure agreement with AAAA in a form acceptable to AAAA acting reasonably.

4. Termination

4.1 If at any time during the Term of this Agreement either party (the “Defaulting Party”) fails to perform any of its obligations under this Agreement and such failure materially interferes with the implementation of this Agreement, the other party (the “Terminating Party”) may terminate this Agreement provided that:

- (a) the Terminating Party has first delivered to the Defaulting Party written notice of such default containing particulars of the obligation which the Defaulting Party has not performed; and
- (b) the Defaulting Party has not, within 10 days of the date such written notice has been delivered to it, cured such default or commenced proceedings to immediately cure such default.

The Terminating Party may terminate this Agreement at any time after the Defaulting Party has failed to comply with subparagraph (b) above upon delivering written notice of such termination to the Defaulting Party and termination shall be effective on the date such notice is delivered and the provisions of paragraph 4.3 shall apply accordingly.

4.2 Notwithstanding paragraph 4.1, if AAAA fails to make a Payment to Velocity on a prescribed Payment Date, Velocity shall be entitled to terminate this Agreement by delivering written notice of such termination to AAAA and termination shall be effective on the date such notice is delivered and the provisions of paragraph 4.3 shall apply accordingly.

4.3 In the event that this Agreement terminates pursuant to subparagraph 1.5(e) or paragraph 4.1 or 4.2, each party’s obligations under this Agreement shall terminate on the date (the “Termination Date”) such notice (which, in the case of subparagraph 1.5(e), means the delivery of the notice of AAAA having made the election under that subparagraph) is delivered, and, upon such termination:

- (a) AAAA shall be released from its obligation to make any of the Payments which come due following the Termination Date; and
- (b) Velocity shall be relieved from its obligations to provide the Products and Services except that it will provide to AAAA its work in progress.

Velocity shall be entitled to retain any Payments that have been made and, in addition, AAAA shall remain obligated to make all of Payments required to have been made up to and including the Termination Date.

5. Arbitration

5.1 The parties hereto agree that all questions or matters in dispute with respect to this Agreement shall be submitted to arbitration pursuant to the terms hereof. It shall be a condition precedent to the right of any party hereto to submit any matter to arbitration pursuant to the provisions hereof that any party intending to refer any matter to arbitration shall have given prior written notice of its intention to do so to the other party together with written particulars of the matter in dispute. On the expiration of 10 days from the date such notice is delivered, the party who gave such notice may proceed to refer the dispute to arbitration as provided in paragraph 5.2 hereof.

5.2 The party desiring arbitration shall nominate an arbitrator and shall notify the other party of such nomination and the other party shall, within five days after such notice having been delivered, either agree to the appointment of the nominee or, within five days, nominate an alternate arbitrator. If the parties fail to agree on the arbitrator within 15 days after notice of the nomination of the arbitrator was delivered by the party desiring arbitration, a single arbitrator shall be appointed under the provisions of the *Commercial Arbitration Act* (British Columbia). Except as specifically otherwise provided in this paragraph, the arbitration herein provided for shall be conducted in accordance with such Act. The arbitrator shall fix a time and place in Vancouver, British Columbia, Canada for the purpose of hearing the evidence and representations of the parties, and he shall preside over the arbitration and determine all questions of procedure not provided for under such Act or this paragraph. After hearing any evidence and representations that the parties may submit, the arbitrator shall make an award and reduce the same to writing, and deliver one copy thereof to each of the parties. The expense of the arbitration shall be paid as specified in the award. The parties agree that the award of the arbitrator shall be final and binding upon each of them.

6. General

6.1 Time and each of the terms and conditions of this Agreement shall be of the essence of this Agreement and any waiver by the parties of this paragraph 6.1 or any failure by them to exercise any of their rights under this Agreement shall be limited to the particular instance and shall not extend to any other instance or matter in this Agreement or otherwise affect any of their rights or remedies under this Agreement.

