

STANDARD TERMS & CONDITIONS

1. Applicability. These Standard Terms and Conditions contain general provisions that apply to all Fourteen Consulting products and services provided under an Agreement or Order. "Agreement" refers to the written contract signed by Customer for Fourteen Consulting products and/or services, its attachments, these Standard Terms and Conditions, other documents incorporated by reference, and the related Order(s). "Order" means a written, electronic or verbal order, submitted or confirmed by Customer and accepted by Fourteen Consulting that identifies specific Fourteen Consulting products and/or services and the quantity/scope ordered. Verbal Orders are deemed confirmed upon Customer's written acknowledgement or use of products or services.

2. Charges. The design services ("Services") to be provided by Consultant are set forth in the Services Agreement ("Services Agreement") signed by Customer and Fourteen Consulting. Subsequent Services may be described in additional Services Agreement attachments ("Attachments") as may be executed by the parties from time to time as the need arises. Each Attachment will provide for the issuance by Customer of a purchase order (which must be in form and substance acceptable to Consultant in its discretion) and for payment of Consultant's fees. Invoices for Services and expenses will be provided to Customer by Consultant as agreed upon in the Services Agreement or applicable Attachment. Unless otherwise provided in the Services Agreement or applicable Attachment, (a) Customer shall be responsible for actual and reasonable costs incurred by Consultant for travel and lodging expenses, (b) invoices shall be rendered upon completion of services or monthly in the event the duration of services exceeds one month, (c) invoices shall be payable upon receipt and shall be past due if not paid within fifteen (15) days of receipt, (d) all payments are non-refundable and shall be made without defense, offset, deduction or counterclaim of any kind or character, and (e) without limiting any other remedies available, Consultant may immediately cease work if any invoice becomes past due. All amounts will be payable at the Travis County location specified in the invoice. Amounts not paid within 15 days of the invoice date or when payable pursuant to another Section of the Agreement will bear interest at the lesser of 18% per year or the maximum lawful rate until paid. Payments will be applied first to accrued interest and the remainder to reduction of the principal amount due.

3. Confidentiality.

3.1 Confidential Information. During the term of this Agreement and for a period of three years thereafter, a party receiving ("Receiving Party") Confidential Information from the other party ("Disclosing Party") shall not use, and shall use reasonable efforts to protect the confidentiality of, such Confidential Information except as Consultant's believes to be advisable to (i) carry out its obligations to the Customer, (ii) assert rights under this Agreement or defend against any claims arising with respect to the services, products or this Agreement, or (iii) obtain advice from Consultant's legal, accounting, tax or other advisers after informing them of the confidential nature of such information. "Confidential Information" means information disclosed to Receiving Party within the previous three years which is not generally made available to the public by Disclosing Party and relates to Disclosing Party's research, development, design, trade secrets, or business affairs excluding information that (i) is or becomes, through no fault of Receiving Party, generally available to the public, (ii) was independently known or developed by Receiving Party prior to disclosure by the Disclosing Party, (iii) Receiving Party is or becomes obligated to disclose pursuant to judicial or other governmental action, or (iv) the Disclosing Party fails to treat as confidential.

3.2 Legal Compulsion. In the event that Receiving Party receives a request to disclose all or any part of the Confidential Information under the terms of a subpoena or order issued by a court of competent jurisdiction or by a governmental or administrative body, Receiving Party will

immediately notify Disclosing Party of the existence, terms and circumstances surrounding such a request so that Disclosing Party may seek a protective order or other appropriate remedy (and Receiving Party will provide such cooperation in connection therewith as Disclosing Party may reasonably request) and/or waive compliance with the provisions of this Agreement. If such protective order or other remedy is not obtained, or the Disclosing Party waives compliance with the provisions of this Agreement, Receiving Party will furnish only that portion of the Confidential Information which in the written opinion is legally required to be disclosed.

3.3 Third Party Information. Consultant, its employees, contractors and agents will not use or disclose to Customer any confidential or proprietary information of former or current clients or employers without written permission from the owner of such information. Customer, its employees, contractors and agents will not use or disclose to Consultant any confidential or proprietary information of third parties without written permission from the owner of such information. Any such third party information provided to Receiving Party by Disclosing Party and so identified in writing will be treated as Confidential Information of a Disclosing Party.

3.4 Return of Confidential Information. At Disclosing Party's request, Receiving Party will return to Disclosing Party all documents and other material containing Confidential Information of Disclosing Party.

4. Warranty & Disclaimer.

4.1 Performance Warranty. Consultant shall use commercially reasonable efforts to perform the Services in accordance with the standards prevailing for similar services in Austin, Texas.

4.2 Notice and Cure. Customer shall notify Consultant of any breach of the warranty in Section 4.1 within 30 days after discovery by Customer or within 90 days after completion of the services under the Agreement, whichever first occurs. Failure to give notice of any breach of the warranty in Section 4.1 before the time required by the preceding sentence shall constitute acceptance by Customer of all services, products and documentation that may be provided by Consultant. Consultant shall be entitled to initiate corrective services or actions within 30 days after receiving Customer's notice of warranty breach and Customer's payment of the purchase price for any necessary hardware. If Consultant fails to cure such breach within a reasonable time (in no event to be less than 30 days) after commencing such efforts, Consultant shall be liable for the lesser of (i) the reasonable cost subsequently expended by Customer to obtain the benefits that would have accrued under the Agreement if such warranty had not been breached or (ii) the amount paid to Consultant for the services, installation or documentation not performed or prepared in accordance with such warranty.

4.3 Exclusive Remedy. **THE PROVISIONS OF SECTION 4.2 CONSTITUTE THE SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THE WARRANTY OF SECTION 4.1.**

4.4 Disclaimer of Warranties. **THE WARRANTY IN SECTION 4.1 IS THE ONLY WARRANTY OFFERED TO AND RELIED ON BY CUSTOMER. SUBJECT TO THE WARRANTY OF SECTION 4.1, ALL SERVICES, PRODUCTS AND DOCUMENTATION ARE PROVIDED "AS IS" WITHOUT ORAL OR WRITTEN WARRANTIES OF ANY KIND. ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, TITLE, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED.**

5. Limitations of Liability; Disclaimer of Consequential Damages.

5.1 Liability Limit. **IN ADDITION TO THE OTHER LIMITATIONS OF THESE STANDARD TERMS AND CONDITIONS, NO PARTY SHALL BE LIABLE IN EXCESS**

OF THE AMOUNT PAID OR PAYABLE TO CONSULTANT UNDER THE AGREEMENT; PROVIDED, HOWEVER, THIS LIABILITY LIMITATION SHALL NOT APPLY TO A BREACH OF SECTION 3 OF THESE STANDARD TERMS AND CONDITIONS.

5.2 Damages Limitations. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES (INCLUDING LOST PROFITS, LOST DATA, LOST REVENUES OR DOWNTIME COSTS), ARISING OUT OF OR RELATING TO THE AGREEMENT, ANY SERVICE, PRODUCT OR DOCUMENTATION OR THE PERFORMANCE, NONPERFORMANCE, USE, INABILITY TO USE, CONDITION, QUALITY, RESULT OR EFFECT OF ANY OF THE FOREGOING, WHETHER BASED IN WARRANTY, CONTRACT, TORT OR OTHER LEGAL THEORY, AND WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

5.3 No Vicarious Liability. EXCEPT FOR DIRECT PERSONAL GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NO AFFILIATE, DIRECTOR, OFFICER OR SHAREHOLDER OF A PARTY SHALL BE LIABLE FOR ANY DAMAGES SUFFERED BY THE OTHER PARTY UNDER RESPONDEAT SUPERIOR, VICARIOUS LIABILITY OR OTHER LEGAL THEORY.

5.4 Independent Provisions. Each subsection of Sections 4 and 5 of these Standard Terms And Conditions are intended to be independent of and severable from each other.

5.5 Scope of Disclaimers and Waivers. The disclaimers and limitations set forth in Sections 4 and 5 shall not apply to the extent of gross negligence, willful tortious conduct or as otherwise prohibited by applicable law.

6. Indemnity. CUSTOMER HEREBY INDEMNIFIES AND AGREES TO HOLD CONSULTANT AND ITS OWNERS, AFFILIATES, EMPLOYEES, AGENTS AND CONTRACTORS HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, EXPENSES AND OTHER MATTERS ARISING OUT OF OR RELATED TO PERFORMANCE OF THEIR OBLIGATIONS UNDER THE AGREEMENT, INCLUDING ANY CLAIMS BY PERSONS OR ENTITIES OWNING OR CLAIMING PATENT, TRADEMARK OR OTHER RIGHTS IN ANY PROPERTY MODIFIED OR UTILIZED IN CONNECTION WITH SUCH OBLIGATIONS. THIS INDEMNITY DOES NOT INCLUDE CLAIMS MADE BY EMPLOYEES OF CONSULTANT IN SUCH CAPACITY OR CLAIMS ARISING SOLELY OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CONSULTANT AS DETERMINED BY A FINAL JUDGMENT OF A COURT.

