



Professional Services Agreement No.: [redacted]
Terms

This Professional Services Agreement ("Agreement") is entered into as of the Effective Date set forth on the Order Form attached hereto by and between the Vendor set forth in the Order Form ("Vendor") and the Client set forth in the Order Form ("Client").

WHEREAS, Client agrees to engage Vendor and Vendor agrees to provide certain professional services and deliverables as expressly described herein.

THEREFORE, Client and Vendor, for good and valuable consideration the sufficiency and receipt of which is hereby acknowledged, intending to be legally bound, agree as follows.

1. DEFINITIONS

- 1.1. "Deliverables" means any custom computer code or custom computer programs provided to Client by Vendor pursuant to the Services under this Agreement. Such deliverables and any fees for such will be identified in an Order Form.
- 1.2. "Services" means the services expressly identified in the Order Form.
- 1.3. "Software" means the computer programs identified in the License and Maintenance Agreement identified in the SLA ("License and Maintenance Agreement").

2. TITLE, LICENSE AND MAINTENANCE

- 2.1. Vendor agrees to provide the Services to Client, as expressly identified in the initial Order Form or any subsequent Order Form.
- 2.2. Vendor retains the entire right, title and interest in and to all ideas, concepts, know-how, data-processing techniques, computer programs or materials, including but not limited to, the Deliverables, developed by Vendor personnel (alone or with Client) in connection with the provisions of the Services hereunder, and hereby grants to Client a license to use such in the same manner as the Software.
- 2.3. Vendor retains right to provide others professional services and deliverables like or different from the Services provided to Client under this Agreement.
- 2.4. The Deliverables shall be maintained by Vendor in the same manner as maintenance of the

Software under the License and Maintenance Agreement, except where otherwise indicated by Vendor.

3. PERFORMANCE OF THE SERVICES

- 3.1. Vendor has right to assign personnel (employees or independent contractors), who are, in Vendor's sole judgment, qualified to render the Services.
- 3.2. The parties acknowledge that performance by Vendor is subject to the availability of qualified personnel of Vendor, and that the time required for the performance of the Services and the development of Deliverables cannot be accurately assessed in advance; consequently, all dates or time quoted with respect to the Services or Deliverables are estimates only and are subject to alteration.
- 3.3. Vendor shall not be liable for any delays or claims of whatsoever nature, which result, directly or indirectly, from the failure by Client to comply with the reasonable requests of Vendor or the breach by Client of any of Client's obligations in this Agreement.
- 3.4. The parties acknowledge that it is not always economically possible to produce Services or Deliverables which are error free and that not all errors are necessarily capable of correction nor are they of such magnitude as to require correction.
- 3.5. EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, THE SERVICES AND DELIVERABLES ARE SUPPLIED "AS IS", WITHOUT ANY WARRANTY, EXPRESS, STATUTORY OR IMPLIED, OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VENDOR EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS, STATUTORY OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THE WARRANTIES OF QUALITY OR REASONABLE SKILL AND CARE, OR OUTCOME OR RESULTS.

4. INFORMATION AND REPRESENTATIONS

- 4.1. Since the performance of Client's computer system cannot be accurately calculated in advance of actual use, any information given or

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statements made by Vendor to Client (whether before or after the date of this Agreement) as to the capacity, throughput or performance of Client's computer system, shall be deemed to be expressions of expectations and not statements of fact or representations.

- 4.2. Client represents that no information has been supplied by Vendor and no statement has been made by Vendor on which the Client has relied to enter into this Agreement, except as expressly provided for in this Agreement.

5. CLIENT RESPONSIBILITIES

- 5.1. Provide all such information, data, documentation and equipment as may be reasonably required by Vendor to enable it to meet its obligations under this Agreement.
- 5.2. Provide a coordinator familiar with and knowledgeable in the system environment, business and procedures of Client, who has authority to make definite decisions relating to the Services. Client shall further provide sufficient computer time and such other physical and human resources as may be reasonably required by Vendor in connection with Services and Deliverables.
- 5.3. Keep Vendor informed on all matters relevant to the Services and Deliverables.
- 5.4. Assume full responsibility for the maintenance and operation of Client's computer system and a proper operating environment.
- 5.5. Submit for Vendor's consideration a completed Service Change Request form, if applicable, for any amendments, modifications, additions or deletions of whatsoever nature required by Client. Such requests are subject to written acceptance by Vendor. Vendor reserves the right to adjust the Services and/or Deliverables as well as charges or man-hours required as a result of the implementation of any Service Change Requests, and to adjust accordingly any estimated schedule of performance.
- 5.6. The Deliverables shall be deemed accepted by Client upon, the earlier of: (1) the production or other use of a Deliverable by Client; (2) thirty (30) days after delivery of the Deliverables by Vendor.

