GATES

MASTER PROFESSIONAL SERVICES AGREEMENT

This MASTER PROFESSIONAL SERVICES AGREEMENT is effective as of  (the “Effective Date”), between Gates Corporation, (“Company”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a/an [INSERT TYPE OF COMPANY] formed under the laws of [INSERT STATE/COUNTRY OF INCORPORATION], having an office at , , (“Service Provider”). Company and Service Provider are each a “Party” to this Agreement and are the “Parties” to this Agreement.

BACKGROUND

1. Service Provider is a provider of professional services, which may include consulting, advising, design, development, engineering, or other services.
2. Company desires to engage Service Provider to provide professional services as described in statements of work.

Accordingly, Company and Service Provider agree as follows:

AGREEMENT

1. Services

Service Provider shall provide, on a non-exclusive basis, the professional services (the “Services”) described in a statement of work entered into by the parties (a “Statement of Work” or “SOW”). Each SOW is subject to this Agreement and describes the scope of the Services to be provided and the fees that Company shall pay to Service Provider upon Company’s reasonable satisfaction that the Services have been completed in accordance with the terms set forth in this Agreement and the SOW. All SOWs must be executed by the parties prior to the commencement of Services by Service Provider. The terms of the Services between the parties shall be controlled by this Agreement regardless of whether the Statement of Work makes reference hereto. The term “Contractor” means any individual providing Services on behalf of Service Provider.

If Services are to be performed outside the United States of America, Service Provider shall identify the country where Services are performed on the Statement of Work. Service Provider may not change the country for performance of Services without Company’s prior written consent.

Service Provider shall devote as much time to the Services as is necessary to complete the Services in a timely manner, and shall provide, upon request and at no additional charge to Company, progress reports on Service Provider’s activities associated with the Services as well as costs, data and other matters pertaining to the Services as required by Company.

1. Company Affiliates

Company Affiliates may execute Statements of Work with Service Provider under this Agreement by accepting the terms of this Agreement in writing. “Affiliate” means any corporation or other business entity controlling, controlled by, or under common control with Company, where “control” means the ability to control or direct the management of an entity. For purposes of each Statement of Work, the term “Company” in this Agreement means the Affiliate signing the Statement of Work. If a Company Affiliate executes a Statement of Work, that Affiliate is solely liable for payment thereunder and Company shall not be jointly and severally liable with or a guarantor of that Affiliate, nor shall any other Company Affiliate be jointly and severally liable with or a guarantor of that Affiliate. If an Affiliate is no longer affiliated with Company, Service Provider shall honor any outstanding Statements of Work with that Affiliate, and that Affiliate shall have the right to continue to issue Statements of Work under these terms until expiration or termination of this Agreement.

1. Fees and Payment

Company agrees to pay Service Provider the fees stated in the applicable Statement of Work. Prior to submitting any invoices for Services billed on an hourly basis, Service Provider shall prepare and submit to Company weekly time reports showing the total number of hours worked for each Contractor performing services.

Company shall reimburse Service Provider for travel and other expenses incurred by Service Provider if the expenses have been approved in advance by Company in the Statement of Work, Service Provider incurs such expenses in accordance with Company’s travel policy (including requirements for accepted forms and required documentation), and such expenses are directly associated with Service Provider’s performance of the Services.

Service Provider shall invoice Company on a monthly basis and state on each invoice the location where Services are provided and the corresponding charges per location. Company shall pay all undisputed amounts due within 90 days following the date that a correct and valid invoice is received, subject to a 1.5% discount for all amounts that are paid within 30 days following the end of the calendar month in which a correct and valid invoice is received. If Company has a good faith dispute about any items invoiced, Company shall pay the entire undisputed amount of the invoice and provide written detail concerning the amount in dispute. The parties shall use good faith efforts to reconcile the dispute within 90 days of the invoice date.

Service Provider shall cooperate with Company in order to structure the transactions contemplated by this Agreement in a tax-efficient manner.

