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Development Agreement

entered into by and between

Company A
hereinafter referred to as „Customer“

and

Company B
hereinafter referred to as „Contractor“

as follows:

I.

The Contractor has provided the Customer with an offer to technical development of … attached hereto as Annex 1. Such offer constitutes basis for the supplies and services of the Contractor as per Annex 2 including the time schedule and steps to be completed within such time schedule. Annex 1 and Annex 2 constitute key contents of the Contractor’s works owed under this agreement.

II.

(1) The Contractor agrees to start upon conclusion of this agreement and complete by … the development works referred to in Article I above.

(2) For the purposes of the Contractor executing these works, the Customer shall make available to the Contractor the premises referred to in Annex 3 hereto which shall include the equipment belonging to such premises. The Customer ensures that the Contractor, his employees or third parties retained by the Contractor including suppliers and sub-contractors shall have unrestricted access to such premises.

III.

(1) The Contractor agrees to inform the Customer by the end of each calendar quarter and initially on the … on the progress of its works through a written report. This shall include a summary presentation of the development works and the results achieved. Upon demand of the Customer, the Contractor shall provide verbal comments on the content of these reports.

(2) The Contractor agrees to immediately inform the Customer in writing and give reasons for any expected or actual deviations from the time schedule set out in Annex 2 or the completion date as agreed in Article 2 subsection 1 above. For the avoidance of doubt, the parties agree that the Contractor shall have no right to demand changes of the deadlines set out in Annex 2.

(3) The Customer is entitled to inspect the progress of the development works and to update himself on the status of such works after giving advance notice and consultation with the Contractor. Upon demand of the Customer, the parties may mutually agree that such inspection rights set out in subsection 1 above may be exercised by a qualified third party. The Contractor shall not unreasonably withhold his consent hereto.

(4) The Contractor represents that he will conduct his development works in accordance with the Customer’s quality assurance guidelines set out in Annex 4 hereto. The Customer shall at all times be entitled to verify compliance with these quality assurance guidelines in the development facilities of the Contractor or have such audit performed

through an independent external quality assurance expert.

(5) By no later than 10 days after conclusion of this agreement the parties shall nominate towards their counterpart a person in charge and its deputy. On the Contractor's side, this shall be the project leader.

IV.

(1) The parties agree that the mandate of the Contractor is mainly based on his expertise and that the services owed under the terms of this agreement shall generally be provided in person only.

(2) Any transfer (including a partial transfer) of obligations under this agreement to any third party shall require prior written consent of the Customer.

(3) No party may transfer any rights under this agreement or parts thereof to any third party without prior written consent of the counterpart.

V.

(1) The overall remuneration for the supplies and services (of the Contractor) provided under this agreement under Article 1 shall be EUR … plus VAT. This shall cover all works of the Contractor (including any third party services permitted in accordance with Article 4 subsection 2).

(2) The overall remuneration shall be payable in instalments in accordance with the achievement of the steps according to Annex 2. The parties agree on the following due dates provided that the Customer shall make the payments within 14 days after having being invoiced by the Contractor.

EUR …	after conclusion of this agreement
EUR …	after completion of step 1
EUR …	after completion of step 2
EUR …	after completion of step 3
EUR …	after completion of step 4
EUR …	after acceptance in accordance with Article 6
EUR …	after expiry of the warranty term in accordance with Article 11

(3) The Contractor is entitled to demand payment of the final instalment prior to expiry of the warranty term if he provides the Costumer with a bank guarantee of even amount to cover warranty claims. Any fees for such bank guarantee shall be at the expense of the Contractor. By no later than ten days after expiry of the warranty term the Costumer will hand over to the Contractor the guarantee deed.

(4) Notwithstanding any provisions of statutory law, the Contractor may in the event of late payments demand payment of a default interest of 5 % above the prime rate of the ECB without being required to serve a warning notice. The Contractor shall be free to claim compensation of a proven higher interest amount.

VI.

(1) … days prior to the anticipated date of acceptance as set out in Article II subsection 1, the Contractor shall notify the Costumer in writing on the readiness of acceptance of the development result.

The parties shall thereupon conduct a formal acceptance procedure. The specification and service list attached hereto as Annex 5 shall form the basis of the acceptance. The acceptance shall be recorded in minutes and be signed by both parties.

(2) The Costumer may refuse acceptance in the event of material deficiencies until the Contractor shall have remedied such deficiencies with a reasonable grace period that the Costumer shall specify for such purpose. In the event of non-material deficiencies, the Costumer shall be under an obligation to accept. All deficiencies shall be recorded in the minutes of acceptance. The Contractor is obliged to remedy these deficiencies within a reasonable period of time.

(3) If, for reasons outside the control of the Contractor, the acceptance date shall be delayed, then acceptance is deemed to have taken place at the completion date as set out in Article II subsection 1 above. Acceptance shall also be deemed to have taken place if the Costumer takes possession of, or uses otherwise, the contractual equipment.

VII.

(1) If the Contractor shall be late in meeting, the date of acceptance agreed hereunder, then he shall pay a penalty to the Costumer. This shall be … % of the overall net remuneration for each complete week of default provided that the maximum amount shall be no more than … % of the overall net remuneration.

(2) This shall be without prejudice of the Costumer's right to claim further damage compensation; in such case, any penalty payments shall be credited towards such claims.

VIII.

(1) The parties mutually confirm that, at the time of the conclusion of this agreement, the Contractor owns the intellectual property rights as listed in Annex 6 hereto. Notwithstanding any use for the purposes of this agreement, these property rights shall remain with the Contractor.

