

## Eclipse Foundation Services Agreement

**This Services Agreement is made between \_\_\_\_\_ a corporation incorporated under the laws of \_\_\_\_\_ and having offices at \_\_\_\_\_ ("Consultant") and The Eclipse Foundation, Inc., a corporation incorporated under the laws of the State of Delaware, USA ("Company")**

WHEREAS from time to time Company wishes to engage Consultant to provide Services (as hereinafter defined) as an independent contractor, and not as an employee and Consultant wishes to provide Services on such terms to Company; and

WHEREAS the parties wish to establish the general terms and conditions under which the Services will be performed such that the parties will only need to execute a Work Schedule (as hereinafter defined) for additional Services to be performed.

NOW THEREFORE, in consideration of the mutual covenants and agreement contained herein, the parties hereto agree as follows:

### 1. Definitions

1.1 As used herein, unless otherwise defined, the following terms shall have the following meanings, respectively:

- (a) "Services Agreement" shall mean the terms and conditions hereinafter set out as such may be amended from time to time by mutual agreement of the parties.
- (b) "Services" shall mean those professional services described in a Work Schedule executed by the parties hereto and may include without limitation consulting and advisory services, computer programming services, document preparation services and such other services as the parties may mutually agree.
- (c) "Work Schedule" shall mean a document in the form attached hereto as Schedule A, setting out the Services to be performed, the price to be paid by Company to Consultant, the delivery schedule, deliverables, specifications for deliverables and any other information which the parties agree to include in such Work Schedule. Any Work Schedule executed by Company and Consultant shall be deemed to be part of this Agreement. . In the event of a conflict between the terms of this Services Agreement and the terms of a Work Schedule, the terms of the Work Schedule shall govern.

### 2. Services

2.1 Subject to the terms and conditions of this Services Agreement including the applicable Work Schedule, Consultant agrees to perform the Services described in such Work Schedule. Each Work Schedule shall describe the Services required, any deliverables to be developed, the acceptance criteria, if any, the specifications for the deliverables to be developed, the required completion date, the cost to Company, the payment terms and such other information as shall be required in order to specifically define the Services to be performed.

### 3. Payment

3.1 Company shall pay Consultant for the Services described in any Work Schedule in accordance with the terms and conditions of payment set out in that Work Schedule. In addition to the

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amounts specified in the Work Schedule, Company shall pay Consultant's reasonable out of pocket expenses, provided Company has pre-approved such expenses in writing.

### **4. Ownership**

- 4.1 Consultant acknowledges that all right, title and interest in and to any of the deliverables developed as a result of the Services (including but not limited to all patents, copyrights, trademarks and any other intellectual property rights therein) provided hereunder are and shall remain the property of Company, and all rights, title and interest therein shall vest in Company and shall be deemed a "work made for hire" within the meaning of the U.S. Copyright Act, 17 U.S.C. Section 101 et. seq. To the extent any of the deliverables are not deemed to be a "work made for hire" Consultant hereby assigns to Company all rights, title and interest to the deliverables. At the expense and request of Company, Consultant agrees to execute all documents and do all other acts necessary in order to enable Company to protect its rights in such tangible or intangible property developed or arising directly as a result of the performance of the Services.

Notwithstanding the foregoing, and subject to the provisions of Section 6 herein, Consultant shall be free to use without obligation to Company and without restriction any residual information that may be incorporated in any tangible or intangible property forming part of a deliverable provided under a Work Schedule, provided however that such information does not relate specifically to any aspect of Company's operation or business plans. Residual information shall mean information that is retained in the unaided memory of Consultant and/or any of its employees, agents or consultants. Unless otherwise specified in an applicable Work Schedule, the deliverables to be provided in such Work Schedule shall not incorporate any pre-existing tangible or intangible property. To the extent identified in a Work Schedule, nothing in this Agreement shall be construed to assign to Company ownership of any of Consultant's pre-existing tangible or intangible property even if such is delivered to Company as part of a deliverable. Company shall have a non-exclusive, non-transferable right to use such pre-existing tangible and/or intangible property solely for its own internal purposes.