6. NON-SOLICITATION AND NON-INTERFERENCE

- 6.1. Neither party shall directly or indirectly, without the other party's prior written consent, solicit and/or enter into any business relationship, on its own behalf or on behalf of a third party, with such other party's employees or contractor or accept service therefrom or cause or influence any such employees or contractors, now or in the future, to diminish their dealings with Vendor for six (6) months following the termination of the last active Order Form.
- 6.2. The parties recognize that a remedy at law for its breach of this Section, "Non-Solicitation and
- 9.3. This Agreement may be terminated by Vendor upon: (1) a change in control of Client in the form of a stock transfer or asset sale where the transferee does not

Non-Interference", may not be adequate, and agrees that the parties may be entitled to injunctive relief, in addition to any other remedies at law and in equity.

7. PAYMENT FOR SERVICES

- 7.1. Applicable charges payable by Client to Vendor for the Services provided under this Agreement and payment terms shall be as set forth in an applicable Order Form.
- 7.2. Unless indicated to the contrary in an applicable Order Form, charges based upon time and material shall be determined by computing the actual number of days or hours spent by each skill level of Vendor personnel in rendering the Services and multiplying same by the applicable rate for each such skill level. All materials used or consumed by Vendor in the performance of its obligations hereunder shall be invoiced to Client at Vendor standard rates for such.
- 7.3. No overtime or weekend work is contemplated. Should Vendor personnel be available to render the Services outside of Vendor normal office hours, as a result of constraints imposed by Client, Vendor shall be entitled to charge, in addition to its normal rates, an overtime premium of fifty percent (50%) of the normal rate, for all overtime so worked.
- 7.4. Unless otherwise specified in an applicable SOW, all rates and charges specified in this Agreement are subject to change by Vendor upon notice to Client; provided, any such modification in rates or charges shall not be effective until thirty (30) days after notice, during which period Client may terminate this Agreement.
- 7.5. The "Payment" Section of the License and Maintenance Agreement is incorporated, ***mutatis mutandis***, herein by this reference.

8. INDEMNIFICATION; LIMITATION OF LIABILITY

SECTIONS "Licensor's Warranties and Disclaimers" and "Licensor's Limitations of Liability" OF THE LICENSE AND MAINTENANCE AGREEMENT ARE INCORPORATED, ***MUTATIS MUTANDIS***, HEREIN BY THIS REFERENCE, AND SHALL APPLY TO THE PERFORMANCE OF SERVICES HEREUNDER AS THOUGH FULLY SET FORTH HEREIN.

9. TERM AND TERMINATION

- 9.1. This Agreement shall be effective as of the Effective Date and shall remain in effect until terminated as provided for below.
- 9.2. This Agreement may be terminated by either party at any time upon default by the other party of any provision of this Agreement if such default is not corrected within (30) days after receipt of written notice requiring such default to be remedied. The party receiving the notice shall be afforded an opportunity to cure any default during such notice period and if such is cured this Agreement shall not terminate. assume this Agreement in a form and substance acceptable to Licensor, (2) the inability of Client to repay its debts when due, (3) the filing of a bankruptcy petition,

receivership or assignment for the benefit of creditors initiated by or against Client, or (4) appointment of a trustee, receiver or such like person for Client who does not assume this Agreement on behalf of the estate of Client.

- 9.4. Upon termination, Client shall remain liable to Vendor for any amounts due to Vendor up to the date of termination and of such other amounts as may be proven to be due to Vendor.
- 9.5. Upon expiration of the license for the Deliverables hereunder or termination of this Agreement, Client shall promptly return Deliverables and related documentation to Vendor; provided, however, that in no event shall any monies previously paid by Client to Vendor, regardless of whether such payment was for the Services, Deliverables, Software or otherwise, be subject to refund from Vendor.
- 9.6. The provisions of this Agreement which by their nature are intended to survive the termination of this Agreement shall survive the termination of this Agreement.

10. CONFIDENTIALITY

All content, information or data delivered by Vendor to Client, including, but not limited to the Deliverables shall be deemed "Confidential Information" under the "Confidentiality" Section of the License and Maintenance Agreement, which is incorporated herein by this reference.

11. GENERAL

11.1. The "General" Section of the License and Maintenance Agreement is incorporated, *mutatis mutandis*, herein by this reference.

11.2. With respect to the incorporation of the License and Maintenance Agreement, "Licensee" shall refer to "Client," and "Licensor" shall refer to "Vendor."

11.3. This Agreement may be executed and delivered by facsimile signature and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Each party intending to be legally bound has caused this Order Form to be executed below by an authorized representative.

AGREED:

Insert Name of Client:

Signature: _____

Name: _____

Title: _____

Date: _____

ACCEPTED AND AGREED:

UC4 Software, Inc.

Signature: _____

Name: Charles A. Wilson

Title: President

Date: _____

Signature: _____

Name: _____

Title: _____

Date: _____