(2) The Contractor agrees to immediately inform the Costumer and offer for acquisition any inventions that employees of the Contractor shall make during the term and in the course of discharging the contractual obligations of this agreement. The Costumer shall within four weeks after receipt of such offer inform the Contractor in writing whether he assumes the rights attached to such invention. The Costumer agrees to keep confidential the invention and all details having been made available to him so long as necessary ensure a smooth filing as intellectual property.

(3) If the Costumer states in writing that he has no interest in taking over the rights attached to the invention, then the Contractor shall have the right to use it (or parts thereof) and to file as intellectual property at his own expense. Such intellectual property shall then be at the unrestricted disposal of the Contractor.

(4) If the Contractor intends to discontinue the use or maintenance of an intellectual property that he has filed in accordance with subsection 3 above, then he shall notify the Costumer of such intention in writing and shall offer him the proprietary rights for take over free of charge. If the Costumer accepts such offer in writing by no later than four weeks after having received the offer, then he shall assume all costs of transfer, continuation and maintenance of the property right; if not, then the Contractor may without further notice proceed with the proposed discontinuation. In the event of an agreed transfer of such property right, the parties will do all acts and file all declarations necessary to implement such transfer.

(5) The Contractor grants to the Costumer a non-exclusive and non-transferable right to use the proprietary rights referred to in Article 8 sub-section 1 above to the extent the underlying inventions have been of (at least of a partial) causal effect to the development results. The parties hereto will well ahead of the use of such property agree use of such rights through conclusion of a license agreement at terms that shall be appropriate and reflect common business practice. Failing such agreement, a third party expert appointed by the parties shall determine what shall be appropriate and reflect common business practice. If the parties should be unable to agree within four weeks on a common expert, then the president of the Chamber of Commerce of … shall appoint such expert upon demand of one on the parties hereto.

IX.

(1) The Contractor represents and warrants that the project works will be conducted in accordance with the state of the art science and technical expertise. The Contractor further agrees to perform the development works and to

procure completion of the developed equipment such that it is in accordance with the agreed specification and free of defects that would jeopardise or deteriorate the value or the ability of being used generally or as assumed under this agreement. The warranty term shall be … months starting at the date of formal acceptance.

(2) In the event of defective deliveries/services the Contractor shall, within a reasonable period of time either cure the same or replace defective deliveries through new parts. The Customer may exercise such right to demand remedial works or replacement delivery twice for each warranty case. Upon unsuccessfully expiry of the second grace period, the Customer may rescind this agreement or demand a reduction of the remuneration. Warranty claims shall not exist if the developed equipment shall have been altered or repaired without prior written consent of the Contractor.

(3) The Contractor does not assume any liability for further damages or consequential damages or damages outside the developed equipment unless such damages shall have been caused by gross negligence or wilful misconduct. The warranty shall not cover those parts that are subject to normal or operationally caused wear and tear.

(4) The Contractor does not assume any warranty that the development results achieved will not infringe any third party intellectual property rights. However, he will use his best efforts to avoid such infringement. As part of such efforts, the Contractor will with reasonable care at its own expense conduct a research on possibly conflicting intellectual property. He will inform the Customer of the results of such research.

X.

(1) The Contractor shall only be liable for wilful misconduct and gross negligence. Any liability for indirect and/or consequential damages including loss of profit or loss of production shall be expressly excluded.

(2) To the extent that any third party shall (on whatever basis) raise any claims against the Contractor, his employees or agents, the Customer shall, upon first written demand, indemnify the Contractor against such damage compensation claims. This shall not apply in the event of gross negligence or wilful misconduct on the side of the Contractor, its employees or agents.

XI.

(1) The Contractor agrees to make available to the Costumer the development results obtained throughout the performance of the development works and shall not make public or available to any third party reports or correspondence sent to the Costumer unless the same shall have been approved in writing by the Customer. The Contractor further agrees not to use for own works or exploit the same or make known to any third party any business secrets disclosed to him by the Customer including any know-how that he shall have provided with for the purposes of the development works.

(2) The parties agree that inventions made and intellectual property filings shall until the date of their disclosure be kept strictly confidential.

(3) The Contractor agrees to impose that confidentiality undertaking assumed under the foregoing provisions to subcontractors, free lancers and employees retained by him.

(4) The confidentiality undertaking according to these provisions shall survive the expiry of this agreement and remain in force for three years after expiry of this agreement.

XII.

(1) The Customer may terminate this agreement with a notice period of one month effective as at the end of any calendar quarter, but in no event earlier than by …

(2) The Customer agrees to assume all costs accrued on the Contractor’s side (including unavoidable costs) until the time at which the termination takes effect. All payments including the settlement payment hereunder may not exceed the overall remuneration owed under Article 5 if the agreement had not been terminated.

(3) Without prejudice to the foregoing provision, any party may terminate this agreement for good cause. A good cause on the Customers shall be the failure of the Customer to make his payments or to make the payments timely despite a warning notice and specifying a cure period.

XIII.

(1) No verbal side agreements have been made. Amendments or supplements to this Agreement including this provision shall be in writing.

(2) If any provision of this Agreement shall be entirely or partly invalid or unenforceable, this shall not affect the validity and enforcement ability of all other provisions of this Agreement. The invalid or unenforceable provision shall be regarded as replaced by such valid and enforceable provision that as closely as possible reflects the economic purpose that the parties hereto had pursued with the invalid or unenforceable provision.

(3) This Agreement shall be governed and construed in accordance with the laws of the Republic of Austria. The courts of … shall have non-exclusive jurisdiction for all disputes between the parties arising from this Agreement.