

SOFTWARE DEVELOPMENT TERMS

These STANDARD SOFTWARE DEVELOPMENT AND HOSTING TERMS shall apply to any Software Development and Hosting Agreement (as defined below) between Krengel Technology, Inc., (“Developer”), and Customer (“Customer”).

ARTICLE I: DEFINITIONS

Section 1.01 – Recitals: The above identification of parties and recitals are true and correct.

Section 1.02 – Definitions: The following definitions shall apply:

- (1) Acceptance Date: The term “Acceptance Date” for each Deliverable shall mean the date the Deliverable is accepted in full by Customer in accordance with Section 4.04 of this Agreement.
- (2) Access: The term “Access” and variants thereof (including but not limited to, the terms “access,” “accessing,” and “accessible”) shall mean to store data in, retrieve data from, or otherwise approach or make use of (directly or indirectly) through electronic means or otherwise.
- (3) Administrative Panels: The term “Administrative Panels” shall mean that certain function or applet that allows text editing to the Software via Remote Access by non-programmers.
- (4) Associate: The term “Associate” shall mean an employee of Developer or an independent contractor hired by Developer.
- (5) Authorized Facility: The term “Authorized Facility” shall mean the office facility owned or leased by Customer, as specified by Customer.
- (6) Authorized Person: The term “Authorized Person” shall mean Customer and employees of Customer who agree in writing to maintain the confidentiality of the Confidential Information; and persons or organizations who are authorized in writing by Developer to receive Confidential Information and who agree in writing to maintain the confidentiality of Confidential Information.

- (7) Cancellation Notice: The term “Cancellation Notice” shall mean that written notice from one party to the other party seeking to cancel this Agreement because of breach by such other party.
- (8) Computer: The term “Computer” shall mean a computer system (including operating system software) which is compatible with the Software, owned or leased by Customer, and located at the Authorized Facility.
- (9) Confidential Information: The term “Confidential Information” shall mean all information disclosed by the Disclosing Party to the Receiving Party that is identified by the Disclosing Party as confidential at the time such information comes into the possession or knowledge of the Receiving Party and that is not: (i) already known to the Receiving Party; (ii) in the public domain; (iii) conveyed to the Receiving Party by a third party who is not subject to restrictions to the disclosure or use of such information; (iv) released by the Disclosing Party without restriction; (v) independently developed by the Receiving Party; and (vi) required by court order to be released by the Receiving Party. For purposes of this definition, all information concerning this Agreement, Development Documents and Developer Technology shall be deemed Confidential Information of Developer.
- (10) Consulting Services: The term “Consulting Services” shall mean those certain additional consulting, implementation, configuration, support, training, strategy, prototyping, or other tasks and ad-hoc services provided to Customer by Developer pursuant to a Work Order signed by both parties hereto.
- (11) Customer Legend: The term “Customer Legend” shall mean a logo, written disclaimer, and written notice, in printed or electronic form, that credits operation of the Software to Customer, including (without limitation) terms and condition of use.
- (12) Customer Materials: The term “Customer Materials” shall mean any and all Technology or information developed by Customer to be used in connection with the Software.
- (13) Defect: The term “Defect” shall mean programming and design errors that substantially impair the performance, utility,

and functionality of the Deliverable as represented in the Design or Functional Requirements List for such Deliverable.

- (14) Defect Notice: The term “Defect Notice” shall mean that certain written notice from Customer to Developer identifying Defects.
- (15) Deliverables: The term “Deliverables” shall mean those certain deliverables developed by Developer and provided to Customer in connection with the Development Services.
- (16) Delivery Date: The term “Delivery Date” shall mean the date the Deliverables are delivered to Customer or the date the Documentation is delivered to Customer, as the case may be.
- (17) Design: The term “Design” shall mean those certain tasks for designing the Deliverables including (without limitation) module architecture, inputs and outputs, code acronyms, file descriptions, screen descriptions, formats, layouts, data elements, frames, windows, applets, video, graphic designs, audio-visual components, password development and protection rules, telecommunications requirements, glossaries, and manual procedures.
- (18) Developer Link: The term “Developer Link” shall mean an electronic text, graphic, or icon link to retrieve or associate the Developer System or Developer’s web site, and a logo, written disclaimer, and written notice, in printed or electronic form, that credits all rights, title, and interests to the Software to Developer, as specified by Developer, including (without limitation) the following statements: (i) “Web Site designed by Krengel Technology, Inc. © (Applicable Year) All Rights Reserved”; or (ii) krengeltech.com.”
- (19) Developer System: The term “Developer System” shall mean computer systems and communications equipment owned or leased by Developer and used for developing and hosting the Software.
- (20) Developer Technology: The term “Developer Technology” shall mean any and all proprietary Technology of Developer developed by or on behalf of Developer, whether exclusively or jointly with Customer or a third party, regardless of the source of

funding for such development, including (without limitation) any source code or executable code in connection therewith.

