

Gabriel Software LLC

Terms and Conditions

1. **Consulting Fees; Expenses.** Customer shall pay to Gabriel Software LLC "Gabriel" the fees as set forth on Exhibit B. The minimum charge for consulting services rendered on-site shall be four hours. Gabriel may change its fees for services upon 60 days advance notice to Customer. Gabriel shall invoice Customer monthly in arrears, for fees incurred as a result of performing the services described in the engagement letter ("Services"). All invoices shall be due upon receipt by Customer. Any amounts payable by Customer which are not paid within 30 days after they are due shall bear interest at a rate of 1 1/2% per month from the date due until such amount is paid. Customer shall reimburse Gabriel for all reasonable out-of-pocket expenses actually incurred by Gabriel in performance of the Services, which include but are not limited to travel expenses, per diem and mileage. Customer understands that services provided by Gabriel consultants will be billed at the rates specified on Exhibit B.

2. **Warranties.** Gabriel warrants that it has full power and authority to enter into the engagement letter and perform the Services contemplated therein. Gabriel warrants that all Services will be performed consistent with generally accepted industry standards. This warranty shall be valid for 90 days from performance of the Services. GABRIEL DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SERVICES.

3. **Confidentiality.**

(a) Because of the consulting engagement, the parties may have access to information that is confidential to one another ("Confidential Information"). "Confidential Information" means nonpublic information that the disclosing party designates as being confidential or which under the circumstances surrounding disclosure ought to be treated as confidential. "Confidential Information" includes, without limitation, information relating to the disclosing party's software or hardware products which may include source code, API data files, documentation, specifications, data bases, networks, system design, file layouts, tool combinations and development methods as well as information relating to the disclosing party's business or financial affairs, which may include business methods, marketing strategies, pricing, competitor information, product development strategies and methods, customer lists and financial results. Confidential Information also includes information received from others that the disclosing party is obligated to treat as confidential and oral information that is identified by the disclosing party as confidential. Confidential Information disclosed by a subsidiary of the disclosing party and/or its agents is covered by this Agreement. Confidential Information includes all tangible materials which contain Confidential Information whether written or printed documents, computer disks or tapes whether user or machine readable. Confidential Information shall not include any information that (1) is already known to the receiving party or its affiliates, free of any obligation to keep it confidential; (2) is or becomes publicly known through no wrongful act of the receiving party or its affiliates; (3) is received by the receiving party from a third party without any restriction on confidentiality; (4) is independently developed by the receiving party or its affiliates; (5) is disclosed to third parties by the disclosing party without any obligation of confidentiality; or (6) is approved for release by prior written authorization of the disclosing party. The parties agree to maintain the confidentiality of the Confidential Information and to protect as a trade secret any portion of the other party's Confidential Information by preventing any unauthorized copying, use, distribution, installation or transfer of possession of such information. Each party agrees to maintain at least the same procedures regarding Confidential Information that it maintains with respect to its own Confidential Information. Without limiting the generality of the foregoing, neither party shall permit any of its personnel to remove any proprietary or other legend or restrictive notice contained or included in any material provided by the disclosing party and the receiving party shall not permit its personnel to reproduce or copy any such material except as expressly authorized hereunder. One parties Confidential Information may only be used by the other party in order to fulfill its obligations under this Agreement.

(b) Both parties acknowledge that any use or disclosure of the other party's Confidential Information in a manner inconsistent with the provisions of the engagement letter may cause the non-disclosing party irreparable damage for which remedies other than injunctive relief may be inadequate, and both parties agree that the non-disclosing party may request injunctive or other equitable relief seeking to restrain such use or disclosure.

(c) The terms and provisions of this Section 3 shall survive any termination of the engagement letter for any reason for a period of 5 years.

4. **Intellectual Property Rights.** In the course of the consulting engagement, Gabriel may use enhancements, discoveries, processes, methods, designs and know-how, whether or not copyrightable or patentable, which Gabriel conceived during the course of other consulting engagements. In addition, Gabriel may independently develop enhancements, processes, methods, designs or know-how during the term of this consulting engagement and customer acknowledges that Gabriel may use such enhancements, processes, methods, designs and know-how in its business operations with other customers.

5. **Term and Termination.** The term of the engagement letter shall commence on the date hereof and, unless earlier terminated as provided below, shall continue until completion of the Services. In the event of any breach of any term or provision of this engagement letter by either party, the other party may cancel this engagement letter by giving thirty (30) days prior written notice thereof; provided, however, that this engagement letter shall not terminate at the end of the thirty (30) day notice period if the party in breach has cured the breach to the satisfaction of the other party prior to the expiration of the thirty (30) day period. In addition, Customer shall have the right to terminate this engagement letter without cause upon fifteen (15) days prior written notice to Gabriel. In such case, Customer shall be responsible for payment of all Services rendered prior to the date of termination. Also, Gabriel may terminate this engagement letter without notice if any consulting invoice is unpaid for a period greater than 30 days following its due date.

6. **Independent Contractor.** Gabriel is an independent contractor. Neither Gabriel nor Customer are, or shall be deemed for any purpose to be, employees or agents of the other and neither party shall have the power or authority to bind the other party to any contract or obligation. Gabriel shall retain the right to perform work for others during the term of the consulting engagement.

7. **Governing Law.** The consulting engagement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. Customer and Gabriel consent to the jurisdiction of the state courts of the Commonwealth of Massachusetts.

8. **Severability.** In the event any one or more of the provisions of this engagement letter or of any exhibit is held to be invalid or otherwise unenforceable, the enforceability of the remaining provisions shall be unimpaired.

9. **Arbitration.** Except for collection actions for payment of fees and for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm, any controversy or claim arising out of or relating to this engagement letter or to its breach shall be settled by arbitration by a single arbitrator in accordance with American Arbitration Rules, pursuant to an arbitration held in Bristol County, Massachusetts, and judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The prevailing party shall be entitled to receive from the other party its attorney's fees and costs incurred in connection with any action, proceeding or arbitration hereunder.

10. **Hiring of Gabriel Personnel.** Customer acknowledges that Gabriel provides a valuable service by identifying and assigning personnel for Customer's work. Customer further acknowledges that Customer would receive substantial additional value and Gabriel would be deprived of the benefits of its work force, if Customer were to directly hire Gabriel's personnel after they have been introduced to Customer by Gabriel. Without the prior written consent of Gabriel, Customer shall not recruit or hire any personnel of Gabriel who are or have been assigned to perform work until one (1) year after the completion of the engagement in effect between the parties. In the event that Customer hires any personnel of Gabriel who are or have been assigned to perform work for Customer, Customer shall pay Gabriel within one (1) year of the date of such hiring, an amount equal to twenty-five percent (25%) of the total first-year compensation Customer pays such personnel as a fee for the additional benefit obtained by Customer.

11. **Force Majeure.** Gabriel shall not be responsible for failure to perform in a timely manner under this engagement letter when its failure results from any of the following causes; Acts of God or public enemies, civil war, insurrection or riot, fire, flood, explosion, earthquake or serious accident, strike, labor trouble or work interruption or any cause beyond its reasonable control.

12. **Notices.** Any notice or other communication required or permitted shall be in writing and shall be deemed to have been duly given on the day of service if served personally or by facsimile transmission with confirmation, or on the day of receipt if mailed, registered or certified, postage prepaid, and addressed to the respective parties at their principal place of business or at such other addresses as may be specified by either party in writing.

13. **Services.** Customer shall provide Gabriel suitable office accommodations and access to computers so as to enable Gabriel to perform the services referenced in the engagement letter.

14. **Entire Agreement; Modifications.** Each party acknowledges that it has read the engagement letter and the exhibits attached thereto, and further agrees that the engagement letter and the exhibits thereto are the complete and exclusive statement of the parties and supersedes and merges all prior proposals understandings and agreements, oral or written, between the parties relating to the subject matter hereof, including without limitation, the terms of any customer request for proposal or the standard printed terms on any Customer purchase order. No modification, amendment, supplement to or waiver of this engagement letter or any exhibit hereunder shall be binding upon the parties hereto unless made in writing and duly signed by both parties.