

CODE SYSTEMS TERMS AND CONDITIONS

This agreement ("Agreement") is made by and between Code Systems Corporation, with its principal place of business at 119 First Avenue South, 3rd Floor, Seattle, Washington 98104, and

_____ ,
with a principal place of business at

_____ ,
and is effective as of

_____ , 20_____
(the "Effective Date").

1. DEFINITIONS

In this Agreement, the terms:

"Affiliate" means any entity controlling, controlled by, or under common control as evidenced by ownership or control of, either directly or indirectly, at least 50% of the outstanding voting securities of the relevant entity.

"Agreement" means these Terms and Conditions, applicable Transaction Documents, Acceptable Use Policy, and any related attachments.

"Acceptable Use Policy" means the document entitled "Acceptable Use Policy" published on the Code Systems web site.

"Code Systems" means Code Systems Corporation, its Affiliates, or entities authorized by Code Systems Corporation to provide a Service. "Code Systems Products" means the software products owned by Code Systems.

"Customer" means the entity that orders the Services or Licensed Materials and is responsible for the payment of fees under, and compliance with, this Agreement.

"Confidential Information" means any information disclosed previously or in the future ("disclosed" means any provision of information, of access to information, or of means to gain access to information) by either party to the other party, either directly or indirectly, in writing, orally, by inspection of tangible objects or otherwise (including, without limitation, research, product plans, products, services, customers, markets, software, inventions, processes, designs, drawings, engineering, hardware configuration information, marketing and finances documents), which are indicated by the disclosing party to be "Confidential," "Proprietary" or similarly designated, or which under the context of its disclosure ought to be considered confidential. Information communicated orally shall be considered Confidential Information if such information is identified as Confidential Information at the time of disclosure or if such information is confirmed in writing, including confirmation via email, as being Confidential Information within a reasonable time after the initial disclosure. Confidential Information may also include information disclosed to a disclosing party by third parties. Confidential Information shall not, however, include any information which (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; (ii) becomes publicly known and made generally available 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 as shown by the receiving party's files and records immediately prior to the time of disclosure; (iv) is obtained by the receiving party from a third party without a breach of such third party's obligations of confidentiality; (v) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as shown by documents and other competent evidence in the receiving party's possession or (vi) is required by law to be disclosed by the receiving party, provided that the receiving party shall give the disclosing party prompt

written notice of such requirement prior to any disclosure so that the disclosing party may seek a protective order or other appropriate relief.

"Licensed Materials" means each of the Code Systems Products, Documentation and Code Systems APIs, SDKs and any other Code Systems software code designed to facilitate the integration or use of any Code Systems Product or Service by the Customer.

"Service" means services or products ordered by Customer in a Transaction Document. A Service may include software which is provided solely to enable Customer's use of Service.

"Transaction Documents" means documents that set forth the description of the Services being purchased from Code Systems and any additional terms set forth in any Order Forms, Statements of Work, or other documents executed by the parties.

2. RESPONSIBILITIES

General. Each party shall perform its obligations as set forth in this Agreement. Code Systems shall provide the Services as set forth in the applicable Transaction Document.

Ownership. Code Systems shall retain all right, title and interest to any patents, copyrights, trade secrets or other proprietary rights in the Service and Licensed Materials. Code Systems may make changes to Licensed Materials or Service at any time without notice.

No Resale. Except as expressly permitted in a particular Transaction Document, Customer shall not resell the Services to a third party nor enter into any similar relationship with a third party to enable the purchase or use of the Services or Licensed Materials through Customer. For purposes of the foregoing, end users accessing the Customer web site are not considered to be using the Services. When using the Services, Customer shall comply with Code Systems' then-current Acceptable Use Policy as published at the Code Systems web site.

No Modifications. Except as expressly permitted in a particular Transaction Document, Customer shall not modify, alter, tamper with, or otherwise interfere with proper functioning of the Licensed Materials or Service. Customer shall not remove, obscure, modify, or otherwise inhibit the full and complete display of any branding or proprietary marks in the Service user interface. Licensee acknowledges that Licensed Materials may incorporate hardware- and Internet-based licensing mechanisms designed to prevent piracy of Licensed Materials. Licensee grants Code Systems the right to utilize such licensing mechanisms and shall not interfere with the proper functioning of such mechanisms.

3. PAYMENT TERMS

Payments to Code Systems. Unless otherwise set forth in the Transaction Document, Customer shall pay all applicable Service and licensing fees within thirty days of any invoice date. All prices are denominated in U.S. dollars and all payments shall be made in U.S. currency, unless otherwise set forth in the Transaction Document. Payments made by check shall be drawn against a U.S. bank.

Taxes and Fees. Prices do not include any taxes or duties, shipping and handling fees, or travel expenses. All such taxes, duties, and fees are the responsibility of Customer. There shall be no deduction from, or an offset against, any such taxes, fees, or other charges, and all payments shall be grossed up to account for any withholding taxes.

Amendments. Unless otherwise stipulated in a Transaction Document or other amendment, the fee schedule for Services and Licensed Materials may be changed at any time at the sole discretion of Code Systems, provided that if Code Systems increases the fees then Customer shall have the right to terminate its purchase of the applicable Service without termination charge by providing written notice to Code Systems within thirty days of the effective date of the increased fees.

Late payment. Customer shall pay a late charge of the lesser of one percent per month (or part of a month) or the maximum lawful rate permitted by applicable law for all amounts not paid within thirty days of invoice date, plus all costs, including reasonable attorneys' fees, incurred to collect any unpaid amounts. Unless prohibited by applicable law or regulation, all invoiced amounts not disputed in writing within sixty days of the invoice date are deemed accepted. Restrictive endorsements or other statements on checks accepted by Code Systems are not enforceable. Code Systems reserves the right to reasonably require payment assurance.

4. CONFIDENTIALITY

Confidentiality of the Agreement. The terms of this agreement, including any Transaction Documents and attachments, shall be treated as Confidential Information by the parties.

Non-Disclosure of Confidential Information. Each party agrees not to use any Confidential Information of the other party for any purpose except in support of the activities contemplated in this agreement. Each party agrees not to disclose any Confidential Information of the disclosing party to third parties or to such party's employees, except to those employees of the receiving party who are required to have the information in order to evaluate or engage in discussions concerning matters related to this Agreement. Neither party shall reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information and which are provided to the party hereunder.

Maintenance of Confidentiality. Each party agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the other party. Without limiting the foregoing, each party shall take at least those measures that it takes to protect its own most highly confidential information, and shall ensure that its employees who have access to Confidential Information of the other party have signed a non-use and non-disclosure agreement in content similar to the provisions hereof, prior to any disclosure of Confidential Information to such employees. Neither party shall make any copies of the Confidential Information of the other party unless such copying is previously approved in writing by the disclosing party. Each party shall reproduce the disclosing party's proprietary rights notices on any such approved copies, in the same manner in which such notices were set forth in or on the original.

Ownership and Return of Materials. Any and all Confidential Information disclosed by either party hereto is and shall remain the property of the disclosing party. All documents and other tangible objects containing or representing Confidential Information, either in whole or part, which has been disclosed by either party to the other party, and all copies thereof which are in the possession of the receiving party, shall be promptly returned to the disclosing party upon the first of the following to occur: (i) the disclosing party's written request; (ii) the completion of the purpose for which it was provided; (iii) the determination by the receiving party that it no longer desires to possess the Confidential Information; or (iv) within thirty (30) days after any termination of this Agreement.

No Additional Restriction. Nothing in this Agreement shall restrict the disclosing party from using, disclosing or disseminating its own Confidential Information in any way.

Residuals. Notwithstanding the foregoing provisions of this Section 4, the receiving party will have the right to use and exploit Residuals, except that Residuals shall be subject to the same limitations on disclosure as the receiving party would impose on its own confidential information of like value. As used herein, "Residuals" means ideas, information and understandings that are retained in the memory of an ordinary person skilled in the art, not intent on appropriating the Confidential Information of the disclosing party as a result of his or her review, evaluation or testing of such Confidential Information.

5. INDEMNIFICATION

Customer shall defend, indemnify, and hold harmless Code System or its agents or suppliers for any claim resulting from a violation of the Acceptable Use Policy, any infringement of patents, copyrights, or other intellectual property rights resulting from Customer content, use of the Service other than as specified in relevant Code Systems documentation, or use of products or services not supplied by Code Systems. Code Systems shall promptly notify Customer in writing of any claim, suit, or proceeding for which an indemnity is claimed, and allow Customer to control the defense of any claim, suit, or proceeding. Customer shall not enter into any settlement that imposes liability or obligations on Code Systems without obtaining Code Systems' prior written consent.

6. DISCLAIMER AND LIMITATION OF LIABILITY

EACH PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, PAST OR PRESENT, STATUTORY OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR SECURITY.

LIABILITY ARISING UNDER THIS AGREEMENT SHALL BE LIMITED TO DIRECT, OBJECTIVELY MEASURABLE DAMAGES AND, TO THE EXTENT PERMITTED BY LAW, NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER PARTY OR A THIRD PARTY FOR ANY INDIRECT OR SPECULATIVE DAMAGES INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF USE, LOSS OF DATA, BUSINESS INTERRUPTIONS, AND LOSS OF PROFITS, IRRESPECTIVE OF WHETHER THE PARTY HAS ADVANCE NOTICE OF THE POSSIBILITY OF ANY SUCH DAMAGES; PROVIDED, HOWEVER THAT THIS LIMITATION SHALL NOT APPLY TO A PARTY'S INDEMNIFICATION OBLIGATIONS, DAMAGES ARISING FROM A PARTY'S BREACH OF CONFIDENTIALITY, OR DAMAGES ARISING FROM A PARTY'S WILLFUL MISCONDUCT.