1. Company is responsible for all sales, use, and value added taxes that Service Provider identifies in each original invoice relating the Services provided hereunder as required by Applicable Law (but excluding taxes based on Service Provider net income, franchise, property, capital stock, use of non-resident or foreign personnel to provide Services or as provided below). Applicable tax amounts (if any) are not included in the fees set forth in this Agreement and any Statement of Work. In each instance, Service Provider shall invoice Company for applicable tax amounts unless Company has provided Service Provider with evidence of Company’s tax exempt status in the applicable jurisdiction. Service Provider shall provide necessary documents to Company in order for Company to claim any credit or refund of taxes if applicable.
2. Company shall withhold any taxes as required by Applicable Law from payment to Service Provider. If Service Provider is exempt from such withholding taxes as a result of a tax treaty or other regime, Service Provider shall provide Company with a valid tax treaty residency certificate or other tax exemption certificate no less than 30 days prior to payment being due.
3. Independent Contractor

Neither party is granted any right or authority to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of the other party. SERVICE PROVIDER (AND EACH CONTRACTOR) IS ACTING AS AN INDEPENDENT CONTRACTOR TO COMPANY; NEITHER SERVICE PROVIDER NOR ANY CONTRACTOR IS ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS, WORKERS’ COMPENSATION BENEFITS, PENSION, BONUS OR OTHER FRINGE BENEFITS FROM COMPANY. SERVICE PROVIDER (AND EACH CONTRACTOR) SHALL PAY ALL NATIONAL, FEDERAL AND STATE INCOME TAX, SOCIAL SECURITY AND OTHER AMOUNTS DUE UNDER APPLICABLE PAYROLL AND SIMILAR LAWS WITH RESPECT TO ALL AMOUNTS PAID IN CONNECTION WITH THIS AGREEMENT. Service Provider shall defend, indemnify and hold Company harmless from and against any claims, damages, losses or liabilities (including reasonable attorneys’ fees and costs) brought or asserted against or incurred by Company as a result of Service Provider’s or any Contractor’s failure to pay any taxes or other amounts contemplated in this section.

1. Regulations and Policies

As a condition to entering Company’s property or facilities, Service Provider and all Contractors shall adhere to Company’s rules, safety regulations, and related company policies, including those on confidentiality, security (including physical, electronic, and data), equipment usage, parking designation, building access and company identification badges, and shall sign whatever forms are required by Company for security and administrative reasons.

If Service Provider requires or is given access to any of Company’s computer, data, information, telecommunications or other systems (“Systems”), Service Provider’s authorization to access and use such Systems is strictly limited to the extent required for performance of the Services. Service Provider shall take all reasonable precautions to prevent any unauthorized access to or use of the Systems by any Contractors or third parties.

If Company provides any laptops, desk tops, mobile devices, cell phones or other similar equipment (“PCs”) to Service Provider or any Contractors in connection with performance of the Services, the parties will enter into a PC Lease Addendum (“PC Lease Addendum”). Once completed and signed by both parties, the PC Lease Addendum will be incorporated into this Agreement as of its effective date. At Company’s option, Company may require that individual Contractors sign individual agreements with respect to any PCs provided by Company substantially in the same form as the PC Lease Addendum**.**

If Company and Service Provider agree that Service Provider will provide recruiting services to Company, the parties will enter into a Recruiting Services Addendum (“Recruiting Services Addendum”). Once completed and signed by both parties, the Recruiting Services Addendum will be incorporated into this Agreement as of its effective date.

1. Contractor Screening

Upon request, Service Provider shall supply to Company information concerning Contractors who may be qualified to perform specified requirements for Company’s needs. Service Provider shall prescreen candidates to verify experience and skills specific to Company’s requirements. Company must approve the assignment of all Contractors prior to assignment on a Company project.

Service Provider understands Company’s goal of providing a drug and alcohol-free workplace. Accordingly, to the extent permissible under Applicable Law, Service Provider shall require Contractors providing services in the U.S. to submit to testing for drug and alcohol usage prior to beginning an assignment with Company; any Contractor who fails a drug and/or alcohol test is ineligible to provide Services to Company. Contractors with assignments to Company of less than 30 days are not subject to these testing requirements.

Further, Service Provider shall require all Contractors who suffer from or contribute to a work related accident in the U.S. to submit to a drug and/or blood alcohol test within 24 hours, unless such testing is prohibited by law. If a Contractor fails a drug and/or blood alcohol test, that individual is subject to immediate termination from performing Services for Company. Service Provider shall pay directly or reimburse Company for testing expenses.

