

28 July 2011

**Agreement Type Agreement
Between**

Your Customer

And

Company Name

Version 1.1.0

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Company Name Terms and Conditions - version 1.0

Agreement BETWEEN Customer Name (called "the Purchaser") AND Company Name (called "the Supplier").

This Agreement for a Agreement Type ("the Agreement ") is to be read in conjunction with all attached schedules and documents. By accepting the Agreement the Purchaser agrees to be bound by the terms and conditions set out within the Agreement as well as the content of its attached schedules and documents. The content of the Agreement, including any existing and future schedules and attached documents, may be modified in accordance with clauses 4 and 10.1.

The Proposal

The Supplier will provide the Purchaser with a proposal for a Agreement Type ("The Proposal "). By accepting the Agreement the Purchaser agrees to the specifications and milestones for the proposed Agreement Type set out in the Agreement and governed by the Agreement (collectively referred to as "The Project "). The specifications and milestones for the Agreement may be modified in accordance with clause 4 and 10.1.

1. Charges and Payment

- 1.1. The Supplier's price quote ("The Fee") is set out in the Agreement and will, unless accepted, expire thirty days from the date of the Agreement.
- 1.2. The Purchaser shall pay twenty five percent of The Fee on acceptance of the Agreement. Subsequent work, after subtracting the twenty five percent of The Fee paid on acceptance of the Agreement shall be invoiced on the basis described in the Agreement.
- 1.3. Unless an alternative payment schedule is specified in the Agreement or otherwise attached to the Agreement, each invoice shall be due and payable by the Purchaser within 14 days following the date of the invoice.
- 1.4. Disbursements not specifically included in The Fee, such as reasonable travel and accommodation expenses and tasks performed on a time and materials basis, will be charged in addition to The Fee where applicable.
- 1.5. Unless otherwise specified, all prices and quotes exclude Goods and Services Tax and other government taxes and levies where properly due.
- 1.6. If payment is not received by the Supplier by the due date, then, without prejudice to the Supplier's other legal remedies:
 - a) The Supplier may charge default interest on the overdue monies at the current commercial overdraft rate charged by our trading bank.
 - b) The Purchaser shall indemnify the Supplier in respect of any legal costs and expenses reasonably incurred by the Supplier in collecting or attempting to collect any overdue amount (together with any interest payable).
- 1.7. Termination of the Agreement for any reason shall not affect the Purchaser's liability to pay the Supplier in relation to any costs incurred and work performed in accordance with the Agreement prior to the date of termination, and Egressive may invoice the Purchaser for such costs and work.

2. Confidentiality

- 2.1. Confidential Information includes all business, personal, strategic and technical information or

data, in any form whatsoever, disclosed to or received by you pursuant to the completion of the Agreement (whether in writing, verbally, or by any other means and whether directly or indirectly). This includes, by way of example and not limitation, the terms of the Agreement, all information pertaining to the affairs, policies, products, software, operations, processes, costings, pricing methods, personnel, plans or intentions, product information, know-how, intellectual property, design rights, trades secrets, market opportunities and business affairs of The Supplier.

- 2.2. Any and all Confidential Information received by the Purchaser from the Supplier shall be held and kept confidential by the Purchaser and shall be used by the Purchaser solely for the strict purpose of performing the Purchaser's obligations pursuant to the Agreement. Confidential Information shall not be disclosed by the Purchaser to any third party except with, and on the terms of, prior written consent of the Supplier or as required by law.
- 2.3. The Supplier's Confidential Information remains the property of the Supplier and no right, entitlement or interest in the Supplier's Confidential Information is extended or conveyed to the Purchaser. At the Supplier's request, and upon termination of the Agreement, The Purchaser must ensure that all of the Supplier's Confidential Information is either destroyed or returned as requested, and must, if requested by the Supplier, forthwith certify in writing that this has occurred.
- 2.4. Any and all Confidential Information received by the Supplier from the Purchaser shall be held and kept confidential by the Supplier and shall be used by the Supplier solely for the strict purpose of performing the Supplier's obligations pursuant to the Agreement. Confidential Information shall not be disclosed by the Supplier to any third party except with, and on the terms of, prior written consent of the Purchaser or as required by law.
- 2.5. The Purchaser's Confidential Information remains the property of the Purchaser and no right, entitlement or interest in the Purchaser's Confidential Information is extended or conveyed to the Supplier. At the Purchaser's request, and upon termination of the Agreement, the Supplier must ensure that all of the Purchaser's Confidential Information is either destroyed or returned as requested, and must, if requested by the Purchaser, forthwith certify in writing that this has occurred.

