

[FORM]

INTELLECTUAL PROPERTY DEVELOPMENT AND TRANSFER AGREEMENT

This Intellectual Property Development and Transfer Agreement (this "**Agreement**") is made as of February ____, 1996 (the "**Effective Date**"), between ABC, L.L.C., an Illinois limited liability company (the "**Company**") and XYZ Management Tools and Information Services, Inc., a Massachusetts corporation (the "**Developer**").

RECITALS

A. The Company was formed to engage in general management consulting activities with a special emphasis on reviewing the efficacy of its clients' existing management practices, analyzing how those practices relate to profitability, and making recommendations for improving profitability based on adjusting management practices (the "**Business Concept**"). To implement the Business Concept, the Company desires to create a software program to be known as the "MNO" system, which will track, organize and retain data concerning management practices of various businesses, and relate those management practices to the profitability, market share and other seminal business barometers of the entities using such management practices.

B. The Developer has expertise in developing software generally, and has specific expertise in the software applications the Company desires to include in the "MNO" system.

C. The Company now desires to retain the Developer, as an independent contractor on a "contract for hire" basis, to develop on the Company's behalf, a fully functional version of the aforesaid "MNO" software, and other items identified below, for the Company's exclusive ownership and use. The Developer desires to perform such services for, and to transfer said items to the Company.

CLAUSES

In consideration of the preceding, and the mutual obligations set forth below, the parties agree as follows:

ARTICLE 1 PROJECT DEVELOPMENT

1.1 Retention of Developer. Subject to the terms and conditions of this Agreement, the Company retains Developer, on an independent contractor - "contract-for-hire" basis (within the meaning of U.S. copyright law), to develop the "Contract Materials" (as defined in Section 2.7 below) for the Company's sole and exclusive benefit and use, and to deliver the same to the Company in accordance with the terms of this Agreement. Developer accepts the foregoing engagement with the Company. For purposes of this Agreement, the term "**Project**" shall mean the Developer's creation and delivery of the Contract Materials to the Company in accordance with this Agreement.

1.2 Contract Software. For purposes of this Agreement, the term "**Contract Software**" shall mean all software programs and modules which Developer includes in the "MNO" system Developer creates for the Company under this Agreement, including but not limited to all source-codes, object-codes, tool kits, interfaces, screens, the "Knowledge Databases" (as defined in Section 1.10 below), reports generated, logarithms, engineering, know-how, specifications, routines, in all languages (whether human or computer) and media, whether now existing or subsequently developed. The Contract Software shall satisfy the specifications identified on attached and incorporated **Schedule "A"**, subject to the Company's

approval. The Contract Software shall be capable of generating the "**Strategic Business Analysis Report**" and "**Management Practices Report**", in form and substance as identified on said **Schedule "A"**. Generally, these reports will provide clients of the Company with a detailed analysis of their management practices compared against other management practices utilized by companies engaged in similar businesses, shall chart the relationship between management practices and various key economic indicators (such as but not limited to profitability and market share), and shall be in form and substance acceptable to the Company. Attached **Schedule "A"** also identifies those elements of the Contract Software which are, or when developed will be, solely proprietary to the Company, and those items which are nonproprietary, solely because they are general purpose modules available in the public domain without restriction. All the Contract Software identified in **Schedule "A"**, whether or not proprietary to the Company, is included in the instant transfer from Developer to the Company. However, the Developer may continue to use the nonproprietary, general purpose modules identified in **Schedule "A"**, in accordance with Section 6.2 below.

1.3 Documentation. For purposes of this Agreement, the term "**Documentation**" shall mean all user and programming manuals, source codes, flow charts, the "Training Materials" (as defined in Section 1.10 below), the "Client Survey Forms" (as defined in Section 1.10 below), illustrations, logic diagrams, designs, program notes, drafts, engineering plans, feasibility studies, reports generated by the Contract Software, marketing plans, specifications, the Strategic Business Analysis Report, the Management Practices Report and all other written documentation concerning the Contract Software and its development and/or use, and/or developmental versions of any of the preceding, the Contract Software or the "Prototype" (as defined in Section 1.4 below).