### **5. Performance of Services**

- 5.1 Consultant agrees to perform the Services by the dates set out in the applicable Work Schedule, subject however, to delays in performance of the Services resulting from an act or omission of Company or caused by labor disputes, strikes, lockouts, fire, unusual delay by common carriers or unavoidable casualties or, without limit to any of the foregoing, by a cause beyond the reasonable control of Consultant, in which case the dates set out in the Work Schedule shall be extended for such reasonable time as may be mutually agreed upon or, failing agreement, by the period of time equal to the time lost as a result of the event causing the delay. Consultant shall inform Company of such delay as soon as Consultant is aware that such delay has occurred. Consultant agrees to work diligently towards eliminating the conditions causing the delay. In the event the delay continues for more than sixty (60) days Company may give notice terminating this Services Agreement or the relevant Work Schedule and the provisions of Section 9 hereof shall apply.

### **6. Confidentiality**

- 6.1 In order for Consultant to provide the Services to Company, it may be necessary and desirable for each party ("disclosing party") to disclose to the other party ("receiving party"), confidential and proprietary information relating to the disclosing party's past, present and future business,

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marketing and technical affairs. The receiving party acknowledges that all such confidential information constitutes valuable proprietary property of the disclosing party. Receiving party agrees to keep all tangible material, which it receives containing any confidential information of the disclosing party in a secure location and agrees not to disclose or use any of the disclosing party's confidential information except for the purposes of this Services Agreement. Confidential information shall not include information which: (i) is in the public domain or which comes into the public domain through no fault of the receiving party; (ii) is independently developed by the receiving party; or (iii) is received by the receiving party from a third party without obligations of confidentiality. The obligations under this Section 6 shall survive termination of this Services Agreement for a period of three (3) years.

### **7. Term**

7.1 The term of this Services Agreement shall commence on the date this Services Agreement is executed by the parties and continue until the longer of one (1) year, the termination of all Work Schedules to this Agreement, or Company's termination of this Agreement for convenience upon five (5) business days notice.

### **8. Default**

8.1 Failure by either party ("defaulting party") to comply with any term or condition of this Service Agreement or of a Work Schedule shall entitle the other party ("non-defaulting party") to give the defaulting party thirty (30) days written notice of the non-defaulting party's intention to terminate this Services Agreement or the Work Schedule, as the case may be, if the default is not remedied. If the default is not remedied within the said thirty (30) days, the non-defaulting party may give notice terminating this Services Agreement or the Work Schedule, as the case may be, and this Services Agreement or the Work Schedule shall forthwith terminate. If this Services Agreement is terminated, all outstanding Work Schedules will terminate at the same time.

### **9. Effect of Termination**

9.1 Upon termination or expiration of this Services Agreement or a Work Schedule, each party shall immediately return to the other party all written or other tangible material of any type which is the property of the other party, including software, source listings, source code, books and records of the other party and all other material provided by the other party or developed for the other party pursuant to this Services Agreement or a Work Schedule.

### **10. Warranty**

10.1 Consultant warrants that the Services will be of a professional quality and will be performed in a timely manner. Consultant shall correct at its cost any errors or deficiencies in any work product developed pursuant to this Services Agreement. Consultant warrants that the work product developed under this Services Agreement shall not infringe any third party rights. Consultant shall indemnify Company for any third party claims resulting from a violation of third party intellectual property rights or any alleged breach of any representation or warranty herein.

### **11. Limitation of Liability**

**11.1 Except for a breach of Section 6 and the indemnification in Section 10.1, neither Party shall have any liability for any punitive, indirect, incidental or consequential damages or for lost profits. Except with respect to a breach of Section 6, Company shall only be liable for**

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**direct damages and Company's total cumulative liability for direct damages shall not exceed the amounts due and unpaid under the Work Schedule in respect of which the damages arose.**

12. **General Provisions**

12.1 Governing Law and Construction This Services Agreement shall be governed by the domestic laws of the State of Delaware, United States of America, without regard to conflict of law provisions.

12.2 Relation of Parties The parties hereto are independent contractors and nothing in this Services Agreement shall be construed to make the parties hereto partners, joint venturers, employees or agents of each other, nor shall either party so hold itself out.

12.3 Entire Agreement The terms and conditions set out in this Services Agreement and each Work Schedule executed by the parties shall constitute a separate agreement and shall contain the entire agreement between the parties hereto with respect to the subject matter thereof and there shall be no other representations or warranties. This Services Agreement and any Work Schedule referencing this Services Agreement can only be changed by an agreement in writing duly executed by the parties.

IN WITNESS WHEREOF the parties hereto have executed this Services Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

CONSULTANT

COMPANY

Per: \_\_\_\_\_

Per: \_\_\_\_\_

Per: \_\_\_\_\_

Per: \_\_\_\_\_