1. Warranties

Service Provider represents and warrants that:

1. Service Provider holds all necessary licenses and permits from local, state, federal, and other governmental authorities required to perform the Services and all such licenses and permits are in full force and effect;
2. Service Provider is in compliance and shall continue to comply, and all Deliverables and Services shall comply, with all Applicable Laws, where “Applicable Laws” means the laws, statutes, rules, regulations, orders or other legal directives promulgated by any governmental body or agency having jurisdiction over a party or location where Services are performed or delivered, or from which any Proprietary Information or Systems are accessed, including laws related to labor and employment, data privacy, employee safety, environmental protection, business operations licensing and authorization, zoning, import/export, non-discrimination, anti-boycott measures and anti-corruption laws, including the United States Foreign Corrupt Practices Act of 1977 and the U.K. Bribery Act of 2010;
3. all Contractors are qualified to perform the Services;
4. Service Provider has obtained written agreements from all Contractors that are at least as protective of Company’s interests as this Agreement, including written assignments of Intellectual Property Rights for Company’s benefit and the protection of Company’s Confidential Information; and
5. the Services shall be performed (i) as described in each Statement of Work, (ii) consistent with the standards identified in a Statement of Work (and no less than generally accepted industry standards), and (iii) within the time frames set forth in each Statement of Work.

For any breach of the representations or warranties contained in this Section, Company’s remedies include the prompt re-performance of the Services at no additional charge, or if Service Provider is unable to perform the Services as warranted within a reasonable period of time, then, in addition to Company’s damages, Company has the right to withhold payment, receive a credit, or receive a refund of the fees paid or payable to Service Provider for the non-conforming Services.

Service Provider further represents and warrants that: (a) neither Service Provider nor any Contractor is subject to restrictive obligations (including non-competition and professional ethical duties) that would impair Service Provider’s or any Contractor’s abilities to exercise best efforts for Company; (b) when performing Services in the U.S., each Contractor has proof of identity and authority to work in the U.S. and Service Provider has properly completed all I-9 and other forms as required under Applicable Law; and (c) Service Provider shall maintain appropriate work authorization, visas and similar documentation for all Contractors with regard to each country in which Services are provided.

* 1. Affordable Care Act. Service Provider agrees as follows as it relates to the U.S Affordable Care Act:

Beginning January 1, 2015, if Contract Workers will be performing Services in connection with this Agreement, Provider must offer ACA compliant medical coverage to all of its eligible Contract Workers who are assigned to such engagements with Gates for 30 hours a week or more on average, no later than 90 days of the start of the engagement in accordance with ACA.  Such medical coverage shall be “affordable” and “minimum value” as those terms are defined in the ACA.  The parties agree that the hourly fee for Contract Workers who have elected coverage under the Provider’s group health plan will be higher than the hourly fee for Contract Workers who have waived coverage. To comply with privacy rules, such increase in fee shall not be reflected on an individual basis in the Provider invoice.

If Provider receives notice from a government agency such medical coverage is noncompliant or that penalty will be assessed, Provider must provide written notice to Gates within 30 days.  Provider will indemnify Gates for any penalties and costs (including reasonable attorneys’ fees) that are a result of Internal Revenue Code Section 4980H(b) penalties relating to Contract Workers.

1. Term and Termination

The initial term of this Agreement (the “Initial Term”) is for one year from the Effective Date listed above, unless terminated earlier in accordance with the provisions of this Agreement. This Agreement shall automatically renew for successive annual terms (each, a “Renewal Term”) commencing on each anniversary of the Effective Date unless Company gives Service Provider at least 30 days written notice of Company’s intention not to renew this Agreement. The Initial Term and all Renewal Terms constitute the “Term.”

Upon notice to Service Provider, Company may terminate any Contractor for any reason. Such termination does not relieve Service Provider’s obligations under the Statement of Work.

Company may terminate this Agreement for any reason by giving Service Provider at least 15 days prior written notice. Company may terminate a Statement of Work for any reason after giving Service Provider at least 5 days prior written notice. An Affiliate may only terminate the Statements of Work to which such Affiliate is a party; only Company shall have the right to terminate this Agreement and all Statements of Work. Termination of a given Statement of Work shall not terminate any other Statement of Work or this Agreement. Notwithstanding any notice of termination of this Agreement, Company may at its option identify individual Statements of Work that Service Provider shall complete subject to the terms of this Agreement and the Statement of Work. The parties agree to deal with each other in good faith to wind up all activities during the applicable notice period.