3. Intellectual Property

- 3.1. The Supplier, subject to payment in full of all sums owing, grants the Purchaser a non-exclusive licence in respect of all pre-existing material of the Supplier, which comprises the Agreement Type upon completion of the Project, including but not limited to The Supplier's application software, library code, templates and data.
- 3.2. The Purchaser shall provide all logos, graphics, pictures, text and all other relevant information to the Supplier in a timely fashion to allow completion of the Project by the date specified in the Agreement.
- 3.3. The Purchaser warrants that all materials provided to the Supplier for the purposes of the Project:

- a) Do not infringe Intellectual Property rights of any other person;
 - b) Are not unlawful, objectionable, offensive, threatening, abusive or defamatory; and
 - c) Do not comprise and cannot be used for any purpose or activity which is of an illegal, fraudulent or defamatory nature.
- 3.4. The Purchaser agrees that the copyright in all source code, software, information, documentation and techniques developed to deliver the Project resides with the Supplier and that the Purchaser is granted a non-exclusive license to the instance of the Agreement Type developed as per the Agreement only. The Purchaser may request copyright of specific elements (e.g. images, source code files) of the Project. These elements, if any, are described in an attached schedule.
- 3.5. The Supplier reserves the right to release any source code, software, information, documentation and techniques that it holds the copyright to under any licence it chooses. The Supplier agrees to make every reasonable effort to ensure that any such release preserves the competitive advantage and brand identity of the Purchaser.
- 3.6. The Purchaser may request that the Supplier not release aspects of the the Project, related to look and feel or specific algorithms developed for the purposes of the Project. Those aspects, if any, are described in an attached schedule.
- 3.7. The Supplier makes every reasonable effort to honour the licence terms of third party software incorporated into the Project and agrees to alert the Purchaser to the implications of any third party licences.
- 3.8. The Purchaser agrees to grant the Supplier a limited licence to reproduce graphical representations, e.g. screen shots, of the Agreement Type via the world wide web or by any other medium as part of the Supplier's portfolio for the purposes of marketing and demonstration of capabilities.
- 3.9. The Supplier agrees to grant the Purchaser a limited license to reproduce its trademarked brand (logo, company name, etc.) for marketing, reporting, or demonstration purposes.
- 4. Alterations to Specifications**
- 4.1. If the Purchaser wishes to alter the specifications set out in the Agreement, the Purchaser shall make a written request to the Supplier for such alteration or amendment to be made and the alteration and amendment shall not form part of the Agreement until agreed by both parties.
- 4.2. The Purchaser shall be responsible for all extra charges and time incurred by the Supplier as a result of the change to the specifications.
- 5. Warranty**
- 5.1. All conditions, guarantees and warranties expressed or implied by statute, common law, equity, trade customer usage or otherwise, are expressly excluded to the maximum extent permitted by law.
- 5.2. The Supplier's liability for breach of condition, guarantee or warranty that cannot be excluded under clause 5.1 is limited, at the Supplier's option, to make good by repair or by replacement within a reasonable time. This applies to any defects which appear in the Project that arise from non-compliance with specifications, faulty development, design, material, workmanship, or error provided that:
- a) Such defects appear within three months of delivery; and
 - b) The Purchaser has notified the Supplier in writing within seven days of the alleged defect first coming to the Purchaser's notice; and
 - c) That the Agreement Type has been properly handled and used and has been installed, operated and maintained in accordance with instructions provided under the Agreement, if any; and
 - d) Any such defects result in the performance of the Project deviating from the specifications; and
 - e) Any such defects are not the result of alterations or modifications made to the Project without prior authorisation by the Supplier; and
 - f) Any such defects are not the result of using the Project in combination with equipment, software or services not authorised in writing by the Supplier; and
 - g) Any such defects are not the result of using the Project in an operating system environment not recommended by The Supplier or in a fashion other than in accordance with the Supplier's reasonable directions; and
 - h) Any such defects are not the result of a failure on the part of the Purchaser to meet its obligations under the Agreement.
- 5.3. The warranty given under clause 5.2 does not apply to any third party software incorporated into the Project nor does the Supplier accept any responsibility for any defect in such software or in the Project arising from a defect in said third party software.
- 5.4. The Supplier does not warrant that:
- a) The the Project is free of defects; or
 - b) Use of the the Project will be uninterrupted; or
 - c) The Project will meet any of the Purchaser's requirements other than those explicitly stated in the Agreement.
- 5.5. The Purchaser agrees that any goods and services supplied under the Agreement are for business purposes and as such the Consumer Guarantees Act 1993 does not apply.
- 6. Liability**
- 6.1. The Supplier shall not be liable to the Purchaser for any direct or consequential loss, damage, or expense incurred by the Purchaser or anyone else as a result of or in connection with the the Project unless the loss or damage arises directly as a result of the Supplier's gross negligence or wilful misconduct. In any event, the Supplier's total aggregate liability to the Purchaser under or in connection with the Agreement shall not under any circumstance exceed an amount equal to the total sum paid by the Purchaser to the Supplier in relation to the Agreement.
- 6.2. The Purchaser indemnifies the Supplier against any liability for any direct, indirect or

consequential injury, loss or damage arising out of any act, default or omission of, or any representation made by the Purchaser or its agents.

- 6.3. The Supplier shall not be liable for the commercial performance of the Project.

7. Termination

- 7.1. Either party may terminate the Agreement, by giving the other party thirty days notice in writing.
- 7.2. Termination of the Agreement shall be without prejudice to the rights or either party accrued up to the date of the termination.

8. Force Majeure

- 8.1. The Supplier shall not be liable for any delay or failure to fulfil its obligations under the Agreement if such delay or failure arises from any circumstance arising that is beyond the Supplier's control. If such circumstance persist for thirty days or more, the Supplier may terminate this Agreement by providing the Purchaser with written notice.

9. Disputes Resolution

- 9.1. If any dispute arises between the Purchaser and the Supplier in relation to the Agreement, then the parties must first try to settle the dispute by way of good faith negotiations. Any dispute, which cannot be settled by good faith negotiations within fourteen days, must be submitted to mediation. The parties must mediate the dispute in accordance with the Mediation Rules of the New Zealand Chapter of Lawyers Engaged in Alternative Dispute Resolution (LEADR), or its successor, and the Executive Chair of LEADR (or his nominee) shall select the mediator and determine the mediator's remuneration.

10. General Provisions

- 10.1. These conditions may only be varied by agreement in writing between the parties by a duly authorised representative of both the Purchaser and the Supplier.
- 10.2. The conditions and proposal shall be governed by the Law of New Zealand and the parties agree to submit to the jurisdiction of the New Zealand Courts.
- 10.3. The Supplier reserves the right to sub-contract the performance of the Agreement or any part thereof to any other party or person it may determine.
- 10.4. The terms of clauses 2 (Confidentiality) and 3 (Intellectual Property) shall survive the termination of the Agreement.
- 10.5. If any part of the Agreement is held to be invalid or unenforceable, then it shall be severed, limited or modified to the minimum possible extent necessary to make the remainder of the Agreement enforceable.

Schedule A - Definitions and Interpretation

1. Definitions: In the Agreement, unless the context requires otherwise:

- 1.1. **"The Agreement"** means the entire agreement, including all schedules and other attached documents. All other representations, warranties or promises whether verbal or written are hereby expressly excluded.
- 1.2. **"Business Day"** means any day of the week other than Saturday or Sunday. This excludes any day that is a recognised New Zealand public holiday. Furthermore a business day starts at 09:00 and concludes at 18:00.

2. Interpretation: In the Agreement, unless the context requires otherwise:

- 2.1. Clauses and other headings are for ease of reference only and are not to be deemed to form any part of the context, or to affect the interpretation, of the Agreement;
- 2.2. Words importing the singular include the plural and vice versa;
- 2.3. A reference to a party to the Agreement includes the party's permitted assigns and subcontractors;
- 2.4. References to a statute include references to regulations, orders or notices made under such statute or regulations and all amendments, replacements or other changes to them;
- 2.5. Words such as "including" do not imply any limitation; and unless stated otherwise, any reference to dollars and \$ is a reference to the New Zealand currency.
- 2.6. For any notifications or certifications required "in writing", email is a suitable substitute for a physical document so long as receipt is confirmed by the recipient.