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## **Attachment B General Terms and Conditions**

Except as otherwise provided by the Proposal or Standard Services and Procedures, the below terms shall apply. Signing of the Proposal indicates your agreement with the below terms and conditions.

### **1. Engagement Arrangements.**

1.1 Engagement. Customer, intending to be legally bound, hereby engages and retains Consultant to perform the services and tasks (“Work”) as set forth in the Proposal. Consultant agrees to perform the Work in accordance with the Proposal.

1.2 Scope, Performance and Manner of Work. Any definition, specification, standard, methodology, design, development, customization, integration, installation, implementation, testing, demonstration, documentation, migration, training, support, maintenance, schedule, milestone or deliverable requirement regarding the Work shall be only as set forth expressly in the Proposal. Consultant shall have no such responsibility or obligation except as set forth expressly in the Proposal.

1.3 Compensation. Except as may be set forth otherwise in the Proposal, Customer shall pay Consultant its standard hourly rates and charges in effect at the time for all services and products provided in the course of performing the Work, including overtime rates for services provided on weekends, holidays or weekdays from 6 p.m. through 9 a.m. Consultant reserves the right to modify its standard rates from time to time on 30 days advance notice to Customer.

1.4 Expenses. Except as may be set forth otherwise in the Proposal, Customer shall reimburse Consultant for any reasonable tax, fee, travel, lodging, meal, communication, document reproduction or other out-of-pocket cost or expense incurred by Consultant in performance of the Work or this Agreement.

1.5 Relationship of Parties. Consultant and Customer are independent contractors. Neither party is the partner or agent of the other. Neither party is authorized to bind or commit the other.

1.6 Parties. “Consultant” shall mean JSpectra LLC and “Customer” shall mean the customer of Consultant that signs the Proposal from Consultant.

1.7 Effective Date. “Effective Date” shall mean the date when both Consultant and Customer have signed the Proposal from Consultant.

### **2. Work Administration.**

2.1 Billing. Consultant shall bill Customer on a monthly basis. Customer shall pay all invoices of Consultant within 30 days of the invoice date. Customer shall pay interest of 1.5 percent per month on all overdue balances and all reasonable costs of collection of Consultant.

2.2 Customer Cooperation and Resources. Customer shall provide such cooperation, services, materials and resources, including access to Customer personnel, facilities, equipment, hardware, software and data, as may reasonably be necessary to perform the Work.

2.3 Estimates. Any estimates of fees, expenses, schedules or completion times in the Proposal are not guaranteed by Consultant.

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### **3. Proprietary Matters.**

3.1 Ownership of Work Product. As between the parties, Consultant shall own all right, title and interest in any ideas, discoveries, inventions, improvements, goods, products, concepts, designs, plans, drawings, specifications, molds, tooling, prototypes, models, parts, formulations, patterns, processes, software, databases, knowledge, know-how, expertise, methods, documentation, research, technical information or technology ("Technology") created, developed or produced in connection with this Agreement or by Consultant ("Work Product"), and all derivative work thereof. This Agreement shall not transfer ownership or title to any such Work Product to Customer.

3.2 Customer License. Effective upon payment by Customer of all amounts due Consultant in connection with this Agreement, Consultant grants Customer a worldwide, non-exclusive and non-transferable license to use any software in machine-readable form internally in the course of Customer's business that was created, developed or produced by Consultant for Customer pursuant to the Proposal.

3.3 Effectuation of Rights. Customer shall take, and shall cause its employees, agents or contractors to take, without further consideration, any action necessary to give effect to the ownership of Work Product by Consultant specified in this Agreement, including the execution of appropriate assignments of intellectual property rights.

3.4 Pre-Existing and General Work Product. Anything in this Agreement to the contrary notwithstanding, Consultant shall own all right, title and interest in, and shall be free to use or disclose, any (1) Technology that Consultant owned, created, developed or produced before entering into this Agreement or (2) Work Product that constitutes general methods, techniques, skills, materials or know-how for conducting Consultant's business.

3.5 Non-Solicitation. Customer acknowledges that Consultant has invested significant resources in recruiting, training and developing its employees. Customer shall not solicit or recruit any employee of Consultant to work for Customer for 12 months after the completion of all Work. Customer shall pay as liquidated damages to Consultant 75 percent of the most recent annual salary or compensation for any employee of Consultant engaged or hired by Customer as a result of any such solicitation or recruitment by Customer.