Company may cancel or terminate for default this Agreement in whole or in part upon written notice to Service Provider:

1. if Service Provider becomes insolvent, makes an assignment for the benefit of creditors, or formally declares or has instigated against it any bankruptcy, reorganization, liquidation, or receivership and fails to remove itself from such proceedings within ten days from the date of institution of such proceedings;
2. if Service Provider becomes involved in any legal proceedings that in the opinion of Company interfere with the diligent, efficient performance and satisfactory completion of the Services; or
3. if Company provides Service Provider written notice of Service Provider’s breach of any terms of this Agreement or any Statement of Work and Service Provider fails to cure such breach within 15 days of the initial notice from Company.

Upon receipt of any termination notice, Service Provider shall discontinue Services on the date indicated and Service Provider shall be paid the actual costs and fees (if Services are billed on a time and materials basis) incurred during the performance hereunder to the time specified in the termination notice, to the extent such costs and fees are actual, necessary, reasonable and verifiable and have been incurred by Service Provider prior to and in connection with discontinuing the Services. In no event may such costs and fees include unabsorbed overhead or anticipatory profit nor exceed the total amount of fees authorized under the Statement of Work. If Services are quoted on a fixed price basis, any amounts due to Service Provider under this Agreement shall be prorated based on the Services completed or performed by Service Provider up to and including the date of termination. Payment of fees for Services is subject to Company’s remedies for breach of warranty as set forth above.

Upon the earlier of termination or the conclusion of a Contractor’s assignment for Company, no later than the last day on which a Contractor provides any Services, the Service Provider shall ensure that each terminated Contractor returns all Company-owned property to the designated Company contact. Company has the right to check all property being removed from Company facilities by a Contractor to prevent the removal of Company-owned property from the premises.

Termination of this Agreement for any reason shall not release either Party from liability that the other Party has already incurred, nor affect in any way the survival of any rights, duties or obligations of either Party that are expressly stated elsewhere in this Agreement to survive termination.

1. Proprietary Information

If the parties have a separate confidentiality, nondisclosure or similar agreement protecting the exchange of proprietary or confidential information between the parties (an “NDA”), the NDA supersedes this section with respect to any exchange of such proprietary or confidential information.

The parties agree to this subsection only if the parties do not have a separate NDA effective during the Term.

1. “Proprietary Information” means all information concerning Company, Company’s products, data, documentation, services, customers, vendors, technology or manufacturing processes that is treated by Company as proprietary or confidential.
2. Service Provider shall (i) maintain all Proprietary Information in strict confidence, (ii) not disclose any Proprietary Information to any third parties, (iii) use such Proprietary Information solely in connection with this Agreement and as required to perform of the Services, and (iv) be responsible for any use or misuse of the Proprietary Information by its Contractors. Subject to the foregoing, Service Provider acquires no interests (express, implied or otherwise) to any of Company’s Proprietary Information, and Company retains all interests to the Proprietary Information that is made available to Service Provider.
3. The foregoing restrictions do not apply to any information that: (i) otherwise was previously known by Service Provider without any obligation of confidentiality, as documented in writing; (ii) becomes generally available to the public through no fault of Service Provider; (iii) is disclosed to Service Provider by a third party who has the right to make such disclosure; or (iv) is independently developed by Service Provider without use of the Proprietary Information. Service Provider may also disclose Proprietary Information that is required to be disclosed by Service Provider pursuant to a legal order or law, in which case Service Provider shall give Company reasonable prior notice of such required disclosure and cooperate in any reasonable efforts of Company to limit the scope of any required disclosure.
4. Upon termination of this Agreement or as otherwise requested by Company, Service Provider shall return to Company (or destroy, as instructed by Company) all Proprietary Information (including Proprietary Information stored in electronic format). Upon the request of Company, Service Provider shall certify in a writing signed by an officer of Service Provider that the Service Provider has fully complied with the requirements of this Section.
5. Intellectual Property Rights

“Deliverables” means all documents, prototypes, data, designs, software code, tools, models, concepts, methodologies, systems, analysis frameworks, analyses, reports, leading practices, specifications and other electronic or tangible materials prepared by Service Provider in connection with performance of the Services. “Intellectual Property Rights” means all present and future worldwide interests in (a) works of authorship, discoveries, inventions, improvements, innovations, technical information, procedures, manufacturing or other processes, software, technology and other intellectual property, as reflected in any form, including patent applications, patents, continuations, extensions and divisions, copyrights, trade secrets, mask works, trademarks, trade identities, trade dress, know-how, confidential information, industrial rights, and other similar proprietary information and intangible rights; and (b) all rights relating to possession, ownership and use of the foregoing, including the rights to license, assign, divide, pledge, sell, offer to sell, transfer, import, make or have made, enforce, register and otherwise exploit such interests.

