

PROFESSIONAL SERVICES AGREEMENT

YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS (THE "**AGREEMENT**") GOVERNING THE PROFESSIONAL SERVICES OFFERED BY APPEXTREMES, LLC. DBA CONGA ("**CONGA**") AND FURTHER DESCRIBED IN THE SOW (DEFINED BELOW), AND ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE POWER AND AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS. THE DATE SET FORTH ON THE SOW SHALL BE THE EFFECTIVE DATE OF THIS AGREEMENT ("**EFFECTIVE DATE**").

1. SERVICES.

1.1 Statements of Work. Conga agrees to perform the services as described in one or more Statements of Work ("Services") for Customer during the term of this Agreement and the applicable Statement of Work. "Statement of Work" or "SOW" means a mutually agreed upon statement of work executed by both parties. SOWs will define the Services to be performed, the software to be provided and the applicable specifications during each phase of the project. When executed and delivered by the parties, Statement of Work shall be deemed incorporated into this Agreement and made a part of this Agreement. This Agreement shall govern the Services provided under each effective Statement of Work and, in the case of any conflict of terms between any Statement of Work and this Agreement, the SOW shall control.

1.2 Change Requests. In the event that either party requires a material change to the scope, frequency or volume of the Services in a Statement of Work, such party will provide a written change request to the other for approval, specifying the change required (each a "Change Request"). Each party agrees that a Change Request may necessitate a change in the delivery schedule and fees due under the applicable Statement of Work. No Change Request will be binding upon either party until it is signed by the authorized representatives of both parties.

1.3 Customer Assistance. Customer shall provide Conga with such resources, information and assistance as Conga may reasonably request in connection with the performance of the Services. Customer acknowledges and agrees that Conga's ability to successfully perform the Services in a timely manner is contingent upon its receipt from Customer of the information, resources and assistance requested. Conga shall have no liability for deficiencies in the Services resulting from the acts or omissions of Customer, its agents or employees or performance of the Services in accordance with Customer's instructions.

1.4 Engagement Managers. Customer and Conga shall each designate an engagement manager from their staff responsible for all project control and development Services that are standard for the project. The engagement managers will: (a) maintain a current project schedule, (b) hold planned review meetings, (c) receive and promptly respond to complaints, concerns, and comments, (d) document and manage Change Requests, (e) manage resources and delivery dates in accordance with the SOW.

2. FEES AND PAYMENT.

2.1 Services Fees. Customer hereby agrees to pay Conga all fees, costs and expenses due pursuant to the SOW and any Change Requests. Unless expressly specified otherwise in the SOW or Change Request, all Services shall be performed at Conga's then-current time and materials rates. Conga will earn and be paid by Customer for actual time worked and expenses incurred in connection with the performance of Services. All fees due hereunder are non-refundable and are not contingent on any additional services or products to be provided. Conga may increase its rates for Services hereunder at any time upon written notice thereof to Customer.

2.2 Costs and Expenses. Expenses incurred by Conga for travel will be reimbursed by Customer. Expense categories covered for reimbursement will be: airfare (coach class), hotel, rental car and associated car expenses, airport parking, mileage, and a daily per diem of \$75 per consultant. Travel time will be billed at half of the hourly rate per hour, not to exceed 8 hours total per consultant per one-way trip.

2.3 Payment Terms. Except as otherwise set forth herein or in a Statement of Work, Conga will invoice Customer on a weekly basis for amounts due hereunder, and Customer shall pay all amounts invoiced with net 15 payment terms. All fees due hereunder are exclusive of, and Customer shall pay, all sales, use and other taxes, export and import fees,

customs duties and similar charges applicable to the transactions contemplated by this Agreement, except for taxes based upon Conga's net income.

3. OWNERSHIP; LICENSE.

3.1 As between the parties, Client owns all right, title and interest in and to its intellectual property including software, programming documentation, technical ideas, patents, trademark, trade secrets, service marks, trade names, domain name rights, mask work rights, know how, processes, algorithms, user interfaces, techniques, designs, mappings, routings, templates and any other intellectual property rights therein developed or owned prior to commencement of this Agreement ("Client Technology") and Conga only receives limited license to Client Technology for the limited purpose of providing the Services under this Agreement.