3.6 Escrow Arrangements. At the request and expense of Customer, after Customer has paid any amounts due Consultant pursuant to this Agreement, Consultant shall enter into reasonable escrow arrangements, as determined in the absolute discretion of Consultant, in order for Customer, in the event Consultant discontinues business, to have access to the source code of any software developed by Consultant expressly for Customer pursuant to the Proposal.

### **4. Confidentiality.**

4.1 Confidential Information. "Confidential Information" shall mean any confidential or proprietary information of either party in any medium or format, including any trade secret. "Confidential Information" of one party shall not include any information that: (1) was obtained by or in the possession of the other party before a disclosure of such information pursuant to this Agreement; (2) was developed independently by the other party without reference to or use of any Confidential Information of the first party; or (3) is generally available to the public at large other than through a breach of this Agreement.

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4.2 Limited Use. Each party shall use any Confidential Information of the other only for the purposes of this Agreement.

4.3 Non-Disclosure. For five years from the Effective Date, neither party shall disclose Confidential Information of the other to any other person except to the extent authorized expressly by this Agreement.

4.4 Disclosure to certain Parties. Each party may disclose Confidential Information of the other to its employees, advisors, representatives, agents and contractors who are subject to commercially reasonable confidentiality obligations on a “need-to-know” basis.

4.5 Confidentiality Measures. Each party shall handle Confidential Information of the other in the same manner as it handles its own Confidential Information.

4.6 Disclosure Required by Law. Each party promptly shall notify the other of any disclosure of Confidential Information of the other party which such first party may be required to make pursuant to applicable laws, including in response to a government order, subpoena, deposition or interrogatory. Neither party shall make any such disclosure unless it has provided the other a reasonable opportunity to arrange appropriate protective orders or measures.

4.7 References. Consultant may announce or disclose its relationship with Customer or the general nature of work done pursuant to this Agreement for reference and marketing purposes.

## **5. Warranty and Claim Matters.**

5.1 Limited Warranty; Disclaimer. Subject to the terms and conditions of this Agreement, Consultant warrants to Customer that for a period of 30 days from delivery service Work shall be performed in accordance with generally accepted industry practice exercised by persons performing services provided for by this Agreement in the same locality and under similar information, time and other circumstances. THE FOREGOING WARRANTY IS THE EXCLUSIVE WARRANTY OF CONSULTANT REGARDING THE WORK AND CONSULTANT DISCLAIMS ANY OTHER WARRANTY REGARDING THE WORK, EXPRESS, IMPLIED OR STATUTORY, INCLUDING AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, RESULTS, COMPATIBILITY, SECURITY AND FREEDOM FROM COMPUTER VIRUS. IN NO EVENT SHALL CONSULTANT BE LIABLE FOR DAMAGES, INCLUDING INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES SUFFERED BY CUSTOMER OR ANY THIRD PARTY ARISING FROM BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE OR RELATED ACTIONS. THE FOREGOING WARRANTY SHALL NOT BE EXTENDED OR MODIFIED BY THE FURNISHING OF ANY SERVICE, REPAIR OR REPLACEMENT WITH RESPECT TO THE WORK.

5.2 Warranty Disclaimer for Products of Third Parties. CONSULTANT DISCLAIMS ALL WARRANTIES OR RESPONSIBILITIES REGARDING ANY PRODUCT, GOOD, SERVICE OR SOFTWARE OF A THIRD PARTY. Customer may have warranty or other rights provided directly to Customer from any such third party.

5.3 Warranty Exclusion. THE FOREGOING WARRANTY SHALL NOT APPLY WITH RESPECT TO A BREACH OF WARRANTY ARISING FROM: (1) ABUSE, MISUSE, UNINTENDED USE OR ABNORMAL USE OF THE WORK; (2) IMPROPER INSTALLATION, OPERATION, MAINTENANCE, SERVICE, REPAIR OR MODIFICATION OF A PRODUCT OR

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TAMPERING IN CONNECTION WITH THE WORK; (3) FAILURE TO COMPLY WITH INSTRUCTIONS OR DOCUMENTATION IN CONNECTION WITH THE WORK; (4) FORCE MAJEURE; OR (5) ACTIVITIES BY UNQUALIFIED PERSONS IN CONNECTION WITH THE WORK.