- (21) Development Documents: The term “Development Documents” shall mean the Functional Requirements List, Design, Development Plan, and all written materials and documents developed in connection with performing the Services.
- (22) Development Plan: The term “Development Plan” shall mean a schedule of tasks derived from the Functional Requirements Lists and Design, including (without limitation) developing, implementing, and delivering executable code and scripts for the Deliverables.
- (23) Development Services: The term “Development Services” shall mean those certain development and testing services performed by Developer pursuant to Articles III and IV of this Agreement.
- (24) Documentation: The term “Documentation” shall mean that certain user’s guide for the Software, as provided to Customer by Developer in printed or electronic form.
- (25) Domain Name: The term “Domain Name” shall mean that certain alphanumeric name by which a web site is known on the Internet.
- (26) Disclosing Party: The term “Disclosing Party” shall mean the party to this Agreement who discloses Confidential Information to the other party to this Agreement.
- (27) Effective Date: The term “Effective Date” shall mean the date this Agreement is signed by both Developer and Customer, whichever is later.
- (28) End-User: The term “End-User” shall mean a single individual or organization that licenses the Software from Customer during the Term for use of the Software as an Internet application, subject to an end-user license agreement.
- (29) Fee Schedule: The term “Fee Schedule” shall mean that certain schedule of fees, as published by Developer from time to time, a

copy of which is attached hereto as Exhibit B and incorporated herein by this reference.

- (30) Functional Requirements List: The term “Functional Requirements List” shall mean that certain document specifying and describing the desirable functional specifications, functional requirements, performance functions, and processing specifications for the Deliverables.
- (31) Hosting Services: The term “Hosting Services” shall mean those certain hosting and transition services performed by Developer to host and provide Customer access to the Software pursuant to Article VI of this Agreement.
- (32) Implement: The term “implement” and variants thereof (including but not limited to, the terms “implementation,” “implementing,” and “implemented”) shall mean to assemble, configure, load and make operational for user access and use.
- (33) Implementation Date: The term “Implementation Date” shall mean the date that Developer implements the Deliverables on the Developer System.
- (34) License Term: The “License Term” for each Deliverable shall mean a period of time commencing on the Acceptance Date for such Deliverable and continuing until this Agreement is terminated or canceled under Article VIII of this Agreement.
- (35) Nonpayment Notice: The term “Nonpayment Notice” shall mean that written notice from Developer to Customer alleging nonpayment under this Agreement and seeking to cancel this Agreement unless payment is rendered as provided thereunder.
- (36) Password: The term “Password” shall mean that certain password and user name assigned to Customer for accessing the Functional Requirements List, Design, Development Plan, Administrative Panels, and the Software on the Internet.
- (37) Product: The term “Product” shall mean the Software and Documentation.
- (38) Receiving Party: The term “Receiving Party” shall mean the party to this Agreement who

receives Confidential Information from the other party to this Agreement.

- (39) Registration Company: The term “Registration Company” shall mean an entity that administers the valid registration and maintenance of Domain Names.
- (40) Remote Access: The term “Remote Access” shall mean remote telecommunications access to the Software by Authorized Persons.
- (41) Services: The term “Services” shall mean Development Services, Hosting Services, Consulting Services, and any other services provided by Developer to Customer under this Agreement.
- (42) Software: The term “Software” shall mean the executable code for the Deliverables developed pursuant to this Agreement and provided to Customer, as described in the Development Documents, including any and all web sites, enhancements, updates, upgrades, or modifications in connection thereto.
- (43) Software Development and Hosting Agreement: The term “Software Development and Hosting Agreement” shall mean that certain Software Development and Hosting Agreement as signed by and between Developer and Customer.
- (44) Technology: The term “Technology” shall mean (i) evaluation, technical, scientific, engineering, marketing, financial and business documents, reports, plans, studies, diagrams, or flow charts; (ii) all forms and types of scientific, technical, economic, or engineering information; and (iii) patterns, plans, compilations, program devices, formulas, designs, prototypes, methodologies, techniques, ideas, solutions, concepts, processes, procedures, programs, codes, scripts, adaptations, derivative works, computers, hardware, networks, products, machines, compositions of matter, articles of manufacture, computer software, source code, executable code, software libraries, documentation, databases, database designs, data models, screen displays, images, graphics, audiovisual works and sound recordings, whether tangible or intangible, and whether stored, compiled, or

memorialized (without limitation) physically, electronically, graphically, photographically, or in writing.

- (45) Technology Notice: The term “Technology Notice” shall mean that certain notice of Third Party Technology hardware and software requirements for implementation and use of the Software (excluding the Tools), recommended by Developer for acquisition by Customer, as attached hereto as Exhibit C and incorporated herein by this reference.
- (46) Term: The term “Term” shall mean a period of time commencing on the Effective Date and continuing until this Agreement is terminated or canceled as provided under Article VIII of this Agreement.
- (47) Termination Notice: The term “Termination Notice” shall mean that written notice from Customer to Developer seeking to terminate this Agreement.
- (48) Test Period: The term “Test Period” for each Deliverable shall mean a period of time commencing on the Delivery Date for such Deliverable and continuing until the Acceptance Date for such Deliverable.
- (49) Third Party Technology: The term “Third Party Technology” shall mean any third-party Technology provided or made available by Vendor or Customer in connection with the Software or Services.
- (50) Tools: The term “Tools” shall mean any Technology developed, provided or made available by Developer as used, incorporated, or accessible via the Software or Services, including (without limitation) the Developer Technology, any Microsoft® platform or Windows® Server.
- (51) Unauthorized Access: The term “Unauthorized Access” shall mean any Access to the Product except for the exclusive purpose of using the Software in accordance with the Documentation, evaluating and modifying the performance, utility, and functions of the Software, and training employees of Customer in the use of the Software.
- (52) Unauthorized Users: The term “Unauthorized Users” shall mean any individual who Accesses the Product except for: (1)

Authorized Persons and End-Users authorized by Customer to Access the Product for the exclusive purposes of using the Software in accordance with the Documentation, evaluating or modifying the performance, utility, and functions of the Software, and training employees of Customer in the use of the Software and (2) Authorized Persons who are authorized in writing by Developer to Access the Product.