1.4 Deliverables. For purposes of this Agreement, the term "**Deliverables**" shall mean: (i) a fully functional prototype of the Contract Software (the "**Prototype**") which has been tested and accepted by the Company and is fully debugged, ready for commercialization and capable of generating the Strategic Business Analysis Report and Management Practices Report; (ii) all final Contract Software; (iii) all associated components, hardware, software, drawings, technical information, flow charts, designs, engineering plans, specifications, materials and know-how; and (iv) all Documentation. The Company will not accept Deliverables which Developer delivers to the Company unless the Prototype is fully capable of performing the functions and specifications identified on **Schedule "A"** to the Company's satisfaction.

1.5 Milestones. The Developer shall develop the Contract Software and deliver the Deliverables to the Company in accordance with the milestone dates (the "**Milestones**") identified on attached and incorporated **Schedule "B"**. The Developer shall provide the Company with the final Deliverables and Documentation within _____ (____) days of the Effective Date. If this Agreement terminates for any reason prior to the Developer's completion of the Contract Software, the Developer, immediately upon such termination, shall deliver to the Company all Contract Software, Documentation, other Deliverables and related items, in their then state of development. The Developer agrees that TIME IS OF THE ESSENCE OF THIS AGREEMENT. Therefore, the Developer's failure to provide any Deliverable or Documentation by its Milestone shall constitute a material breach of this Agreement.

1.6 Supply of Materials. Supply of Materials. At its sole cost, Developer will provide all: (i) capital goods needed or desirable to complete the Project on a timely, efficient basis, including (but not limited to) laboratories, engineering and equipment; (ii) materials to be consumed in the research and development of the Prototype; and (iii) personnel. Developer shall have the sole obligation to pay all compensation and benefits (if any) due to the individuals who constitute the Project team.

1.7 Project Reports. Project Reports.7 Project Reports. The Developer will complete the Project to the Company's satisfaction, and shall prepare and deliver to the Company quarterly interim reports commencing ninety (90) days from the Effective Date and continuing until the termination of this Agreement. The Developer shall not make said reports available to any individual or entity other than the Company nor use said reports or any Deliverables for any purpose whatsoever, without the prior, written approval of the Company.

1.8 Periodic Meetings Periodic Meetings Periodic Meetings. During the term of this Agreement, representatives of Developer shall meet with representatives of the Company within five (5) days of a request by the Company for such meeting, to discuss the progress and results, as well as ongoing plans, or changes therein, concerning the Project.

1.9 Term. The Developer shall deliver a fully functional Prototype, and all associated Contract Materials to the Company, on or before _____ (the "**Term**").

1.10 Other Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

(i) the term "**Client Survey Forms**" shall mean forms the Developer creates to input all Client data into the Knowledge Base as necessary to generate the Strategic Business Analysis Report and Management Practices Report;

(ii) the term "**Knowledge Base**" shall mean the database generated by the Contract Software which contains the information taken from the Client Survey Forms, as well as the other information inputted concerning management practices and/or business strategies, whether stored, maintained or reproductive in electronic, magnetic, disk or paper form;

(iii) the term "**Survey Data**" shall mean the responses which clients make to specific questions under the Client Survey forms; and

(iv) the term "**Training Materials**" shall mean written Documentation in the form of user manuals which will permit average computer users to utilize the Contract Software.

ARTICLE 2 **TRANSFERS**

2.1 Grant of Exclusive Ownership and Use Rights. The Developer sells, grants, conveys and assigns to the Company, exclusively for and throughout the world, in and for all languages (including but not limited to computer and human languages whether now existing or subsequently developed) all the Developer's rights, titles and interests in the Contract Materials, including but not limited to all rights of the Developer under all United States federal or state and other "Governmental Authority" (as defined in Section 2.8 below) intellectual property and other laws, as well as all rights of the Developer as an author or inventor under the laws of any Governmental Authority. The foregoing transfer of rights by the Developer to the Company is all inclusive and without reservation of any right, title, interest or use, whether now existing or subsequently arising.

2.2 Derivative Works. Developer acknowledges that the Company has the sole right throughout the world and in all languages (human or computer, now or subsequently existing): (i) to prepare derivative works based on the Contract Software, Documents and other Deliverables (collectively "**Derivative Works**"); (ii) to reproduce, distribute, copy or display the Contract Software, Documents, other Deliverables and Derivative Works and all versions

thereof; (iii) to sell or transfer ownership to, or to rent, lease, lend or license the Contract Software, Documents, other Deliverables and Derivative Works; (iv) to exploit through any and all means available the Contract Software, Documents, other Deliverables, Derivative Works and all versions thereof; (v) to authorize others to do any and all of the aforesaid; and (vi) to utilize the Contract Materials and Derivative Works in combination with any other works, in and as part of any collective works, and to do so in any and all forms, including but not limited to using magnetic tapes, hard and floppy disks, compact disk or other digital technology and such solid state forms as exist from time to time, including but not limited to fibre optics, satellite transmissions, ROM chips and printed circuitry. The Developer expressly acknowledges that the Company has the sole and exclusive right to do any and all of the foregoing by all means and via any and all media now or subsequently existing, including but not limited to all computers, peripheral equipment, dedicated machines and other hardware devices and all print media, including books and magazines, motion pictures, radio, video tapes, compact disks, and all broadcast and cable data wire, and/or optic fibre transmission systems and networks, whether now existing or subsequently developed.

2.3 Grant of Exclusive Rights to Trademarks and Service Marks. The Developer, grants, conveys, transfers, alienates and assigns exclusively to the Company, for and throughout the world and in any and all languages (human or computer) and media, whether now existing or subsequently developed, all the Developer's rights, titles, interests (legal, industrial, commercial, equitable, use, as an author and otherwise) in and to any and all: (i) trademarks and service marks which concern any Contract Materials, whether or not registered, all applications for the same and the right to obtain registered trademarks, service marks or other marks concerning the Contract Materials in or under the laws of any Governmental Authority, including but not limited to the mark "MNO" or any derivation or graphic depiction thereof; (ii) rights to record the transfers made under this Agreement in the United States Patent and Trademark Office or in any other Governmental Authority Office throughout the world; and (iii) rights to sue for and collect damages predicated on past, present or future infringements of the preceding, as well as all other claims and rights to damages associated with the preceding, whether predicated on past, present or future actions or omissions, and whether or not currently known or unknown. The Developer shall not utilize any such marks, names or titles or any variation of the same for any products, technology or services of any nature, shall not authorize and does not have any right to authorize any third person to do so, and shall not incorporate any such marks, names or titles or any marks, names or titles similar thereto in any of Developer's names.

2.4 Grant of Exclusive Rights to Copyrights and Patents. The Developer, grants, conveys, transfers, alienates and assigns exclusively to the Company, for and throughout the world and in any and all languages (human or computer) and media, whether now existing or subsequently developed, all the Developer's rights, titles and interests (legal, industrial, commercial, equitable, use, as an author or inventor and otherwise) in and to any and all: (i) copyrights and/or patents of any type or nature in the Contract Materials, whether or not registered, all applications for the same and the right to file and register the same in the Company's name or in any other name in any Governmental Authority; (ii) all discoveries, improvements and/or inventions conceived or first reduced to practice (as that phrase is used in practice before the United States Patent and Trademark Office) during the Project or otherwise incorporated in any Contract Materials; (iii) rights to record the transfers made under this Agreement in the United States Patent, Trademark and/or Copyright Office and in any other public offices of any Governmental Authorities throughout the world; and (iv) rights to sue for and collect damages predicated on past, present or future infringements of the preceding, as well as all other claims and rights to damages associated with the preceding, whether predicated on past, present or future actions or omissions, and whether or not currently known or unknown.

2.5 Further Instruments. The Developer shall execute, acknowledge and deliver to the Company, within five (5) days of the Company's request for the same, such further instruments and documents as the Company may request from time to time to facilitate registration of any such filings or to record the transfers made in this Agreement in any public office, or otherwise to give notice or evidence of the Company's exclusive rights to the Contract Materials.

2.6 No Retained Rights. The Developer's assignment of the Contract Materials to the Company under this Agreement constitutes a complete, absolute and exclusive transfer of all rights (legal, industrial, commercial, equitable, use as an author or inventor and otherwise) in the Contract Materials, whether currently existing or arising in the future. The Developer does not reserve or retain any right, title or interest in any Contract Materials, any component of the Contract Materials or any trade secrets which concern any Contract Materials, except as specifically provided otherwise in Section 6.2 below. The Developer acknowledges and agrees that all the Contract Materials constitute the sole, exclusive and confidential property of the Company.

2.7 Contract Materials Defined. For purposes of this Agreement, the term "**Contract Materials**" shall mean the following: (i) all Deliverables; (ii) all versions of the Prototype, Contract Software, other Deliverables and/or Derivative Works created for or on, displayable on or contained in any computers, networks, peripherals, devices, hardware, equipment or other media of any type; (iii) all written materials concerning the Project, Deliverables and/or Derivative Works, whether such written materials are set forth in hard copy, electronic storage, floppy disk, compact disk or other media; (iv) all source codes, object codes, integrations, bridges, logarithms, modifications, engineering, know-how, developments, windows, tool kits and programs used in the Documentation, Deliverables, Contract Software, Prototype and/or Derivative Works; (v) all inventions and developments concerning the Contract Software or its functionality or use; (vi) all marketing methods, plans and strategies concerning the Deliverables, Derivative Works and/or Business Concept; (vii) the Business Concept itself; and (viii) all enhancements of or improvements to any Contract Software, Documentation, Deliverables and/or Derivative Works.

2.8 Governmental Authority Definitions. For purposes of this Agreement, the following terms shall have the following meanings: (i) the term "**United States**" shall mean the United States of America, and all geographical territories and subdivisions of the United States of America; (ii) the term "**Other Nations**" shall mean each country, principality or other independent territory and each subdivision thereof, which is not a part of the United States; (iii) the term "**Supra-National Authority**" shall mean the European Union, the United Nations, the World Court, the Commonwealth, the North Atlantic Treaty Organization, the General Agreement on Tariffs and Trade, the North American Free Trade Agreement and all other multi-national authorities or treaties which have or may have from time to time jurisdiction over any of the parties to or any performance under this Agreement; and (iv) the term "**Governmental Authority**" shall mean any subdivision, agency, branch, court, administrative body, legislative body, judicial body, alternative dispute resolution authority or other governmental institution of (A) the United States, (B) any state, municipality, county, parish, subdivision or territory of the United States, (C) all Other Nations, (D) any state, territory, county, province, municipality, parish or other subdivision of any Other Nations, and (E) all Supra-National Authorities.

2.9 Future Assistance. During the development of the Contract Materials, the Developer shall provide the Company with such technical assistance as the Company may request, free of charge. If, however, the Company desires technical assistance from the Developer concerning the Contract Materials following the Developer's delivery to the Company

of a fully functional Prototype which the Company accepts, in writing, the Developer agrees to provide such technical assistance to the Company upon payment by the Company of reasonable fees to the Developer, as agreed at the time between the parties. The Developer agrees that any such fees which it charges to the Company in the future shall be no greater than the lowest charge the Developer is then utilizing for any of its customers. The Developer shall provide the Company with all updates, improvements, modifications, discoveries, concepts, know-how, techniques or ideas which Developer develops, either on its own or together with others, following the Effective Date, which concern the Contract Materials or systems similar to or competitive with the Contract Materials. The Developer shall assist the Company in adapting such product improvements to the Contract Materials.

ARTICLE 3 **FEE**

The Company shall pay the Developer a purchase price (the "Fee") of One Hundred Twenty Thousand U.S. Dollars (\$120,000) for the Developer's successful completion of the Project. The Company shall pay _____ percent (___%) of such amount on the Effective Date, and shall pay the remainder in installments, solely when the Developer completes various Deliverables by their respective Milestones, as provided on attached and incorporated **Schedule "B"** and to the satisfaction of the Company. Developer agrees that the foregoing Fee is fixed, and is not subject to increase unless the Company submits a change order to Developer which materially alters the specifications for the Project. In the event of such change order, the parties shall agree upon an adjustment to the Fee to account solely for Developer's actual increase in costs associated therewith.

ARTICLE 4 **COOPERATION**

4.1 Referrals. The Developer shall refer all inquires which it may receive concerning software systems similar to or competitive with the Contract Materials or any Derivative Work directly to the Company, within two (2) business days of receiving such inquiry.

4.2 Client Solicitation. The Company shall have the right to solicit potential clients to subscribe to the MNO system in accordance with the Business Concept and to deliver to such potential clients all information necessary for them to evaluate the Contract Software and MNO system prior to Developer's completion of the Project. The Company shall have the sole discretion to negotiate and agree upon all conditions of licensing, price, warranties, service contracts and other matters with any such potential clients. Developer, free of charge, shall provide such information as the Company may request to enable such potential clients to evaluate the Contract Software, other than direct, out-of-pocket costs such as "Fed-Ex®" charges.

4.3 The Company Rights to Deliverables. The Developer agrees that the Company's rights to all Deliverables, Documentation and other Contract Materials are coupled with an interest because the Company will: (i) solicit third parties to license Contract Software and use the MNO system; and (ii) invest a substantial amount of money and personnel into developing and marketing the Contract Software and Business Concept. Therefore, the Developer agrees that the Company's rights to the Contract Materials are irrevocable, and the Developer shall deliver the same to the Company immediately upon demand irrespective of the stage of development thereof.

4.4 Improvements the Company Develops. The Company shall be the sole legal and beneficial owner of any and all improvements, inventions, modifications, developments or

concepts the Company develops, on its own or with others, concerning the Contract Materials, including but not limited to those the Company develops prior to the Developer's completion of the Contract Materials. If the Company deems the same to be necessary, the Developer shall execute such documents as the Company may request to evidence the Company's ownership interest in any such the Company developments, whether for filing with any public or governmental office or otherwise.

ARTICLE 5 **DEVELOPER WARRANTIES**

5.1 Authorization. The Developer represents and warrants that it has full power and authority: (i) to enter into this Agreement; (ii) to grant to the Company the rights in the Contract Materials set forth in this Agreement; and (iii) to perform all of its obligations under this Agreement. The Developer further represents and warrants that it has taken all corporate action necessary to authorize the preceding.

5.2 No Third Party Interest. The Developer represents and warrants that: (i) no third party has any claim, right, title or interest in any Contract Materials; (ii) no third party requested the Developer to prepare any of the Contract Materials on behalf of such third party; and (iii) the Developer has not mortgaged or otherwise encumbered or permitted the encumbrance of any portion of or rights in any Contract Materials, granted sold, assigned or licensed any rights in any Contract Materials, nor entered into any option or other agreement respecting any such right in any Contract Materials. The Developer represents and warrants that if any persons other than the Developer's employees participated in the preparation of any Contract Materials, such persons did so solely for hire on behalf of the Developer, such persons have assigned irrevocably to the Developer all rights to the work they performed for the Developer, and such persons do not have any right, title, claim or interest in or to any part of or all of the Contract Materials.

5.3 No Infringement. The Developer represents and warrants that upon delivery of the Contract Materials to the Company, the Company will be the sole owner of all Contract Materials free and clear of all claims, liens or encumbrances. The Developer represents and warrants that the Contract Materials are not in the public domain and do not infringe any trademark, servicemark, tradename, copyright or patent, or to the Developer's best knowledge, any other proprietary or trade secret right of any third party.

5.4 Original Work. The Developer represents and warrants that the Contract Materials are wholly original works, solely organized and created by the Developer and that the Developer has not copied or reproduced any other individual's or entity's work, software, codes, documentation, copyrighted material, patented material, patent application or other document or information when developing any of the Contract Materials. The Developer has not published all or any portion of the Contract Materials in any form or manner prior to the Effective Date. The Developer represents and warrants that the Contract Materials do not contain any materials which were obtained in an unlawful fashion or which are in any way unlawful to include within the Contract Materials, and that the Developer has not prepared any versions of any Contract Materials other than those delivered to the Company under this Agreement. The Developer represents and warrants that no claims of copyright or patent relating to any portion or all of the Contract Materials have been submitted to or filed or registered with the United States copyright office or any other public office in any other country throughout the world, whether by the Developer or any third party.

5.5 No Trademarks. The Developer has not filed or registered any trademark or claim of trademark rights in any Governmental Authority office, nor made any agreement with

any third persons with respect to the same, concerning the title or name of the Contract Materials identified in this Agreement. The Developer has not registered or attempted to register any similar title or name.

5.6 Contract Software. Developer represents and warrants to the Company that the Contract Software developed by Developer under this Agreement: (i) will be of merchantable quality and fit for its intended purposes; (ii) will conform to the specifications identified on attached **Schedule "A"**; (iii) will not require the licensing of any third party patent rights to use fully the Contract Software (i.e. there are no blocking patents); and (iv) is valid and subsisting, is not in whole or in part invalid or unenforceable, and there are no outstanding claims, liens or encumbrances therein and Developer has no knowledge of any information which could render any such intellectual property invalid and/or unenforceable.

5.7 Chronology. The Developer covenants, represents and warrants that it shall prepare an accurate and complete chronology of events concerning the development of the Contract Materials, and shall deliver the same to the Company contemporaneously with the Prototype.

5.8 Personnel. The Developer covenants, represents and warrants to the Company that the following individual officers and key employees (the "**Key Employees**") of Developer shall devote their full time and attention to the Project, and shall continue to do so until the Project is completed in accordance with the terms of this Agreement: (i) William J. Hass; (ii) _____; and (iii) _____.

ARTICLE 6 **RESTRICTIVE COVENANTS**

6.1 Noncompete. Except for the "Permitted Activity" (as defined below in this Section), the Developer shall not directly or indirectly, on behalf of itself or any other individual or entity: (i) deliver or provide any product competitive with the Contract Materials ("**Competitive Product**") to any individual or entity doing business in the United States or Canada; (ii) assist any individual or entity in developing a Competitive Product if such individual or entity does business in the United States or Canada; or (iii) in any way use, sell, divulge, disclose, transfer or assign, on its own behalf or to or with any other individual or entity, any Contract Materials. For purposes of this Agreement, the term "**Permitted Activity**" shall mean the Developer engaging in the following activities: (i) _____, (ii) _____; and _____. Except as the foregoing specifically provides concerning the Permitted Activity, the Developer shall not provide or develop Competitive Products in the United States or Canada, or for individuals or entities which do business in the United States or Canada. The Developer shall not, directly or indirectly, for its own benefit or for the benefit of any other person or entity, be involved, for a period of four (4) years from the Effective Date in the development, conception, copying, marketing or reproduction of any Competitive Products.

6.2 Limited Use of Nonproprietary Materials. Concerning those materials identified as non proprietary in attached **Schedule "A"**, the Company grants to the Developer, and the Developer accepts from the Company, a non-exclusive and a non-transferable license, to use such non proprietary materials subject to the express, prior condition that the Developer may not use such materials to develop, copy, reproduce and/or create, in any manner, directly or indirectly, for its own use or for the use of any other person or entity, any Competitive Products. For purposes of this Agreement, the fact that the Developer, alone or with others, directly or indirectly, for its own benefit or for the benefit of any other person or entity, is involved in any way in the development, copying and/or reproduction of any Competitive Products, shall

constitute sufficient evidence that the Developer has improperly used, for the purpose thereof, Contract Materials, including those labeled as nonproprietary on **Schedule "A"**, and therefore has breached its obligations under this Section.

6.3 Confidentiality Acknowledgments. The Developer acknowledges that: (i) the Business Concept, Client Survey Forms, Management Practices Report, Strategic Business Analysis Report, Knowledge Base, Survey Data, Training Materials and all other Contract Materials, their programming, application, development, technical specifications and use, including but not limited to the terms of this Agreement, are highly confidential and constitute trade secrets of the Company within the meaning of the Illinois Trade Secrets Act, and are protectable as trade secrets (the "**Trade Secrets**"); (ii) the Company has a proprietary interest in the Trade Secrets; (iii) the Company has invested and will continue to invest substantial amounts of time, money and effort to develop and market the Trade Secrets; (iv) the Company has implemented procedures to maintain the confidentiality of the Trade secrets; (v) the Company's competitors would obtain unfair economic and competitive advantages if the Trade Secrets were divulged; (vi) the Company would suffer irreparable and continuing injury if the Trade Secrets were disclosed; and (vii) the Trade Secrets form an integral part of the Company's business. The fact that any Contract Materials are marked with a copyright notice shall not reduce, impair or affect the Trade Secret status of the item so marked, and instead shall serve solely as notice of the Company's copyrights therein.

6.4 Confidentiality Duties. In recognition of the importance and sensitivity of the Trade Secrets, the Developer agrees that it: (i) shall hold the Trade Secrets in trust solely for the benefit and use of the Company; (ii) shall not directly or indirectly sell, alienate, transfer, assign, disclose or divulge the Trade Secrets to any person or entity without the Company's prior, written permission; (iii) shall not directly or indirectly use the Trade Secrets in or for the benefit of any individual, business, profession, partnership, corporation, joint venture or other endeavor, other than as the Company specifically authorizes in writing and in advance; and (iv) shall not directly or indirectly disclose any terms of this Agreement.

6.5 Duty to Disclose. The Developer immediately shall notify the Company of any information which comes to its attention which does or might indicate that there has been any loss of confidentiality concerning any Trade Secret. In such event the Company, in its sole discretion, shall have the right to file litigation to prevent such spread. The Developer shall cooperate fully with any such proceeding.

6.6 Purchaser Title Protection. The Developer covenants that it shall not attack, compromise, file suit against or in any manner attempt to vitiate or dispute or commit or fail to take any action which could vitiate or constitute a dispute of any of the Company's rights, titles or interests in any Contract Materials. The Developer shall not attempt to develop any Competitive Product based on any Trade Secrets, or through reverse engineering, decompiling, disassembly or any other method.

6.7 Infringement Cooperation. If at any time any infringement action is brought concerning any Contract Materials whether by or against the Company, Developer shall cooperate in any such infringement action, at the Company's expense, and shall assist the Company as the Company then directs.

6.8 Indemnification. The Developer shall defend, indemnify and hold harmless the Company and its successors, assigns and affiliates (collectively the "**Indemnitees**"), on demand, from any liabilities and expenses, including but not limited to attorneys' and accountants' fees, investigation costs, disbursements, settlement amounts, expert fees, lost patent rights, lost profits, fines or penalties which any Indemnitees incur in connection with, and

settlement of or resulting from any claims, actions, suits or proceedings (whether civil, criminal, administrative or investigative, including all associated appeals) which involve or threaten any Indemnitees, as parties or otherwise, that are in any way based upon Developer's or breach of any of its representations or warranties, or failure to satisfy any of its obligations or covenants in this Agreement.

ARTICLE 7 **MISCELLANEOUS**

7.1 No Agency or Partnership. This Agreement does not constitute the parties as the legal representatives, partners or joint venturers of each other for any purpose whatsoever. The parties have no right to create any obligations or responsibilities, express or implied, on behalf or in the name of the other, or to bind the other, legally, beneficially or otherwise.

The Developer's status under this Agreement is and shall remain that of an independent contractor, and not that of an agent of the Company for all purposes, including without limitation payment of social security, withholding and all other taxes which any governmental authority may impose. The Developer shall defend, indemnify and hold harmless the Company, its successors and assigns, on demand, from all costs and expenses, including but not limited to attorneys' fees, court costs, penalties, interest and fines, associated with the Developer's failure to pay any such taxes or otherwise comply with the terms of this Agreement.

7.2 Termination of Agreement.

(a) Causes. This Agreement shall terminate upon the occurrence of any of the following events: (i) the parties execute any instrument that specifically terminates this Agreement; (ii) the expiration of thirty (30) days following the filing of a petition in bankruptcy by or against Developer, if such petition is not dismissed during such thirty (30) day period; (iii) the voluntary or involuntary dissolution of Developer; or (iv) the Company transmits a termination notice to the Developer due to (A) a breach by the Developer of this Agreement (in which case such termination shall be effective fifteen (15) days from the date of such notice), or (B) the Company's dissatisfaction with the Developer's performance under this Agreement (in which case such termination shall be effective thirty (30) days from the date of such notice), or (C) the Developer no longer employs any of the Key Employees on a full-time basis, in which case termination of this Agreement shall be at the Company's option, within thirty (30) days of the Company providing termination notice to Developer. Nothing contained in this Section shall affect or impair any rights or obligations which arose prior to or at the time of the termination of this Agreement, or which may arise due to any event which causes this Agreement to terminate.

(b) Delivery of Data. Upon the termination of the Developer's engagement with the Company for any reason, the Developer immediately shall deliver to the Company all notes, data, reference materials, memoranda, documents, instruments, records and all other information which in any way incorporate or reflect any Contract Materials or Trade Secrets.

7.3 No Assignment. The Developer may not assign any of its rights, duties or obligations under this Agreement. The Company may assign this Agreement to any successors.

7.4 Notices. All notices concerning this Agreement shall be given in writing, as follows: (i) by actual delivery of the notice into the hands of the party entitled to receive it, in

which case notice shall be deemed given when delivered; (ii) by mailing such notice by registered or certified mail, return receipt requested, in which case the notice shall be deemed given four (4) days from the date of its mailing; (iii) by Federal Express or any other overnight carrier, in which case the notice shall be deemed to be given on the date next succeeding the date of its transmission; or (iv) by Facsimile or other telephonic or fibre optic transmission of written characters resulting in hard copy being received by the notified party, in which case the notice shall be deemed given as of the date it is sent. All notices which concern this Agreement shall be addressed as follows:

To the Company:

To the Developer:

7.5 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Company, its successors and assigns and the Developer and its permitted successors. This Agreement supersedes any prior understandings, written agreements or oral arrangements between the parties which concerns the subject matter of this Agreement. The terms of this Agreement shall govern if there is any conflict between this Agreement and: (i) any purchase order or invoice which the parties may exchange; and (ii) any other written instrument which concerns or affects the subject matter of this Agreement.

7.6 Complete Understanding. This Agreement constitutes the complete understanding between the parties. No alteration or modification of any of this Agreement's provisions shall be valid unless made in a written instrument which both parties sign.

7.7 Applicable Law. The laws of the State of Illinois (other than those pertaining to conflicts of law) shall govern all aspects of this Agreement, irrespective of the fact that one of the parties now is or may become a resident of a different state or country, and without reference to or inclusion or application of the United Nations Convention on Contracts for the International Sale of Goods, said Convention being expressly excluded in its entirety. The parties shall submit all disputes which arise under this Agreement to state or federal courts located in the City of Chicago, Illinois for resolution. The parties acknowledge the aforesaid courts shall have exclusive jurisdiction over this Agreement, and specifically waive any claims which they may have that involve jurisdiction or venue, including but not limited to forum non conveniens. Service of process for any claim which arises under this Agreement shall be valid if made in accordance with the notice provisions set forth in Section 7.4 above. If service of process is made as aforesaid, the party served agrees that such service shall constitute valid service, and specifically waives any objections the party served may have under any state or federal law or rule concerning service of process. Service of process in accordance with this Section shall be in addition to and not to the exclusion of any other service of process method legally available.

7.8 Governing Language and Currency. The English language version of this Agreement shall be the governing and binding version of this Agreement, irrespective of any other language this Agreement may be translated into or performed under. All payments required under and monetary amounts identified in this Agreement shall be United States of America Dollars.

7.9 Severability. If a court of competent jurisdiction holds that any one or more of this Agreement's provisions are invalid, illegal or unenforceable in any respect, such invalidity,

illegality or unenforceability shall not affect any of this Agreement's other provisions, and this Agreement shall be construed as if it had never contained such invalid, illegal or unenforceable provisions.

7.10 Waiver. A party's attempted waiver, consent or authorization of any kind, whether required pursuant to the terms of this Agreement or granted pursuant to any breach or default under this Agreement, shall not be effective or binding upon such party unless the same is in a written instrument which such party has signed. Any such waiver, consent or authorization will be valid solely to the extent specifically set forth in such written instrument. No failure or delay on the part of either party to this Agreement to exercise any right, remedy, power or privilege shall preclude or limit any other or further exercise of such right or the exercise of any other right, remedy, power or privilege with respect to the same or any other matter.

ABC, L.L.C.,
an Illinois limited liability
company

**XYZ MANAGEMENT TOOLS AND
INFORMATION SERVICES, INC.,**
a Massachusetts corporation

By: _____

By: _____

Its: _____

Its: _____