NOTWITHSTANDING THE FOREGOING, A PARTY'S TOTAL COLLECTIVE LIABILITY TO THE OTHER PARTY UNDER THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNT PAID TO CODE SYSTEMS BY CUSTOMER DURING THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE INCIDENT GIVING RISE TO SUCH LIABILITY, PROVIDED, HOWEVER, THAT THIS LIMITATION SHALL NOT APPLY TO A PARTY'S INDEMNIFICATION OBLIGATIONS, DAMAGES ARISING FROM A PARTY'S BREACH OF CONFIDENTIALITY, OR DAMAGES ARISING FROM A PARTY'S WILLFUL MISCONDUCT.

7. TERM AND TERMINATION

Term. The "Term", if any, is set forth in the Transaction Document and automatically renews for successive terms of equal duration unless either party notifies the other of its intent to not renew at least sixty (60) days prior to the end of the applicable Term. Termination of an individual Transaction Document shall not terminate any Services under other Transaction Documents.

Termination. Either party may terminate a Transaction Document if the other materially breaches this Agreement and such breach continues unremedied for thirty days following notice or such other period designated herein. Code Systems may immediately suspend all Transaction Documents for undisputed not received within fifteen days of payment due date. Code Systems may modify components of any Service to the extent such change is made to the generally available Service and, in such event, may modify or eliminate any affected Agreement terms or an affected Transaction Document without termination charge upon thirty days notice, or a lesser period if such change or termination is due to applicable laws or regulations; provided that Customer may terminate the applicable Transaction Document without termination charge if Code Systems fails to remedy a material decrease in the functionality of the affected Service within thirty days of written notice from Customer.

Early Termination. Except for a termination by Customer as expressly permitted herein, if a Transaction Document is terminated prior to end of the Term for any reason, Customer shall pay Code Systems a termination charge (which Customer acknowledges reflects a reasonable measure of actual damages and not a penalty) equal to 100% of the fees that would have become due for the remainder of the Term, in addition to all fees outstanding at the date of termination.

Survival. Sections 3, 4, 6, 7, and 8 shall survive termination.

8. MISCELLANEOUS

Governing Law, Jurisdiction and Attorneys' Fees. This Agreement and all matters arising out of or relating to this Agreement shall be governed by the laws of the State of Washington, excluding its conflict of law provisions. In the event of any litigation of any controversy or dispute arising out of or in connection with this Agreement, its interpretation, its performance, or the like, the prevailing party shall be awarded reasonable attorneys' fees and expenses, court costs, and reasonable costs for expert and other witnesses attributable to the prosecution or defense of that controversy or dispute. In the event of a non-adjudicative settlement of litigation between the parties, the term "prevailing party" shall be determined by that same process. The Federal and State Courts located in King County, Washington shall have sole jurisdiction over any disputes arising hereunder and the parties hereby submit to the personal jurisdiction of such courts. The U.N. Convention on the International Sale of Goods shall not apply to this Agreement.

Notices. All notices required to be sent hereunder shall be in writing and shall be deemed to have been given upon (i) the date it was delivered by courier, or (ii) if by certified mail return receipt requested, on the date received, to the addresses set forth above and to the attention of the signatories of this Agreement, or to such other address or individual as the parties may specify from time to time by written notice to the other party.

Severability. In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force.

Waiver. The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach.

No Agency, Partnership or Joint Venture. No agency, employment, partnership, joint venture, or other joint relationship is created hereby. Code Systems and Customer are each independent contractors with respect to the other and neither has any authority to bind the other in any respect whatsoever.

Assignment. Neither party may assign, transfer or delegate this Agreement or any right and/or obligation of the party hereunder to any third party hereto without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign this Agreement and such party's rights and obligations hereunder without the consent of the other party to a subsidiary, parent, or entity under common control. In addition, either party may assign this Agreement, and its rights and obligations hereunder, to any third party that acquires all or substantially all of such party's stock or assets relating to that portion of such party's business that is related to the subject matter of this Agreement, provided that such party assumes all of the obligations of the assigning company under this Agreement. Any attempted assignment, delegation, or transfer in contravention of this Agreement shall be null and void.

9. EXECUTION

Code Systems and Customer have caused this Agreement to be executed by their duly authorized representatives on the respective dates entered below.

CUSTOMER

Signature: _____

Name: _____

Title: _____

Date: _____

CODE SYSTEMS CORPORATION

Signature: _____

Name: _____

Title: _____

Date: _____