Company is and shall be the owner of all interests, including all Intellectual Property Rights, in the Deliverables. Service Provider shall disclose the Deliverables promptly to Company and give all assistance necessary to secure full title in the Deliverables in Company. Service Provider hereby transfers to Company all interests that Service Provider has or shall have in the Deliverables, including all Intellectual Property Rights in the Deliverables. At Company’s request and expense, Service Provider shall execute all papers and render such other assistance as is necessary for Company to secure or register Company’s rights in the Deliverables in any countries identified by Company. If Service Provider has any rights of authors, “moral rights” or similar rights that cannot be transferred to Company, Service Provider waives such rights in perpetuity, and, if such rights cannot be waived, grants Company a license to such rights as Service Provider Technical Elements as set forth below. Service Provider shall not use the Deliverables for any purpose except as directed by Company.

Deliverables may include data, modules, components, designs, utilities, subsets, objects, program listings, tools, models, methodologies, programs (excluding those under separate license to Company that is not superseded by this Agreement), systems, analyses, analysis frameworks, reports, leading practices, and specifications that are owned, developed or licensed by Service Provider prior to, or independently from, performance of the Services (“Service Provider Technical Elements”). Subject to this section, Service Provider retains all rights to the Service Provider Technical Elements and to any derivative works, modifications or enhancements to Service Provider’s Technical Elements developed in the course of performing the Services. Service Provider shall clearly reference in each Statement of Work all Service Provider Technical Elements delivered to Company under that Statement of Work. Service Provider hereby grants to Company a perpetual, worldwide, non-exclusive, paid-up, transferable license, under all of Service Provider’s Intellectual Property Rights, to use, copy, modify, make, use, sell, offer to sell, import and otherwise exploit such Service Provider Technical Elements as integrated into any Deliverables, and any products, software, or other items or materials that incorporate or embody any Deliverables.

1. Indemnification

Service Provider shall defend, indemnify and hold Company, Company’s Affiliates, and their respective directors, officers, employees, contractors and agents (collectively, “Indemnitees”) harmless from and against any and all losses, liabilities, injuries (both property damage and personal injury, including death), allegations, claims, causes of action, judgments, fines, penalties, costs, and expenses, including reasonable attorney fees and court costs (collectively, “Claims”) incurred by or asserted against Company arising in any way out of Service Provider’s work, performance, or breach of this Agreement. However, the provisions of the indemnification described in this section do not apply to Claims that arise out of Company’s or Company’s employees’ sole negligence; if the negligence of Service Provider or any Contractor may have contributed to the Claim, then the Claim shall be deemed not to arise from Company’s sole negligence. Service Provider understands that, by virtue of this Agreement, Service Provider may be required to defend and indemnify Company even though Company’s own negligence is alleged to have contributed to a Claim.

Service Provider shall defend, indemnify and hold all Indemnitees harmless from and against all Claims that a Deliverable or Service Provider Technical Element (collectively, “Covered Items”) infringes, misappropriates or otherwise violates any third party’s Intellectual Property Rights.

1. If a Covered Item is held or is believed by Service Provider to infringe, Service Provider shall, at Service Provider’s option and expense, (i) modify the Covered Item to be non-infringing; (ii) obtain for Company a license to continue using the Covered Item consistent with the rights granted in this Agreement; or (iii) refund the fees paid for the infringing Covered Item.
2. Service Provider is not required to defend or indemnify Company to the extent a Claim is caused by either (i) Company’s misuse or modification of such Covered Item, or (ii) Company’s failure to use corrections or enhancements provided at no charge by Service Provider to Company.
3. The provisions of the indemnification described in this section do not apply to the extent that (i) the infringing element of the Covered Item at issue was developed according to Company’s detailed specifications, (ii) the Covered Item has been modified by a party other than Service Provider, or (iii) the Covered Item has been used in a manner prohibited by this Agreement.