5.4 Remedy Selection; Liability Limitations. THE ONLY REMEDY AVAILABLE FROM CONSULTANT IN CONNECTION WITH ANY WORK IS, IN ITS DISCRETION, REPAIR OF, REPLACEMENT OF OR REFUND OF THE FEES TO PROVIDE A DEFECTIVE PORTION OF ANY WORK. THE TOTAL MAXIMUM LIABILITY OF CONSULTANT WITH RESPECT TO ANY WORK SHALL NOT EXCEED THE MONIES, IF ANY, ACTUALLY RECEIVED BY CONSULTANT FOR SUCH PORTION OF ANY WORK. CONSULTANT SHALL NOT BE LIABLE FOR ANY LOSS OF OR DAMAGE TO REVENUES, PROFITS, GOODWILL, DATA, INFORMATION SYSTEMS OR OTHER SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND ARISING IN CONNECTION WITH THE WORK, PERFORMANCE OR BREACH OF THIS AGREEMENT OR THE DEALINGS OF THE PARTIES, WHETHER BASED IN ANY CONTRACT, TORT OR OTHER CAUSE OF ACTION. THE FOREGOING REMEDY AND LIABILITY LIMITATIONS SHALL SURVIVE EVEN IF ANY REMEDY IS CLAIMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

5.5 Condition to Performance of Warranty; Limitation on Actions. As a condition precedent to any warranty claim, Customer shall deliver to Consultant written notice of any actual or suspected breach of the foregoing warranty no later than 30 days after learning of any such actual or suspected breach. Customer shall be responsible for shipping costs to and from Consultant in connection with any such claim. Any related lawsuit or legal proceeding must be initiated within three months after the delivery of such notice.

5.6 No Modification of Warranty. Customer is not authorized to, and will not, expand or modify any warranty provided by Consultant in any dealing with a third party.

## **6. General.**

6.1 Further Assurances. Each party, promptly upon the request of the other party, shall execute any document or take any action reasonably necessary to effectuate the intent of, and transactions contemplated by, this Agreement.

6.2 Legal Requirements. Customer shall comply with all laws and legal requirements applicable in connection with the Work or this Agreement.

6.3 Indemnification. Customer shall indemnify and hold harmless Consultant and its affiliates, directors, employees, agents and representatives from any actual or alleged claim, lawsuit, damage, injury, expense or harm, including attorneys fees, which arises in connection with Customer's performance or breach of this Agreement, acts, errors, omissions or dealings with Consultant.

6.4 Force Majeure. Consultant shall be excused from the performance of any obligation pursuant to this Agreement because of any event beyond its control, including war, terrorism, fire, earthquake, flood, labor dispute or shortage of materials.

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6.5 Choice of Law. The construction and performance of this Agreement and the dealings between the parties shall be construed under the laws of the State of Illinois without regard to choice of law principles and excluding the United Nations Convention on Contracts for the International Sale of Goods.

6.6 Choice of Forum. Customer shall commence and prosecute any lawsuit or legal proceeding arising in connection with this Agreement or the dealings between the parties only in the federal or state courts located in Chicago, Illinois. Customer consents and submits to the jurisdiction of such courts and agrees that the mailing to its last known address by registered mail of any process shall constitute legal and valid service of process on Customer. CUSTOMER WAIVES TRIAL BY JURY.

6.7 Severability. The invalidity or unenforceability of any portion of this Agreement in any particular circumstance shall not affect either the validity or enforceability of the rest of this Agreement or of such portion in other circumstances.

6.8 No Waiver. Any non-enforcement by either party of its rights pursuant to this Agreement shall not be construed as a waiver of such rights or affect the validity of this Agreement.

6.9 Headings. Section headings are for convenience only and shall not affect interpretation of this Agreement.

6.10 Assignment, Successors. Customer shall not assign (including by a change of control of Customer) this Agreement without the prior written consent of Consultant. This Agreement shall be binding upon and inure to the benefit of successors and permitted assigns.

6.11 Entire Agreement; Modifications. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes any prior understanding or communication. This Agreement may be amended or modified only by a writing that specifically refers to this Agreement and is signed by authorized representatives of all parties.