7. Assignment of Intellectual Property Rights.

7.1 Definitions.

"Background Technology" means all programs, systems, data and materials, in whatever form that do not constitute Work Product and are: (i) included in, or necessary to, the Work Product; and (ii) owned solely by Consultant or licensed to Consultant with a right to sub-license to Customer. Background Technology includes computer code generated by programs proprietary to Consultant and all other Consultant Tools.

"Consultant Tools" means the software tools of general application, including commercial programs, that were not originally created by Consultant, its predecessors or affiliates, whether now owned by or licensed to Consultant or directly to Customer, and which are used to render Services or develop deliverables under the Agreement.

"Generic Components" means the software/programming tools developed generally to support Consultant products and/or service offerings and which (i) can be used in services, applications and deliverables other than those developed under the Agreement, and (ii) can be used without Customer's Confidential Information.

"Work Product" means all programs, systems, data and materials that are (i) planned, concrete results of the Services, (ii) first produced or created by Consultant as a result of or in the performance of work or services under this Agreement; and (iii) do not constitute Consultant Tools or Generic Components.

7.2 Work Product Ownership. Subject to the condition subsequent of full payment of all amounts owed or owing to Consultant under this Agreement, Consultant hereby: (i) acknowledges and agrees that, insofar as Consultant is concerned, the Work Product has been specially ordered and commissioned by Customer and constitutes "works made for hire" for copyright purposes; and (ii) to the extent that any Work Product does not qualify as a work made for hire under applicable law, and to the extent that the Work Product includes material subject to copyright, patent, trade secret or other proprietary right protection, Consultant hereby assigns to Customer, its successors and assigns, all right, title and interest Consultant may have in and to the Work Product.

7.3 Licenses. Subject to the condition subsequent of full payment of all amounts owed or owing to Consultant under this Agreement, Consultant will on request grant to the extent of its rights a perpetual, non-exclusive, worldwide, royalty-free license to Customer to use the Background Technology and Generic Components in application(s) incorporating the Work Product to the extent and only to the extent that such use is required to maintain the design data delivered under the Agreement. Such license shall be granted on an AS IS basis without any warranties pursuant to a license agreement in form and substance acceptable to Consultant.

7.4 Assistance. Consultant will assist Customer in every reasonable way during and after completion of this Agreement to obtain patents, copyrights, and mask work rights covering the intellectual property rights of Customer pursuant to Section 7.2 of these Standard Terms and Conditions. Customer will pay all related expenses (including Consultant's legal fees) relating to such efforts and will compensate Consultant at the then-current billing rates of Consultant for time spent by Consultant at Customer's request on such assistance.

8. Acceptance. "Acceptance" of services and/or products under this Agreement shall be deemed to have occurred upon the earlier of (i) completion by Consultant of the milestones specified in the Services Agreement, and (ii) any use by Customer, its agents, employees or licensees, for any purpose, of any services or work product or result of services.

9. Miscellaneous.

9.1 Independent Contractor Status. Neither Consultant nor Consultant's employees are or shall be deemed employees of or partners or joint venturers with the Customer. Consultant maintains a separate place of business from Customer and a separate set of books and records that reflect all items of income and expense for Consultant's business.

9.2 Taxes. Customer agrees to make all payments to Consultant in connection with this Agreement free and clear of any and all taxes, fees, levies, duties, imposts, charges, penalties or other amounts imposed by governmental authorities on Customer or Consultant in connection with the transactions contemplated by this Agreement and the Licenses ("Taxes"). In addition, Customer agrees to promptly pay, and to hold Consultant harmless from and against, any and all Taxes other than Taxes on the income of Consultant.

9.3 Advertising. Unless otherwise provided in the Services Agreement, Consultant reserves the right to refer to Customer as a customer of its Services in its marketing materials.

9.4 Entire Agreement. The Agreement constitutes the complete and exclusive statement of all mutual understandings between the parties with respect to its subject matter, and supersedes all prior and contemporaneous oral or written proposals, communications and understandings. Each party acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by the other party or their representatives which are not embodied herein, and that no other agreement, statement or promise not contained in the Agreement shall be valid or binding. These Standard Terms and Conditions are the general provisions that apply to all Consultant's services and products, except as superseded by an individually negotiated Services Agreement signed by Consultant affirmatively states that it amends the provision(s) of these Standard Terms and Conditions expressly listed therein. Any modification of the Agreement shall be effective only if it is in writing, signed and dated by all parties.

9.5 Severability. If any provision of the Agreement, or the application of any provision to any person or set of circumstances, is determined to be invalid or unenforceable to any extent, the remainder of the Agreement, and the application of such provision to persons or circumstances other than those as to which it is determined to be invalid or unenforceable, shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law. If any provision of the Agreement is determined to be invalid or unenforceable for any reason, then the Agreement shall remain in full force and effect and the invalid or unenforceable provision shall be replaced by a provision determined by a mutually agreed independent business attorney to be within the original spirit and intent of the Agreement. If the parties are unable to agree on such attorney, either party may petition a court to identify such attorney.

9.6 Governing Law; Disputes. The Agreement shall be governed by and construed in accordance with the laws of the State of Texas without reference to its conflicts of law principles. Any controversy between the parties involving the construction, application, performance or breach of any of the terms, provisions, or conditions of the Agreement, shall on written request of either party, be submitted first to mediation and then if still unresolved to binding arbitration. Any mediation or binding arbitration shall be conducted in Austin, Texas in accordance with the rules of the American Arbitration Association for Commercial Disputes ("Arbitration Rules") unless the parties stipulate otherwise. The arbitrator(s) shall not render any award or decision inconsistent with the terms and conditions of the Agreement including its limitation of liability provisions. If any arbitration or action at law or in equity is necessary to enforce or interpret the terms of the Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements incurred both before and after any judgment or decision in addition to any other relief to which such party may be entitled. Each party waives any right to adjudicate any controversy in any other court or forum, except that a party may seek interim relief before the start of arbitration as allowed by the Arbitration Rules and such other injunctive relief to the extent not available by arbitration. Jurisdiction and venue for all purposes shall be in Travis County, Texas.

9.7 Notices. The parties agree that electronic mail shall be deemed to be a written instrument signed by the person electronically indicated as the sender of such e-mail. Any notice, invoice or communication required or permitted to be given hereunder shall be made in writing and shall be deemed to have been given to the intended recipient upon (i) hand delivery, (ii) actual or attempted delivery to such party's address according to evidence of delivery by a recognized independent courier service, (iii) electronic facsimile transmission according to the facsimile transmission confirmation receipt, or (iv) electronic confirmation of electronic mail delivery, in each case at the address, telecopy number or e-mail address listed for such party in the Services

Agreement. Either party may designate a different address by giving notice to the other in accordance with this Section.

9.8 Force Majeure. If, after the Services Agreement is executed, the economic situation changes substantially, or if events constituting force majeure or other events beyond Consultant's control arise as a result of which Consultant would no longer be interested in implementing or completing the project described in the Services Agreement, then Consultant will have the option either to rescind the Services Agreement or to extend the agreed delivery periods. In the event Consultant exercises these rights, Consultant shall have no liability to Customer and Customer will not be entitled to assert any claims against Consultant. No delay or default of Consultant in performing its obligations shall be considered a breach, and no damages shall be owed to Customer in connection therewith, if such delay or default is caused by or results from unforeseen circumstances or an event beyond the reasonable control of Consultant, including fire, flood, earthquake, explosion, accident, governmental action, failure of suppliers, strike, lockout, riot, acts of war (whether or not so declared), sabotage or defects or errors in hardware or software used in connection with the Consultant's services (including alpha and beta release software tools chosen by Consultant in its discretion).

9.9 Construction. Whenever in the Agreement the singular number is used, the same shall include the plural where appropriate (and vice versa), and words of any gender shall include each other gender where appropriate. As used in the Agreement, (i) "or" means "and/or"; (ii) "business day" means any day on which banks in Texas are open for business; and (iii) "including" or "include" means "including without limitation." Section and other headings are for reference purposes only and are not intended to describe, interpret, define, or limit the scope, extent, or intent of the Agreement or any of its provisions. All pronouns and any variations thereof shall be deemed to refer to masculine, feminine, or neuter, singular or plural, as the identity of the person or persons may require. The parties are sophisticated and were or could have been represented by legal counsel during the negotiation of the Agreement. Accordingly, the parties believe the presumption of any laws or rules relating to the interpretation of contracts against the drafter thereof should not apply, and hereby waive any such presumption and agree that the Agreement shall be construed fairly and not against either party.

9.10 Survival. Upon termination or expiration of the Agreement, all rights and duties of the parties toward each other shall cease except:

- (i) that the Customer shall pay, within thirty (30) days of the effective date of termination or expiration, all amounts owing to Consultant under this Agreement at such effective date, including any expenses; and
- (ii) these Standard Terms and Conditions shall survive such termination or expiration.