Company agrees (a) to notify Service Provider in writing within a reasonable period of time from notice of any indemnified claim; (b) that Service Provider has sole control of the defense and all related settlement negotiations; and (c) to provide Service Provider with the assistance, information and authority necessary to perform Service Provider’s obligations under this Section. Service Provider shall reimburse Company for reasonable expenses incurred by Company in providing such assistance, including employee time.

1. Insurance

During the term of this Agreement, Service Provider shall maintain at its expense at least the following insurance, covering Services performed and its contractual obligations under this Agreement:

|  |  |
| --- | --- |
| **Coverage** | **Limits** |
| Worker Compensation | Statutory |
| Errors & Omissions Liability | $1,000,000 Each Claim |
| Employers Liability |  |
| -Bodily Injury by Accident | $2,000,000 |
| -Bodily Injury by Disease | $2,000,000 |
| -Policy Limit for Disease | $2,000,000 |
| Automobile Liability | $1,000,000 Each Accident |
| Commercial General Liability | $2,000,000 Each Occurrence  $3,000,000 General Aggregate |

Umbrella Liability in combination with primary limits is acceptable in meeting these requirements. Service Provider shall provide Company with a certificate of insurance from its insurance company or companies demonstrating the coverage required hereunder and naming Company as an additional insured.

1. Miscellaneous

Notices. Each party shall deliver any notice to be given under this Agreement in writing and either in person, by any method of mail (postage prepaid) requiring return receipt, or by overnight courier, to the party to be notified at the addresses set forth on the cover page of this Agreement, or at any address such party has previously designated by prior written notice to the other. Service Provider shall also deliver copies of any notice to Company to: Gates Law Department, 1551 Wewatta Street, Mail Code 10-A5, Denver, Colorado 80202, USA. Notice shall be deemed to be sufficiently given for all purposes upon the earlier of: (a) the date of actual receipt; (b) if mailed, the date on which receipt of delivery is confirmed; or (c) if delivered by overnight courier, the next business day the overnight courier regularly makes deliveries.

Publicity. Service Provider shall not make any announcement or release any information concerning this Agreement or with respect to Service Provider’s business relationship with Company except as required for performance hereunder or by law.

Gratuities. Company prohibits its employees from using their official position for personal financial gain, or from accepting any personal advantage from anyone under circumstances which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their official duties. Except for de minimis exchanges according to reasonably prudent industry norms, Service Provider shall not extend any gratuity or special favor to employees of Company under circumstances that might reasonably be interpreted as an attempt to influence the recipients in the conduct of their duties.

Governing Law and Dispute Resolution.

1. If both Parties are US residents, exclusive jurisdiction and venue for any action, suit or proceeding concerning this Agreement will be in the federal or state courts located in the city and county of Denver, Colorado, and each Party submits to exclusive personal jurisdiction in the state of Colorado for any such action, suit, or proceeding; and notwithstanding the place of execution or performance, this Agreement will be governed by and construed under and in accordance with the laws of the state of Colorado, USA, irrespective of any laws regarding choice or conflict of laws that direct the application of the Laws of another jurisdiction. Each Party hereby irrevocably waives any objection that such Party may have to the exclusive venue and jurisdiction of the courts identified in this Section. Each Party will accept service of process by registered mail, return receipt requested, in accordance with Colorado or Federal rules of civil procedure.
2. If either Party is a Chinese entity, the laws of China govern this Agreement, irrespective of any laws regarding choice or conflict of laws that direct the application of the laws of another jurisdiction. The Controversy will be submitted to the China International Economic and Trade Arbitration Commission in Shanghai (“CIETAC”) for final resolution by arbitration in accordance with the rules and procedures of CIETAC. The CIETAC tribunal will consist of three (3) arbitrators. Parties will at all times comply with and observe all requirements and rulings of CIETAC made in relation to any Controversy submitted to CIETAC for resolution. Submission of evidential documents may be in copies without the need of notarization unless specifically ordered by the CIETAC tribunal. Any interim decisions or orders by the CIETAC tribunal will be binding and sanctions may be given on failures of any party in implementing such interim decision or order. Any award or determination by the CIETAC tribunal is final and binding on both Parties. The arbitration proceedings will be conducted in the English language.
3. If neither Party is a Chinese entity and either party is not a U.S. entity, then any controversy or claim arising out of or relating to this Agreement including, but not limited to, its breach, existence, validity, legality, enforceability, interpretation, performance, nullity, termination or expiration, (a “Controversy”) will be settled by binding arbitration; and notwithstanding its place of execution or performance, this Agreement will be governed by and construed under and in accordance with the Laws of the State of New York, USA, irrespective of any laws regarding choice or conflict of laws that direct the application of the laws of another jurisdiction. The place of arbitration will be New York, New York, under the rules prescribed by the International Centre for Dispute Resolution (“ICDR”) in accordance with its ICDR Rules. Unless the Parties agree to a single arbitrator, the arbitration will be heard and determined by three arbitrators, who will be appointed pursuant to the ICDR Rules. The arbitration proceedings will be conducted in the English language. The award will be rendered in writing with the reasons detailed. The award may be in the nature of money damages, injunctive relief, or specific performance as decided by the arbitrator. The award resulting from such arbitration is final and the Parties consent to judgment upon said award and agree that such award may be entered in any court of competent jurisdiction. Either Party may initiate arbitration by notifying the other in writing. The arbitrator’s ruling and award from such arbitration is final, the parties consent to judgment upon the award, and the award may be entered in any court of competent jurisdiction.