6.2 The Schedules to this Agreement incorporated by reference and the recitals to this Agreement constitute a part of this Agreement.

6.3 This Agreement constitutes the entire Agreement between the parties hereto in respect of the matters referred to herein and there are no representations, warranties, covenants or agreements, expressed or implied, collateral hereto other than as expressly set forth or referred to herein. Without in any way limiting the generality of the foregoing, all preceding agreements, letter agreements, quotations, proposals and letters of intent, if any, are hereby terminated and of no further force and effect.

6.4 The headings in this Agreement are for reference only and do not constitute terms of the Agreement.

6.5 The provisions contained in this Agreement which, by their terms, require performance by a party to this Agreement subsequent to the completion of the Term of this Agreement shall survive the completion of the Term of this Agreement.

6.6 No alteration, amendment, modification or interpretation of this Agreement or any provision of this Agreement shall be valid and binding upon the parties hereto unless such alteration, amendment, modification or interpretation is in written form executed by the parties directly affected by such alteration, amendment, modification or interpretation.

6.7 Whenever the singular or masculine is used in this Agreement the same shall be deemed to include the plural or the feminine or the body corporate as the context may require.

6.8 The parties hereto shall execute and deliver all such further documents and instruments and do all such acts and things as any party may, at any time, reasonably require in order to carry out the full intent and meaning of this Agreement.

6.9 Any notice, request, demand and other communication to be given under this Agreement shall be in writing and shall be delivered by hand or by telecopier or Email to the parties at their following respective addresses:

To: AAAA:

u

Attention: u

Fax: : u

E-Mail: u

To: Velocity Software Systems Limited
438 North Springer Avenue
Burnaby, B.C
Canada, V5B 1H4

Attention: Leslie J, Mulder

Email: lesm@velocity.ca

or to such other addresses as may be given in writing by the parties hereto in the manner provided for in this paragraph, and shall be deemed to have been received, if delivered by hand, on the date of delivery, or if delivered by telecopier or Email, on the date that it is sent.

6.10 This Agreement may not be assigned by any party hereto without the prior written consent of both of the parties hereto.

6.11 This Agreement shall be subject to, governed by, and construed in accordance with the laws of the Province of British Columbia, Canada and the parties hereby attorn to the jurisdiction of the Courts of British Columbia.

6.12 This Agreement may be signed by the parties in as many counterparts as may be deemed necessary, each of which so signed shall be deemed to be an original, and all such counterparts together shall constitute one and the same instrument.

In witness whereof the parties have hereunto set their hands and seals as of the Effective Date first above written.

SIGNED, SEALED & DELIVERED
by **VELOCITY SOFTWARE SYSTEMS LTD**

Per:

Authorized Signatory

Name and Title: _____

SIGNED, SEALED & DELIVERED
by **AAAA u:**

Per:

Authorized Signatory

Name and Title: _____

**SCHEDULE "A" TO THE SOFTWARE DEVELOPMENT AGREEMENT
MADE EFFECTIVE AS OF THE u DAY OF u, 200u
BETWEEN VELOCITY AND AAAA**

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**SCHEDULE "B" TO THE SOFTWARE DEVELOPMENT AGREEMENT
MADE EFFECTIVE AS OF THE u DAY OF u, 200u
BETWEEN VELOCITY AND AAAA**

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**SCHEDULE "C" TO THE SOFTWARE DEVELOPMENT AGREEMENT
MADE EFFECTIVE AS OF THE u DAY OF u, 200u
BETWEEN VELOCITY AND AAAA**

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**SCHEDULE "D" TO THE SOFTWARE DEVELOPMENT AGREEMENT
MADE EFFECTIVE AS OF THE u DAY OF u, 200u
BETWEEN VELOCITY AND AAAA**

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**SCHEDULE "E" TO THE SOFTWARE DEVELOPMENT AGREEMENT
MADE EFFECTIVE AS OF THE u DAY OF u, 200u
BETWEEN VELOCITY AND AAAA**

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