- (53) Vendor: The term “Vendor” shall mean the individual or entity that licenses the Third Party Technology.
- (54) Work Order: The term “Work Order” shall mean those certain Statement Of Work signed by Developer and Customer.

ARTICLE II: SCOPE OF SERVICES

Section 2.01 – Development Services: During the Term, Developer shall render Development Services to Customer in accordance with the terms and conditions of Articles III and IV of this Agreement.

Section 2.02 – Hosting Services: During the Term, Developer shall provide Hosting Services to Customer in accordance with the terms and conditions of Article VI of this Agreement.

Section 2.03 – Consulting Services: During the Term, Customer shall have the right to request Consulting Services from Developer by submitting a Work Order to Developer. Upon Developer acceptance of a Work Order, Developer shall provide Customer with Consulting Services concerning the Software. All Consulting Services provided by Developer pursuant to a Work Order shall be subject to the discretion of Developer. The Consulting Services shall be deemed accepted upon performance.

Section 2.04 – Personnel: Developer shall designate qualified employees of Developer to perform the Services who are experienced in electronic commerce business applications and technical programming. Developer may engage qualified independent contractors to perform the Services who are experienced in electronic commerce business applications and technical programming. The personnel assigned to perform the Services shall be determined solely by Developer.

Section 2.05 – Cooperation: Developer and Customer hereby acknowledge that successful performance of the Services shall require Customer to cooperate with

Developer in good faith and to provide information as may be requested from time to time. Customer hereby agrees to provide such good faith cooperation and information. Customer shall disclose to Developer the Customer Materials necessary to assist Developer to develop the Software (as determined by Developer).

Section 2.06 – Access: Customer hereby authorizes Developer to Access the personnel, facilities, computers, software and data of Customer for purposes of performing this Agreement.

Section 2.07 – Facilities: The Services shall be performed at the office facilities of Developer, unless otherwise required (as determined in the reasonable discretion of Developer).

Section 2.08 – Schedule: The Services shall be performed during the hours of 9:00 a.m. through 5:00 p.m., Central Time, Monday through Friday (excluding holidays), unless otherwise required (as determined in the reasonable discretion of Developer).

ARTICLE III: DEVELOPMENT

Section 3.01 – Functional Requirements List: A Functional Requirements List shall be developed for the Deliverables as follows:

- (1) Recommended Functional Requirements List: Customer shall develop a recommended Functional Requirements List in consultation with Developer.
- (2) Review – Recommended Functional Requirements List: Developer shall review the recommended Functional Requirements List and shall accept or reject each requirement on the recommended Functional Requirements List. Requirements from the recommended Functional Requirements List that are accepted by Developer shall be used by Developer to develop a revised Functional Requirements List. Requirements from the recommended Functional Requirements List that are rejected by Developer shall be identified in writing and submitted to Customer by Developer explaining the reason for rejecting each such requirement ("Requirements Rejection"). Such Requirements Rejection shall be submitted to Customer within a reasonable time after Developer receipt of the recommended Functional Requirements List.
- (3) Revised Functional Requirements List: Developer shall provide Customer access to a revised Functional Requirements List on the

Developer System via a secure login on the Internet using the Password within a reasonable time after Developer receipt of the recommended Functional Requirements List. The revised Functional Requirements List shall be deemed accepted by Customer and approved within ten (10) days after receipt by Customer, unless Developer receives written notice from Customer specifying changes to the revised Functional Requirements List ("Requirements Change Request") within such ten (10) day period. Each definition or requirement not specified in the Requirements Change Request shall be deemed accepted by Customer.

- (4) Functional Requirements Change Request: Developer shall review the Requirements Change Request and shall accept or reject each change requested in the Requirements Change Request. Developer shall use changes accepted by Developer in developing a final Functional Requirements List. Changes rejected by Developer shall be identified in writing and submitted to Customer by Developer explaining the reason for rejecting such change ("Requirements Rejection"). Such Requirements Rejection shall be submitted to Customer within a reasonable time after Developer receipt of the Requirements Change Request.
- (5) Final Functional Requirements List: Developer shall submit to Customer a final Functional Requirements List within a reasonable time after Developer receipt of the Requirements Change Request. Such final Functional Requirements List shall be deemed accepted and approved by Customer upon receipt by Customer.
- (6) Modification Rights: All modifications to the final Functional Requirements List shall be subject to the prior written approval of Developer and Customer.

Section 3.02 – Design: Based upon the Functional Requirements List, a Design shall be developed for the Deliverables as follows:

- (1) Recommended Design: Developer shall develop a recommended Design based upon the Functional Requirements List. Developer shall provide Customer access to the recommended Design on the Developer System via a secure login on the Internet using the Password within a reasonable time after Customer receipt of the final Functional Requirements List.

- (2) Review - Recommended Design: Customer shall review the recommended Design in consultation with Developer within ten (10) days of receiving the recommended Design. The recommended Design shall be deemed accepted by Customer and approved within ten (10) days after Customer receipt of the recommended Design, unless Developer receives written notice from Customer specifying changes to the recommended Design within such ten (10) day period ("Design Change Request").
- (3) Review – Design Change Request: Developer shall review the Design Change Request and shall accept or reject each change requested in the Design Change Request. Developer shall use changes accepted by Developer in developing a revised Design. Changes rejected by Developer shall be identified in writing and submitted to Customer by Developer explaining the reason for rejecting such change ("Design Rejection"). Such Design Rejection shall be submitted to Customer within a reasonable time after Developer receipt of the Design Change Request.
- (4) Revised Design: Developer shall submit to Customer the revised final Design within a reasonable time after Developer receipt of the Design Change Request. Such revised final Design shall be deemed accepted and approved by Customer upon receipt.
- (5) Modification Rights: All modifications to the final Design shall be subject to the prior written approval of Developer and Customer.

Section 3.03 – Development Plan: Developer shall develop a Development Plan specifying a schedule of tasks for the Deliverables derived from the Functional Requirements Lists and Design. Developer shall provide Customer access to the Development Plan on the Developer System via a secure login on the Internet using the Password within a reasonable time after Customer receipt of the final Design. The Development Plan shall be accepted by Customer upon receipt.

Section 3.04 – Coding: Based upon the Functional Requirements List, Design, and Development Plan, Developer shall develop source code and executable code for the Deliverables, which shall enable the Deliverables to perform the functions defined in the Functional Requirements List for such Deliverables. Developer shall complete development of the source code and executable code within ninety (90) days after Customer's receipt of the Development Plan.

Section 3.05 – Documentation: Developer shall develop Documentation for the Software. Developer shall deliver the Documentation to Customer on the Delivery Date. The Documentation shall be deemed accepted by Customer on the Delivery Date.

ARTICLE IV: TESTING AND IMPLEMENTATION

Section 4.01 – Beta Test License: Developer hereby grants Customer a nonexclusive and nontransferable license to use the Deliverables on the Developer System via Remote Access from the Authorized Facility for the Test Period, for the sole purpose of testing the Deliverables for compliance with the Functional Requirements List for such Deliverables.

Section 4.02 – Implementation: Developer shall Implement the Deliverables on the Developer System on the Implementation Date. Upon completing implementation of the Deliverables, Developer shall demonstrate the Deliverables to Customer. Upon completing demonstration of the Deliverables, the Deliverables shall be deemed implemented on the Developer System and delivered to Customer on the Delivery Date.

Section 4.03 – Testing: Customer shall test the Deliverables on the Developer System via Remote Access at the Authorized Facility for the Test Period pursuant to Section 4.01 to identify discrepancies between the actual performance of the Deliverables and the functionality of the Deliverables as represented in the Functional Requirements List for such Deliverables.

Section 4.04 – Acceptance: The Deliverables shall be deemed accepted in full by Customer thirty (30) days after the Delivery Date, unless Defect Notice is received by Customer on or before such thirtieth (30th) day. Upon receipt of such Defect Notice from Customer, Developer shall review the asserted Defect to determine if the Defect is valid. If, in the reasonable professional judgment of Developer, such Defect is valid, Developer shall correct the Defect and resubmit the Deliverable to Customer for acceptance by Customer in accordance with the procedures set forth in this Section. If, in the reasonable professional judgment of Developer, such Defect is not valid, Developer shall submit to Customer a written explanation of the reasons why such asserted Defect is not valid. The written explanation of Developer set forth herein shall be deemed accepted by Customer within ten (10) days after Customer's receipt of the written explanation. The failure of the parties to agree on the validity of the rejection of the Deliverables shall be deemed a dispute and shall be resolved in accordance with this Agreement. Upon receipt of

Defect Notice from Customer by Developer as set forth above, the Deliverables shall be deemed accepted by Customer except as to the Defect specified in the Defect Notice.

ARTICLE V: LICENSE

Section 5.01 – Grant of License: Upon the Acceptance Date and during the License Term, Developer hereby grants Customer a nonexclusive and nontransferable license to: (i) use the Deliverables via Remote Access; (ii) use the Deliverables on the Computer at the Authorized Facility; (iii) modify the Deliverables; and (iv) promote, market, and license the Deliverables to End-Users for use of the Software via Remote Access; all subject to the terms and conditions of this Agreement.

Section 5.02 – Authorized Use: Customer shall prevent Unauthorized Users from Accessing the Product. Customer shall prevent Unauthorized Access to the Product. Customer shall promptly inform Developer of any and all Unauthorized Access and Unauthorized Users of which Customer has knowledge or suspicion.

Section 5.03 – Site Restriction: During the Term, Customer shall: (i) use the Software only at the Authorized Facility or via Remote Access; and (ii) use the Documentation only at the Authorized Facility.

Section 5.04 – Risk of Loss: Customer shall assume risk of loss to the Product as of the Delivery Date.

ARTICLE VI: HOSTING

Section 6.01 – Hosting: During the Term, Developer shall host the Software on the Developer System to provide Customer access to the Software on the Internet. During the Term, Developer shall be responsible for any and all costs incurred by Developer to host the Software. Upon request by Customer, Developer shall assist Customer in transferring the Software from the Developer System to a third party host or to Customer, whereby Customer shall be responsible for any and all third party hosting costs, including any activation or transfer costs.

Section 6.02 – Back-Up: Developer shall perform routine backup of all files stored on the Developer System.

Section 6.03 – Third Party Technology: Customer hereby acknowledges and agrees that Third Party Technology is required to implement and use the Software. Developer shall identify in the Technology Notice all Third Party Technology required to

implement and use the Software. Developer shall have no obligation to supply, provide, or deliver to Customer the Third Party Technology or otherwise participate in the acquisition of Third Party Technology by Customer. Customer shall be solely responsible for acquiring, maintaining, integrating, and updating all Third Party Technology necessary to implement and use the Software, including all costs, fees, and expenses in connection therewith. Customer shall be responsible for obtaining all necessary licenses, authorizations, and rights for Customer to acquire and use the Third Party Technology and for Developer to use, modify, and distribute the Third Party Technology in connection with the Software and Services.

Section 6.04 – Domain Name Registration: Customer hereby acknowledges and agrees that Customer shall be responsible for registering a Domain Name(s) for the Software with a Registration Company. Developer shall use the Domain Name specified by Customer to host the Domain Name and the Software on the Developer System, as requested by Customer.

Section 6.05 – Dial-Up Accounts: The Services provided to Customer by Developer do not include Internet Service Provider (ISP) accounts. Customer hereby acknowledges and agrees that Developer shall have no obligation to provide Customer access to the Internet. Customer shall be solely responsible for acquiring, purchasing, installing, configuring, maintaining, updating, and implementing the computer system for accessing the Internet, including (without limitation) computer software, Internet access software, computer hardware and telecommunication equipment and all fees, costs, and expenses in connection therewith.

Section 6.06 – Login: During the Term, Developer shall provide Customer access to the Development Documents, Administrative Panels, and the Software as it is being developed on the Developer System via a secure login on the Internet using the Password. Developer shall be responsible for maintaining Customer access to the Development Documents, Administrative Panels, and Software using the Password during the Term.

Section 6.07 – Password: Developer shall assign Customer a Password within ten (10) days after the Effective Date. Customer hereby accepts responsibility for, and shall be liable for maintaining the confidentiality of the Password and all access to the Software in connection with the Password.

Section 6.08 – Tools: Customer hereby acknowledges and agrees that Tools are required to implement and use the Software. Developer represents and warrants that Developer shall supply, provide, or deliver to Customer the Tools necessary to use and maintain the Software. During the Term, Developer shall be solely responsible for acquiring, maintaining, integrating, and updating all Tools necessary to implement and use the Software, including all costs, fees, and expenses in connection therewith. During the Term, Developer shall be responsible for obtaining all necessary licenses, authorizations, and rights for Customer to acquire and use the Tools. Notwithstanding anything to the contrary, Developer shall not be responsible for acquiring, implementing, or maintaining the Third Party Technology.

Section 6.09 – Service Level: The Development Documents, Administrative Panels, and the Software shall be made available to Customer on the Developer System twenty four (24) hours a day, seven (7) days a week, less downtime that is attributable to: (i) scheduled network, hardware, or service maintenance; (ii) the acts or omissions of Customer or Customer’s employees, agents, contractors, or vendors gaining access to the Design, Development Plan, or Software by means of Customer’s Password; or (iii) a failure of the Internet and/or public switched telephone network (collectively, the “Excusable Downtime”).

ARTICLE VII: PAYMENTS AND FEES

Section 7.01 – Fees: Developer shall perform the Development Services at the time and material rates of Developer, as set forth in the Fee Schedule. Customer shall be solely responsible for any additional fees, costs, and expenses due to changes in the scope of a Functional Requirements List, Design, or Development Plan or by Customer failing to perform its obligations under this Agreement.

Section 7.02 – Consulting Services: The Consulting Services shall be performed by Developer at the time and material rates of Developer as set forth in the Work Order. Any additional services provided by Developer to Customer that are not provided for under this Agreement shall be invoiced to Customer by Developer at the time and material rates of Developer prevailing at the time such services are rendered.

Section 7.03 – Direct Cost: Customer shall pay all direct costs incurred by Developer in connection with this Agreement. Direct costs shall include (without limitation) postage, freight, telephone, travel, per diem, material and reproduction costs.

Section 7.04 – Invoicing and Payment: Developer shall invoice Customer for fees for the Services and all direct costs incurred by Developer under this Agreement in accordance with the Fee Schedule or the Work Order (as the case may be). Customer shall pay any such invoice in full within thirty (30) days of receipt.

Section 7.05 – Taxes: Customer shall pay any and all applicable taxes incurred in connection with this Agreement including (without limitation) any applicable sales or use taxes and any applicable personal property taxes (excluding income taxes assessed against Developer).

Section 7.06 – Late Fee: Any amount which is not paid by Customer when due shall be increased by a late charge equal to 1½% of such unpaid amount for each month (18% per annum) in which such amount is due and not paid. Late fees shall not be compounded.

ARTICLE VIII: TERMINATION

Section 8.01 – Termination Limitations: This Agreement shall only be terminated or canceled as provided under this Article VIII.

Section 8.02 – Term: This Agreement shall be valid for the Term.

Section 8.03 – Termination: Customer may terminate this Agreement for convenience by providing thirty (30) days Termination Notice to Developer.

Section 8.04 – Cancellation: If a party violates its obligations under this Agreement, the other party may cancel this Agreement by sending Cancellation Notice describing the noncompliance to the noncomplying party. Upon receiving Cancellation Notice describing the noncompliance, the noncomplying party shall have thirty (30) days from the date of such notice to cure any such noncompliance. If such noncompliance is not cured within the required thirty (30) day period, the party providing Cancellation Notice shall have the right to cancel this Agreement as of the thirty-first (31st) day after the date of the Cancellation Notice.

Section 8.05 – Winding Up: Upon termination or cancellation, Developer shall be entitled to compensation for unbilled expenses of winding up the project, plus unbilled hours worked in performing the Services, at the prevailing time and material rates of Developer when the work was performed, up to the date of written Termination Notice or Cancellation Notice.

Section 8.06 – Nonpayment: Notwithstanding Sections 8.03 and 8.04 above, Customer failure to pay an invoice when due shall be sufficient cause for cancellation of this Agreement by Developer as provided hereunder. Developer shall exercise such right of cancellation by submitting Nonpayment Notice to Customer. Upon receipt of Nonpayment Notice, Customer shall have twenty (20) days to cure the Nonpayment. If Customer fails to cure the nonpayment within such twenty (20) days, Developer shall have the right to cancel this Agreement as of the date established by Developer in the Nonpayment Notice.

Section 8.07 –Return of Materials: Upon termination or cancellation of this Agreement, Customer shall immediately return to Developer all property owned by Developer in the possession or control of Customer, including (without limitation) the Development Documents, Developer Technology, Product, and all materials incidental thereto, and Customer shall destroy all backup copies of the Product. Customer shall provide Developer a certificate of compliance with this Section 8.07 signed by an authorized representative of Customer. Following termination or cancellation of this Agreement, and upon request by Customer, Developer shall deliver the Customer Materials to Customer. This Section 8.07 shall survive termination and cancellation of this Agreement.

Section 8.08 – Refund: Upon termination or cancellation of this Agreement, Customer shall not be entitled to a refund of any sums paid to Developer hereunder in anticipation of services, including (but not limited to) all fees and expenses rendered to Developer by Customer hereunder. Termination or cancellation of this Agreement shall not relieve Customer from any payment obligation under this Agreement. All payment obligations under this Agreement shall survive termination or cancellation of this Agreement.

ARTICLE IX: INTELLECTUAL PROPERTY

Section 9.01 – Ownership: Customer hereby agrees that the Development Documents, Developer Technology, Product, and all materials incidental thereto (“Property”) developed under this Agreement shall be the sole and exclusive property of Developer, and that Developer shall own all of the rights, titles, and interest to such Property, including (but not limited to) any and all patents, copyrights, and trade secrets in connection therewith. The Property shall not be deemed a “work made for hire” under the U.S. Copyright Act, 17 U.S.C. §101, et seq. Customer hereby assigns, transfers, and conveys to Developer any and all rights, title, and interest that Customer may have

or accrue in the Property including (but not limited to) any and all patents, copyrights, and trade secrets in connection therewith.

Section 9.02 – Customer Ownership: Developer hereby agrees that the Customer Materials shall be the sole and exclusive property of Customer, subject to any third party rights, and that Customer shall own all of the rights, titles, and interest to the Customer Materials, including (but not limited to) any and all patents, copyrights, and trade secrets in connection therewith.

Section 9.03 – Licensed Technology: Developer grants Customer a non-exclusive and non-transferable license to use the Tools in connection with the Software. Customer shall comply with all terms and conditions applicable to the Tools as set forth by Developer or Vendor.

Section 9.04 – Third Party Technology: Customer hereby acknowledges and agrees that Developer grants no license with respect to Third Party Technology. Customer shall comply with all terms and conditions applicable to the Third Party Technology as set forth by Vendor.

Section 9.05 – Confidential Information: Each party shall maintain Confidential Information in strict confidence. Neither party shall disclose Confidential Information, except to Authorized Persons. Neither party shall duplicate, use or disclose Confidential Information of the other party except as otherwise permitted under this Agreement.

Section 9.06 – Trade Secret: Customer hereby acknowledges and agrees that the Confidential Information for Developer derives independent economic value (actual or potential) from not being generally known to other persons who can obtain economic value from its disclosure or use and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; is the subject of reasonable efforts by Developer under the circumstances to maintain its secrecy; and is a trade secret as defined under applicable State Statutes.

Section 9.07 – Licenses: The execution of this Agreement or the disclosure of Confidential Information hereunder shall not be construed as the grant of a license to Customer to use the Confidential Information to develop proprietary products.

Section 9.08 – Reverse Engineering: Customer shall not reverse engineer the Software and shall not allow the Software to be reversed engineered.

Section 9.09 – Modifications: Customer shall not use the Product or any materials incidental thereto to develop computer software without the prior written consent of Developer. If the Product is modified, such modifications shall be the sole and exclusive property of Developer and Developer shall own any and all of the rights, title and interest in and to such modifications and any resulting Technology or computer software, including (but not limited to) any and all copyrights, patents and trade secrets in connection therewith.

Section 9.10 – Trademarks: Customer shall have the right to create or adopt any trademarks, service marks, or trade names for the Product. Developer hereby acknowledges that all trademarks, service marks, or trade names used in connection with the Product, and all goodwill associated therewith, is owned exclusively by Customer. Customer shall retain all rights, titles, and ownership interests in all trademarks, service marks, or trade names in connection with the Product.

Section 9.11 – Link: Developer may maintain on the Software the Developer Link. In the event the Software is hosted by Customer or a third party host, Customer hereby acknowledges and agrees that Customer shall maintain the Developer Link, as provided under this Agreement. Notwithstanding anything to the contrary, Customer may at all times maintain a Customer Legend.

Section 9.12 – Cooperation: Customer shall cooperate with Developer and provide Developer reasonable assistance in securing, maintaining, and enforcing any rights, title, and interests of Developer in and to the Property.

Section 9.13 – No Contest: Customer shall not contest or aid in contesting the ownership or validity of the copyrights, trademarks, service marks and trade secrets of Developer.

Section 9.14 – Non-compete: Customer hereby acknowledges and agrees that Customer will receive Confidential Information and trade secrets of Developer during the Term. Customer acknowledges that Developer has a legitimate business interest in placing reasonable limits on the use of such information. Accordingly, during the Term and for a two-year period following the Term, Customer shall not:

- (1) engage in any activities (directly or indirectly) in competition with Developer; or

- (2) induce or solicit (directly or indirectly) any Associate to leave the employment of Developer or engage the services of an Associate; or
- (3) use the Property (directly or indirectly) to develop, promote, advertise, market, or provide any software similar to or competitive with the Software.

Section 9.15 – Continuation: The terms and provisions of this Article IX shall survive termination and cancellation of this Agreement.

ARTICLE X: WARRANTY

Section 10.01 – Service Warranty: The Services to be provided by Developer hereunder shall be performed in a timely and professional manner by qualified software support personnel familiar with the Software and shall conform to the standards generally observed in the industry for similar services at the time such Services are rendered. Customer’s sole remedy in the event of a breach of this Section 10.01 shall be re-performance of the Services.

Section 10.02 – Performance Warranty: Developer represents and warrants that the Software shall perform substantially as represented in the Documentation. Customer’s sole remedy in the event of a breach of this Section 10.02 shall be repair or modification of the Software.

SECTION 10.03 – WARRANTY LIMITATION: THE SERVICE WARRANTY IN SECTION 10.01 AND PERFORMANCE WARRANTY IN SECTION 10.02 ARE IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES OF MERCHANTABILITY. DEVELOPER HEREBY DISCLAIMS AND CUSTOMER HEREBY WAIVES, ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES OF MERCHANTABILITY.

Section 10.04 – Third Party Technology Disclaimer: Developer makes no representations or warranties with respect to the Third Party Technology. Developer shall not be responsible for the Software in connection with Third Party Technology.

Section 10.05 – Express Warranties: Customer hereby acknowledges and agrees that Developer (including officers, employees, agents, directors and independent contractors of Developer) has not made or granted any express warranties concerning the Product and Services except the warranties set forth in Sections 10.01 and 10.02.

Section 10.06 – Customer Warranty: Customer hereby represents and warrants that Customer has obtained all necessary authorizations, permissions, and licenses to provide Developer the Customer Materials. Customer hereby represents and warrants that Customer has obtained all authorizations, permissions or licenses from third parties to permit Developer to perform the Services and that use by Developer of any Third Party Technology made available by Customer shall not infringe upon or violate any patent, copyright, trade secrets or trademark rights of any third party or violate any laws.

Section 10.07 – Indemnification: If final judgment is entered against Customer for claims that the Product violates trade secrets, trademark, copyright or patent rights of a third party, Developer shall perform one or more of the following actions (as determined in the exclusive discretion of Developer) within one year of the date judgment in favor of such third party's claim is rendered by a court of competent jurisdiction:

- (1) Replacement: Replace the Product with a non-infringing software product of substantially equivalent functional and performance capability;
- (2) Modification: Modify the Product to avoid the infringement without substantially eliminating the functional and performance capabilities of the Product;
- (3) Obtain Agreement: Obtain a license for use of the Product from the third party claiming infringement for use of the Product.

Developer shall have the right to participate, and Customer shall permit and authorize Developer to participate, in the defense of any such claim or action through legal counsel. The foregoing remedy does not apply, and Developer shall have no obligation in connection with or relating to, any third party infringement claim in connection with or attributable to (i) Customer's modification of the Product; (ii) Customer's failure to use the Product in accordance with the Documentation; (iii) Customer's failure to use the most current release or version of the Product; (iv) Customer's combination, interface, operation or

use of the Product with Third Party Technology; and (v) misuse of the Product by End-Users. The remedies set forth herein shall be the sole and exclusive remedies of Customer under this Agreement for any and all claims of indemnification relating to infringement.

Section 10.08 – Indemnification: Customer shall defend, indemnify and hold Developer and its officers, directors, employees, and agents harmless from and against any and all claims, actions, liability, expenses, costs, or losses arising from (i) Customer's modification of the Product; (ii) Customer's combination, interface, operation or use of the Product with Third Party Technology; (iii) misuse of the Product by End-Users; (iv) the acts (or any failure to act) of Customer hereunder; and (v) any breach by Customer of the obligations of Customer hereunder. This Section 10.08 shall survive termination and cancellation of this Agreement.

Section 10.09 – Limitation of Damages: Developer shall not be liable to Customer under this Agreement or in connection with the Product for any lost profits, consequential, exemplary, incidental or punitive damages, regardless of the form of action, whether in contract or in tort, including negligence, and regardless of whether Developer has been advised of the possibility of such damages in advance or whether such damages are reasonably foreseeable. Notwithstanding any provision to the contrary, the liability of Developer for any reason and for any cause of action whatsoever in connection with this Agreement and the Product shall be limited to the amount of money received by Developer from Customer under this Agreement. This Section 10.09 shall survive termination and cancellation of this Agreement.

Section 10.10 – Force Majeure: Developer shall not be liable for any failure to perform its obligations under this Agreement because of circumstances beyond the reasonable control of Developer, which such circumstances shall include (without limitation) natural disaster, terrorism, riot, sabotage, labor disputes, war, any acts or omissions of any government or governmental authority, declarations of government, transportation delays, power failure, computer failure, telecommunications failure, and any other events reasonably beyond the control of Developer.

ARTICLE XI: MISCELLANEOUS

Section 11.01 – Assignments: All assignments of rights under this Agreement by Customer without the prior written consent of Developer shall be void.

Section 11.02 – Public Announcements: All public announcements of the relationship of Developer and Customer under this Agreement shall be subject to the prior written approval of Developer.

Section 11.03 – Entire Agreement: Excepting any Work Order, Fee Schedule, or Technology Notice, this Agreement contains the entire understanding of the parties and supersedes previous verbal and written communications, proposals and agreements between the parties concerning the subject matter hereof. In the event of a conflict between a Work Order, Fee Schedule, or Technology Notice and this Agreement, the terms and conditions of this Agreement shall prevail, except as explicitly provided otherwise under such Work Order, Fee Schedule, or Technology Notice.

Section 11.04 – Amendments and Modifications: Except as provided herein, alterations, modifications or amendments of a provision of this Agreement shall not be binding unless such alteration, modification or amendment is in writing and signed by Developer and Customer.

Section 11.05 – Severability: If a provision of this Agreement is rendered invalid, void or unlawful, the remaining provisions shall remain in full force and effect.

Section 11.06 – Captions: The headings and captions of this Agreement are inserted for reference convenience and do not define, limit or describe the scope or intent of this Agreement, or any particular section, paragraph, or provision.

Section 11.07 – Counterparts: This Agreement may be executed in multiple counterparts, each of which shall be an original, but which together shall constitute one and the same instrument.

Section 11.08 – Governing Law: This Agreement shall be governed by the laws of the state of Minnesota and venue shall be Hennepin County Minneapolis, Minnesota.

Section 11.09 – Notice: Notices shall be in writing. Notices shall be deemed delivered when delivered by Certified or Registered Mail – Return Receipt Requested, by commercial express delivery service or by hand to the address set forth below for Developer or to the address set forth on the signature page of

this Agreement for Customer. Notice shall be deemed given on the date of receipt - as evidenced in the case of Certified or Registered Mail by Return Receipt and in the case of commercial express delivery by electronic or written delivery confirmation.

<u>Developer:</u>	<u>Address</u>
Krengel Technology, Inc.	83 Evergreen Court Madison Lake, MN 56063

Section 11.10 – Pronouns/Gender: Pronouns and nouns shall refer to the masculine, feminine, neuter, singular or plural, as the context shall require.

Section 11.11 – Waiver: Waiver of breach of this Agreement shall not constitute waiver of another breach. Failing to enforce a provision of this Agreement shall not constitute a waiver or create an estoppel from enforcing such provision. Any waiver of a provision of this Agreement shall not be binding unless such waiver is in writing and signed by the waiving party.

Section 11.12 – Relationship of the Parties: Nothing herein shall be construed as creating a partnership, an employment relationship, or an agency relationship between the parties, or as authorizing either party to act as agent for the other. Each party shall maintain its separate identity.

Section 11.13 – Arbitration: Any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by arbitration in accordance with Arbitration Rules of the American Arbitration Association in St. Paul, Minnesota. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Three qualified Arbitrators shall be selected by the parties in accordance with the Arbitration Rules of the American Arbitration Association. Each party shall have the right of discovery as set forth in the Federal Rules of Civil Procedure. The Arbitration shall be administered by the American Arbitration Association in St. Paul, Minnesota.

Section 11.14 – Assurances: Each party hereby represents and warrants that all representations, warranties, recitals, statements and information provided to the other party under this Agreement are true, correct and accurate as of the Effective Date to the best of their knowledge.

Section 11.15 – Litigation Expense: In the event of litigation or arbitration arising out of this Agreement, each party shall pay its own costs and expenses of litigation or arbitration (excluding fees and expenses of arbitrators and administrative fees and expenses of arbitration).

Section 11.16 – Equitable Remedies: The parties hereby acknowledge that in certain cases damages at law may be an inadequate remedy. In addition to all other remedies that may be available at law or equity, each party shall have the right of specific performance, injunction or other equitable remedy in the event of a breach or threatened breach of this Agreement.

Software Development and Hosting Agreement
("Agreement")
by and between
Krengel Technology, Inc. ("Developer")
and
Customer

IN WITNESS WHEREOF, this Agreement has been entered into as of the Effective Date.

DEVELOPER:

Krengel Technology, Inc.

By: _____

Print Name: _____

Title: _____

Date: _____

Address: _____

CUSTOMER:

Name: _____

By: _____

Print Name: _____

Title: _____

Date: _____

Address: _____

- (4) Customer Responsibilities: Customer shall perform the tasks and provide the following items as a condition precedent to the obligations of Developer hereunder:

- (5) Terms: Any capitalized term not defined hereunder shall have the meaning as set forth in the Agreement.
- (6) Agreement: The Agreement is hereby incorporated herein by this reference and made a part hereof.
- (7) Work Date: The term “Work Date” for this Work Order shall mean the date this Work Order is signed by Developer and Customer, whichever is later.
- (8) Additional Terms: The following additional terms shall apply:

DEVELOPER:
Krengel Technology, Inc.

By: _____

Print Name: _____

Title: _____

Date: _____

Address: _____

CUSTOMER:

Name: _____

By: _____

Print Name: _____

Title: _____

Date: _____

Address: _____

EXHIBIT C

Technology Notice

to the Software Development and Hosting Agreement (“Agreement”)

by and between

Krengel Technology, Inc. (“Developer”)
and
Customer

This TECHNOLOGY NOTICE is made by and between Developer and Customer, as follows:

- (1) Technology Notice: The Third Party Technology required for implementation and use of the Deliverables shall be provided by Customer as follows:

- (2) Terms: Any capitalized term not defined hereunder shall have the meaning as set forth in the Agreement.

- (3) Agreement: The Agreement is hereby incorporated herein by this reference and made a part hereof.

- (4) Additional Terms: The following additional terms shall apply:

DEVELOPER:
Krengel Technology, Inc.

By: _____

Print Name: _____

Title: _____

Date: _____

Address: _____

CUSTOMER:

Name: _____

By: _____

Print Name: _____

Title: _____

Date: _____

Address: _____