Severability. If any provision of this Agreement or any Statement of Work is held by an arbitrator or a court of competent jurisdiction to be unenforceable, such provision shall be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under Law and the remaining provisions of this Agreement shall continue in full force and effect.

Assignment and Subcontracting. This Agreement is binding upon and inures to the benefit of the parties, and to their permitted successors and assigns. Neither party shall have the right to assign, delegate or transfer (by sale, operation of law, or otherwise) this Agreement or any of the rights or obligations hereunder without the prior written consent of the other party; however, Company may assign or delegate this Agreement or any Statement of Work to an Affiliate or a successor of Company. Regardless of Company’s written consent to any subcontracting or delegation of this Agreement, Service Provider shall remain liable for all responsibilities and obligations of this Agreement including subcontractors’ performance under this Agreement. Upon receipt of such consent, before allowing any subcontractor to begin performing work hereunder, Service Provider shall enter into a binding written agreement with such subcontractor that protects Company’s rights and interests to at least the same degree as this Agreement. Service Provider shall be responsible for the direction and coordination of the work of each subcontractor. Company shall have no obligation to pay any subcontractor directly. Except for Affiliates of Company that enter into Statements of Work, this Agreement is neither expressly nor impliedly made for the benefit of any party other than those executing it.

Waiver. The failure of a party to insist upon strict performance of any provision of this Agreement or to exercise any right arising out of this Agreement shall neither impair that provision or right nor constitute a waiver of that provision or right, in whole or in part, in that instance or in any other instance.

Survival. In addition to any other provision that by its nature is intended to survive, the following provisions, along with any provisions or terms necessary to interpret or enforce those provisions, survive any termination or expiration of this Agreement: 3, 4, 7, 8, 9, 10, 11, and 13.

Construction. The headings of sections are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word “including” means “including but not limited to.” This Agreement is to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting or causing any instrument to be drafted.

Choice of Language: It is by the express intention of the parties that the present Agreement and all its related documents be drafted in English. *Il est de l’intention expresse des parties à la présente Convention (connaissement, bon de commande, bon de conditionnement ou facture) et tout document s’y rattachant soient écrit en langue anglaise*.

Entire Agreement. This Agreement, together with all Exhibits and Statements of Work issued hereunder, constitutes the entire agreement between the parties and supersedes any prior and contemporaneous understandings, agreements or representations by or among the parties, written or oral, that may have related in any way to the subject matter hereof. This Agreement and any Statement of Work may not be modified or supplemented by any pre-printed terms on change orders, acknowledgments, order acceptances, standard terms of sale, invoice or the like, all of which are rejected; however, this Agreement and any Statement of Work may be modified or supplemented in a writing expressly stated for such purpose and signed by the parties.

IN WITNESS WHEREOF, by their duly authorized Contractors, the parties hereto have executed this Agreement on the dates set out below but to be effective as of the Effective Date.

**Service Provider Gates Corporation**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature) (Signature)

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_