3.2 As between the parties, Conga owns all right, title and interest in and to its intellectual property including software, programming documentation, technical ideas, patents, trademark, trade secrets, service marks, trade names, domain name rights, mask work rights, know how, processes, algorithms, user interfaces, techniques, designs, mappings, routings, templates and any other intellectual property rights therein developed or owned prior to commencement of this Agreement and any derivative works, improvements enhancements or modifications made to the foregoing ("Conga Prior Technology") pursuant to this Agreement and Client receives only the limited license to use Conga Prior Technology for the purposes set forth in the relevant SOW.

3.3 Each party reserves all rights not otherwise expressly granted in this Agreement and no licenses are granted by implication, estoppel or otherwise.

3.4 Notwithstanding the foregoing, each party will retain all of its rights in any materials, ideas, products, concepts, methodologies, processes, techniques, templates, reports, information, inventions, concepts, data (including customer data), know-how and other works, and all intellectual property rights therein owned or controlled by such party prior to the date of this Agreement, or acquired or developed after the date of this Agreement, but unrelated to this Agreement and developed without reference to or use of the intellectual property or confidential information of the other party.

4. WARRANTIES; DISCLAIMER.

4.1 Limited Warranty. Conga warrants to Customer that the Services will be performed in accordance with the agreed upon Statement of Work.

4.2 Disclaimer. EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN SECTION 4.1 ABOVE, THE SERVICES AND ANY CONGA PROPERTY ARE PROVIDED "AS IS," WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND. CONGA EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, AND ANY IMPLIED WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE OR COURSE OF DEALING.

5. TERM AND TERMINATION.

5.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue until terminated as set forth herein (the "Term").

5.2 Termination. Either party may terminate this Agreement or any uncompleted Statement of Work at any time. The termination or expiration of a single Statement of Work shall not cause the automatic termination of any other Statement of Work.

6. LIMITATION OF LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA, LOST PROFITS AND COSTS OF SUBSTITUTE GOODS OR SERVICES, ARISING FROM OR RELATING TO THIS AGREEMENT, THE USE OF OR INABILITY TO USE THE CONGA PROPERTY OR ANY SERVICES PROVIDED HEREUNDER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR LIABILITY ARISING OUT OF A BREACH OF SECTIONS 2, IN NO EVENT WILL EITHER PARTY'S TOTAL CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE USE OF OR INABILITY TO USE THE CONGA PROPERTY OR ANY SERVICES PROVIDED HEREUNDER, REGARDLESS OF THE FORM OF ACTION, WHETHER IN

CONTRACT, TORT OR OTHERWISE, EXCEED AN AMOUNT EQUAL TO THE TOTAL FEES PAID OR PAYABLE TO CONGA UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY.

7. NON-SOLICITATION. During the term of this Agreement and for 12 months after the termination or expiration of this Agreement, neither party will, directly or indirectly, solicit the employment or services of any employee or consultant of the other party with whom a party has had contact or who became known to it in connection with this Agreement, or encourage such employees or consultants to leave the other party; provided, however, that the foregoing does not prevent a party from employing such persons who contact such party on their own initiative without prior solicitation from such party in response to a general advertisement or other general solicitations of employment not directed to the other party's employees or consultants. A party, at its sole discretion, may consent to its employee or consultant going to work for the other party in exchange for payment of 6 month's salary from the hiring party as a recruiting fee. The provisions of this Non-Solicitation cannot be waived except as stated herein.

8. GENERAL.

8.1 Assignment. Neither party may assign or transfer, by operation of law or otherwise, this Agreement or any of its rights under this Agreement to any third party without the other party's prior written consent, such consent shall not be unreasonably withheld or delayed; except that either party may assign this Agreement by operation of law or otherwise to any successor to its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise. Any attempted assignment or transfer in violation of the foregoing will be null and void. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, and shall not confer any rights or remedies upon any person or entity not a party hereto.

8.2 Force Majeure. Except for any payment obligations, neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder as a result of any cause which is beyond the reasonable control of such party.

8.4 Governing Law. This Agreement will be governed by and interpreted in accordance with the laws of the State of Colorado without reference to its choice of law rules.

8.6 Relationship of the Parties. The parties acknowledge that Conga is an independent contractor of Customer, and its employees are not employees of Customer. Nothing in this Agreement or any Order will be construed as creating a partnership, joint venture, or agency relationship between the parties, or as authorizing either party to act as an agent for the other or to enter contracts on behalf of the other. Nothing in this Agreement is intended to confer any rights or remedies on any other person or entity, which is not a party to this Agreement.

8.11 Entire Agreement. This Agreement, including any Statement of Work and any exhibits or attachments thereto, constitute the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral.