

## **R1 SOFTWARE - BASIC ORDERING AGREEMENT**

**THIS AGREEMENT** (the "Agreement") is hereby entered into between Leamsi Fontáñez DBA R1 Software, with offices at Reparto Montellano C-13 Calle A, Cayey, PR 00736 (the "Contractor") and

a \_\_\_\_\_ with offices at \_\_\_\_\_  
\_\_\_\_\_ (the "Customer") on the following terms and conditions:

1. **General Undertaking.** The parties are entering into this Agreement to establish a basic ordering relationship whereby Customer may, from time to time, commission Contractor to perform professional or technical services agreed to by the parties (the "Services") and to develop Custom Work Product or other items specified in a particular Task Order (collectively, the "Deliverables"). Contractor's services for a specific project shall be engaged upon execution of a Task Order and for the period described in Section 4(b) ("Particular Task Orders").

2. **Task Orders.** Work performed under this Agreement shall be described in a Time & Materials, or Fixed Price Task Order ("Task Order"), which in each instance shall be incorporated herein as an Amendment to this Agreement at the time it is signed by an authorized representative of Contractor. Execution of a Task Order shall be considered a commitment by Customer to commission and pay for the Services or Deliverables described therein according to the terms and subject to the conditions of the Task Order and this Agreement. The parties may issue other transactional documentation (e.g., purchase orders, invoices and the like) for administrative convenience, which shall have no substantive effect on the terms of this Agreement. The terms of a Task Order shall take precedence over any inconsistent terms of this Agreement. Unless otherwise agreed in a Task Order, all prices are stated in USD\$.

(a) **Time & Materials Task Orders.** Task Orders issued on a Time & Materials ("T&M") basis shall be performed at such times, locations and at such rates as are set forth in the applicable Task Order. Contractor personnel shall maintain contemporaneous daily time records of hours and tasks performed, which shall be submitted or made available for inspection by Customer upon ten (10) days' advance written notice. Warranty work is considered a normal part of work performed under T&M Task Orders and shall be subject to the regular T&M rates. Unless accompanied by a detailed statement of work and specifically designated as binding, any total pricing amounts or "not to exceed" limitations appearing in a T&M Task Order shall be considered reasonably accurate estimates, subject to revision. Time shall not be of the essence unless clearly stated otherwise in the Task Order.

(b) **Fixed Price Task Orders.** All Services performed on a Fixed Price basis shall be at the price stated in the applicable Task Order, subject to Contractor's approval of a Statement of Work that sets forth in reasonable detail the scope of such work. If part of a Fixed Price Task Order involves the preparation of a requirements analysis or design document needed to establish the scope of remaining work, then Contractor shall not be obligated to proceed beyond such preliminary work until the document is in mutually acceptable form. Once a Statement of Work under a Fixed Price Task Order has been established, the Customer shall resist changes to the Statement of Work. Any such changes shall be subject to Contractor's approval and described in a written Change Order that includes an appropriate adjustment to the price, delivery dates or both. If the parties cannot agree on the characterization of an item as "out-of-scope," Contractor may in its discretion fill the request without prejudice to its claim for reasonable compensation. Out-of-scope work shall be deemed performed on a T&M basis at the rates referenced in Subsection (a) ("Time & Materials Task Orders"). Unless otherwise stated in the Task Order: (i) all work schedules shall be considered reasonably accurate estimates, subject to revision; (ii) Customer is responsible for cooperation of its personnel and performance of other contractors not under Contractor's direction and control, and (iii) Customer shall ensure proper site and environmental conditions for the work performed hereunder.

3. **Testing & Acceptance.** All Custom Work Product and other Deliverables of a nature suitable for testing shall be subject to acceptance testing under procedures mutually agreed to by the parties and described in the applicable Task Order. Such testing shall be reasonably designed to determine whether the Deliverables function substantially in accordance with the relevant specifications. Unless otherwise agreed, the Deliverables shall be deemed accepted upon the earlier of Customer's written acceptance or beneficial use.

4. **Term.**

(a) **Basic Ordering Period.** The duration of the general relationship and period in which Task Orders may be executed under this Agreement (the "Term") shall commence on the date last below written and, unless terminated earlier in accordance with Section 13 ("Termination"), shall continue in full force and effect for a period of one (1) year. The Term shall automatically be renewed for successive one (1) year periods unless either party notifies the other within thirty (30) days prior to expiration of the then current Term that the Agreement shall not be renewed. Should the Term otherwise expire during performance of a project specified in a Task Order, Customer shall have the option of extending the Term for a period ending with completion of such Task Order (not to exceed thirty (30) days unless otherwise agreed by Contractor).

(b) **Particular Task Orders.** Once a Task Order is executed, the Contractor shall be deemed retained until the period of performance or work described therein is completed according to its terms or this Agreement is otherwise terminated under Section 13 ("Termination").

(c) **Effect of Termination.** Termination shall have no effect on Customer's obligation to pay the applicable labor rate, fee or an equitable portion of any Fixed Price Task Order with respect to Services commissioned or Deliverables ordered (and which cannot reasonably be canceled by Contractor) prior to the effective date of termination.

5. **Price & Payment.**

(a) **Price.** Applicable prices for all Services and other Deliverables shall be specified in the Task Order. The price includes Contractor's wages, overhead, general and administrative expenses and all other indirect costs and profit to be recovered or charged under the Task Order.

(b) **Invoices.** All Services rendered and accepted under a T&M Task Order shall be invoiced weekly as work progresses (but in no event later than forty-five (45) days after such Services are rendered). Services performed under a Fixed Price Task Order shall be paid according to the payment schedule set forth therein or, if not specified, then invoices shall be submitted for an amount equal to ½ the contract price upon commencement of work, and ½ upon final acceptance or beneficial use.

(c) **Payment.** Payment shall be made within ten (10) days after date of invoice. Customer may not withhold or "setoff" any amounts due hereunder and Contractor reserves the right to cease work without prejudice if amounts are not paid when due. Any late payment shall be subject to any costs of collection (including legal fees of 17.5% pre-filing, or 35% after filing formal proceedings) and shall bear interest at the rate of one (1) percent per month or fraction thereof until paid.

(d) **Out-of-Pocket Costs & Taxes.** Except as otherwise set forth in this Agreement, prices quoted for Services do not include and Customer shall reimburse Contractor for its cost of travel (air & cab fare, lodging, auto rental or local mileage, standard per diem, etc.) and out-of-pocket costs for photocopying, overnight courier, long-distance telephone and the like. Customer shall pay, indemnify and hold Contractor harmless from all sales, use, gross receipts, GST, value-added, personal property or other

tax or levy (including interest and penalties) imposed on the Services and Deliverables provided hereunder, other than taxes based on the net income or profits of Contractor.

**6. Proprietary Rights.** The ownership of Custom Work Product created under this Agreement shall be specified in the applicable Task Order. For these purposes, "Custom Work Product" means all analyses, discoveries, designs, software routines, programs, documentation, training manuals, and any fixes, new releases, enhancements or derivative works of the foregoing created by Contractor or its personnel after the effective date of this Agreement and in furtherance of a Task Order. If such ownership is not specified in the Task Order: (a) the Contractor shall be deemed to own all right, title and interest in the Custom Work Product, (b) Customer expressly acknowledges and agrees that none of the Custom Work Product shall be deemed to constitute "work made for hire" under U.S. copyright laws (17 U.S.C. Sec. 101) and, alternatively, Customer hereby irrevocably assigns to Contractor all ownership rights and irrevocably waives all other rights (including moral rights) it might have in the Custom Work Product, (c) Contractor reserves all rights not expressly granted hereunder, including the right to distribute, sublicense, rent, loan, lease, modify, translate, alter or prepare derivative works of the Custom Work Product. Customer shall, at any time upon request, execute any documentation required by Contractor to vest exclusive ownership of the Custom Work Product in Contractor (or its designee).

**7. Confidential Information.**

**(a) Acknowledgment of Confidentiality.** Each party hereby acknowledges that it may be exposed to confidential and proprietary information belonging to the other party or relating to its affairs, including, without limitation, source code and design materials for Custom Work Product and other materials expressly designated or marked as confidential. Confidential Information does not include (i) information already known or independently developed by the recipient; (ii) information in the public domain through no wrongful act of the party, or (iii) information received by a party from a third party who was free to disclose it.

**(b) Covenant Not to Disclose.** Each party hereby agrees that during the Term and at all times thereafter it shall not use, commercialize or disclose the other party's Confidential Information to any person or entity, except to its own employees having a "need to know," and to such other recipients as the other party may approve in a signed writing. Neither party shall disassemble, decompile or reverse engineer any Custom Work Product owned by the other party and made available in object code form and any information obtained in violation of this restriction shall be deemed Confidential Information owned exclusively by the owner of the original materials. Each party shall use at least the same degree of care in safeguarding the other party's Confidential Information as it uses in safeguarding its own Confidential Information, but in no event shall a party use less than due diligence and care. Neither party shall alter or remove from any software, documentation or other Confidential Information of the other party (or any third party) any proprietary, copyright, trademark or trade secret legend.

**8. Non-circumvention.** During the Term and for a period of one (1) year thereafter, Customer agrees not to hire, solicit, nor attempt to solicit the services of: (i) any subcontractor of Contractor assigned to this relationship or (ii) any Contractor employee without the prior written consent of Contractor. Placement of advertisements of general circulation shall not, by itself, be considered a violation of this provision.

**9. Injunctive Relief.** The parties acknowledge that violation by one party of the provisions of Section 6 ("Proprietary Rights"), Section 7 ("Confidential Information") or Section 8 ("Non-circumvention") would cause irreparable harm to the other party not adequately compensable by monetary damages. In addition to other relief, it is agreed that preliminary and permanent injunctive relief shall be available without necessity of posting bond to prevent any actual or threatened violation of such provisions.

**10. Warranties.**

(a) **Noninfringement Warranty.** Contractor represents and warrants to the best of its knowledge and belief that the Deliverables (including Custom Work Product), when properly used as contemplated herein, will not infringe or misappropriate any United States copyright, trademark, patent, or the trade secrets of any third persons. Upon being notified of such a claim, Contractor shall (i) defend through litigation or obtain through negotiation the right of Customer to continue using the Deliverable; (ii) rework the Deliverable so as to make it noninfringing while preserving the original functionality, or (iii) replace the Deliverable with functionally equivalent materials. If none of the foregoing alternatives provide an adequate remedy, Customer may as its sole remedy terminate all or any part of this Agreement and recover amounts paid hereunder with respect to the infringing Deliverable.

(b) **No Performance Warranties.** Contractor is providing all Services, Custom Work Product and other Deliverables hereunder strictly on an "as is" basis without any express or implied warranty, guarantee or other assurance of quality, conformity with specifications, reliability or functionality.

(c) **Warranty Disclaimer.** THE CONTRACTOR HEREBY DISCLAIMS WITH RESPECT TO ALL SERVICES, SOFTWARE, CUSTOM WORK PRODUCT AND OTHER DELIVERABLES PROVIDED HEREUNDER, ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, ACCURACY, INTEGRATION OR FITNESS FOR A PARTICULAR PURPOSE.

**11. Limitation of Remedies & Liabilities.** The parties acknowledge that the following provisions have been negotiated by them and reflect a fair allocation of risk:

(a) **Remedies.** Except for certain injunctive relief authorized under Section 9 ("Injunctive Relief"), Customer's sole and exclusive remedies for Contractor's default hereunder shall be (i) to obtain the repair, replacement or correction of the defective services or deliverable to the extent warranted under Section 10 ("Warranties") or, if Contractor reasonably determines that such remedy is not economically or technically feasible, (ii) to obtain an equitable partial or full refund of amounts paid with respect to the defective services or deliverable.

(b) **Liabilities.** CONTRACTOR SHALL NOT BE LIABLE FOR ANY AMOUNT EXCEEDING THE TOTAL PORTION OF THE CONTRACT PRICE ACTUALLY PAID BY CUSTOMER FOR THE TASK ORDER AT ISSUE. IN NO EVENT SHALL CONTRACTOR BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST SAVINGS, LOST PROFIT OR BUSINESS INTERRUPTION EVEN IF CONTRACTOR IS NOTIFIED IN ADVANCE OF SUCH POSSIBILITY) ARISING OUT OF OR PERTAINING TO THE SUBJECT MATTER OF THIS AGREEMENT. THIS LIABILITY LIMIT IS INDEPENDENT OF REMEDY LIMITS.

**12. Notices.** Notices sent to either party shall be effective when delivered in person or transmitted by fax machine, one (1) day after being sent by overnight courier, or two (2) days after being sent by first class mail postage prepaid to the address on the first page hereof or such other address as a party may give notice. A facsimile of this Agreement and notices generated in good form by a fax machine (as well as a photocopy thereof) shall be treated as "original" documents admissible into evidence unless a document's authenticity is genuinely placed in question.

**13. Termination.** This Agreement shall terminate upon expiration of the Term described in Section 4 ("Term"); provided, however, that if such expiration would occur during pendency of a Task Order having a specified period of performance, the Term hereof shall automatically be extended to be coterminous with such Task Order to the extent permitted under Section 4(a) ("Basic Ordering Period"). In addition to other relief, either party may terminate this Agreement if the other party breaches any material provision hereof and fails within ten (10) days after receipt of notice of default to correct such default or to commence corrective action reasonably acceptable to the aggrieved party and proceed with due diligence to completion. Either party shall be in default hereof if it becomes insolvent, makes an assignment for the benefit of its creditors, a receiver is appointed or a petition in Bankruptcy is filed with respect to the party and is not dismissed within thirty (30) days. Termination shall have no effect on the parties' rights or obligations under Section 7 ("Confidential Information"), Section 8 ("Non-circumvention"), Section 9 ("Injunctive Relief") or Section 10 ("Warranties").

**14. Disputes & Choice of Law.** Except for certain emergency judicial relief authorized under Section 9 ("Injunctive Relief"), the parties agree that all disputes shall be submitted to a single arbitrator who shall be a former judge or attorney having experience in similar disputes. The proceedings shall be conducted pursuant to the Streamlined Arbitration Rules and Procedures and the U.S. Arbitration Act, 9 U.S.C. Sec. 1 et seq. ("Arbitration Act"). The award of the arbitrator shall include a written explanation of the decision, shall be limited to remedies otherwise available in court and shall be binding upon the parties and enforceable in any court of competent jurisdiction. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF THE UNITED STATES ("NATIONAL LAW") AND PUERTO RICO ("LOCAL JURISDICTION"), WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. THE PARTIES WILL INITIATE ANY DISPUTE RESOLUTION PROCEEDING IN SUCH LOCAL JURISDICTION AND IRREVOCABLY CONSENT TO EXCLUSIVE PERSONAL JURISDICTION AND VENUE THEREIN. The U.N. Convention on Contracts for the International Sale of Goods and the Unfair Contracts Act in the United Kingdom shall not apply to this Agreement. Any claim against Contractor will be brought within one (1) year after it arose, or be barred.

**15. Independent Contractor Status.** Each party and its people are independent contractors in relation to the other party with respect to all matters arising under this Agreement. Nothing herein shall be deemed to establish a partnership, joint venture, association or employment relationship between the parties. Each party shall remain responsible, and shall indemnify and hold harmless the other party, for the withholding and payment of all Federal, state and local personal income, wage, earnings, occupation, social security, worker's compensation, unemployment, sickness and disability insurance taxes, payroll levies or employee benefit requirements now existing or hereafter enacted and attributable to themselves and their respective people.

**16. Security, No Conflicts.** Each party agrees to inform the other of any information made available to the other party that is classified or restricted data, agrees to comply with the security requirements imposed by any state or local government, or by the United States Government, and shall return all such material upon request. Each party warrants that its participation in this Agreement does not conflict with any contractual or other obligation of the party or create any conflict of interest prohibited by the U.S. Government or any other government and shall promptly notify the other party if any such conflict arises during the Term.

**17. Insurance, Indemnity.** Each party shall maintain adequate insurance protection covering its respective activities hereunder, including coverage for statutory worker's compensation, comprehensive general liability for bodily injury and tangible property damage, as well as adequate coverage for vehicles. Each party shall indemnify and hold the other harmless from liability for bodily injury, death and tangible property damage resulting from the acts or omissions of its officers, agents, employees or representatives acting within the scope of their work.

**18. Compliance with Export Regulations.** Each party has or shall obtain in a timely manner all necessary or appropriate licenses, permits or other governmental authorizations or approvals to perform its responsibilities hereunder. Neither party shall directly or indirectly export or re-export (including by transmission) any regulated technology to any country to which such activity is restricted by U.S. regulation or statute, without the prior written consent, if required, of the Bureau of Export Administration of the U.S. Department of Commerce. This provision and the assurances made herein shall survive termination of this Agreement.

**19. U.S. Government Restricted Rights.**

**(a) Department of Defense.** Notwithstanding any other provision hereof, Licensee agrees that: (i) the Deliverable is delivered as "Commercial Computer Software" as defined in the Rights in Commercial Computer Software clause at DFARS 227.7202-3; (ii) the Deliverable has been developed entirely at private expense; (iii) Licensee is solely responsible for any effects or costs in connection with modifications of the Deliverable independently made by or for DOD including, but not limited to, impacts on compatibility or support; (iv) the Deliverable is deemed to be adequately marked when the legend below is affixed to the Deliverable or its storage media perceptible directly or with the aid of a machine or device, and (v) for the purposes of this Section, DFARS shall include any applicable successor or replacement clause or regulation.

**RESTRICTED RIGHTS LEGEND**

Use, duplication or disclosure by the Government is subject to restrictions as set forth in the Rights in Commercial Computer Software clause at DFARS 227.7202-3. The contractor is Leamsi Fontáñez DBA R1 Software, and its address is: Reparto Montellano C-13 Calle A, Cayey, PR 00736.

**(b) Civilian Agencies.** Notwithstanding any other provision hereof, Licensee agrees that: (i) the Deliverable and Documentation are "restricted computer software" as defined in the Commercial Computer Software-- Restricted Rights clause at FAR 52.227-19; (ii) the Deliverable was developed entirely at private expense; (iii) the Deliverable is delivered with only the specific rights set forth in subparagraph (c)(2) of the Commercial Computer Software--Restricted Rights clause at FAR 52.227-19; (iv) the Deliverable is deemed to be adequately marked when the legend below is affixed to the Deliverable or its storage media:

**RESTRICTED RIGHTS LEGEND**

Notice- Notwithstanding any other lease or license agreement that may pertain to, or accompany the delivery of, this restricted computer software, the rights of the Government regarding its use, reproduction and disclosure are as set forth in subparagraph (c)(2) of the Commercial Computer Software- Restricted Rights clause at FAR 52.227-19.

**20. Miscellaneous.** This document and the Task Orders constitute the entire and exclusive agreement between the parties with respect to the subject matter hereof and supersede all other communications, whether written or oral. This Agreement may be modified or amended only by a writing signed by the party against whom enforcement is sought. Except as specifically permitted herein, neither this Agreement nor any rights or obligations hereunder may be transferred, assigned or subcontracted by Contractor without the Customer's prior written consent and any attempt to the contrary shall be void. Neither party shall be liable for delays caused by events beyond its reasonable control. Any provision hereof found by a tribunal of competent jurisdiction to be illegal or unenforceable shall be automatically conformed to the minimum requirements of law and all other provisions shall remain in full force and effect. Waiver of any provision hereof in one instance shall not preclude enforcement thereof on future occasions. Headings are for reference purposes only and have no substantive effect.

**IN WITNESS WHEREOF**, for adequate consideration and intending to be legally bound, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

**R1 Software**

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By:

By:

Name: Leamsi Fontáñez

Name:

Title: Owner

Title:

Date:

Date: