



Exhibit to Statement of Work - Consulting Agreement

This Consulting Agreement ("Agreement") by and between **INFOVISTA SA** or that particular subsidiary of INFOVISTA SA that has accepted your Purchase Order ("InfoVista") and the customer identified in a Purchase Order ("You" or "Customer") and in the Statement of Work ("SOW"), sets forth the terms and conditions whereby InfoVista agrees to provide You with standard professional consulting services. Consulting services performed by InfoVista are provided in accordance with the Statement of Work. You shall also reimburse InfoVista for reasonable and customary travel, meals, lodging and other out-of-pocket expenses incurred by InfoVista during its performance hereunder.

Unless otherwise agreed upon in a SOW executed by the parties, InfoVista shall invoice You monthly for actual work performed plus out-of-pocket expenses such as travel, per diem, telephone and media costs. InfoVista issues monthly invoices at the first of each month following the month in which work is performed. Actual work performed includes activities, which may be performed on and off of the site designated in the Statement of Work. InfoVista shall invoice You, and You shall pay, reasonable expenses incurred by InfoVista's consultants during travel to and from the site designated in the Statement of Work. You shall pay each invoice within thirty (30) days of the invoice date. Any amount due and payable to InfoVista which is not paid within thirty (30) days after the invoice date shall bear interest at the higher of the rate of one and one-half (1½%) per cent per month or as otherwise permitted by law.

1. **PROPERTY RIGHTS.** As all work performed hereunder shall be based upon existing InfoVista technologies, concepts, ideas and proprietary information, InfoVista shall retain all copyright, patent rights, trade secrets and other property rights with respect to any software, documentation, user technical manuals, technology, algorithms, designs, architecture, or other materials which may be furnished, disclosed, or used by InfoVista under this Agreement.

2. **CONFIDENTIALITY.** Each party acknowledges that it will have access to certain confidential information of the other party concerning the other party's business, plans, customers, technology, and products, and other information held in confidence by the other party ("Confidential Information"). Confidential Information will include all information in tangible or intangible form that is marked or designated as confidential or that, under the circumstances of its disclosure, should be considered confidential. Confidential Information will also include, but not be limited to, InfoVista's proprietary technology, including InfoVista services, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, know-how, trade secrets and any related intellectual property rights throughout the world (whether owned by InfoVista or licensed to InfoVista from a third party), including any derivatives, improvements, enhancements, or extensions of InfoVista technology conceived, reduced to practice, or developed during the term of this Agreement by either party that are not uniquely applicable to Customer or that have general applicability in the industry. The terms and conditions of this Agreement are confidential as well as any information relating to an identified or identifiable individual ("Personal Data"). Each party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by, or required to achieve the purposes of, this Agreement, nor disclose to any third party (except as required by law or to that party's attorneys, accountants and other advisors as reasonably necessary), any of the other party's Confidential Information and will take reasonable precautions to protect the confidentiality of such information, at least as stringent as it takes to protect its own Confidential Information.

3. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL INFOVISTA'S LIABILITY FOR DAMAGES EXCEED THE AMOUNT PAID BY YOU UNDER A SOW. INFOVISTA SHALL NOT BE LIABLE FOR LOST PROFITS OR OTHER INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES EVEN IF INFOVISTA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

4. **SERVICE WARRANTY.** InfoVista warrants that the Services will be of a professional quality conforming to generally accepted industry standards and practices. InfoVista shall perform the Services under Your general direction but InfoVista shall determine, in InfoVista's sole discretion, the manner and means by which the Services are accomplished.

5. **TERMINATION.** InfoVista has the right to terminate this Agreement if You default in the payment of any fees due under this Agreement. If this Agreement is terminated by InfoVista as a result of Your default in the payment of any fees due under this Agreement or Your breach of any other provision of this Agreement, which default or breach has not been cured within thirty (30) days of written notice of such breach or default, You shall be obliged to pay all charges which have accrued up to the date of termination. The obligations under Paragraph 1, 2, 3 and 6 of this Agreement shall survive any termination of this Agreement.

6. **MISCELLANEOUS.** This Agreement, including any and all Addenda and Exhibits attached hereto and made a part hereof, may be modified or amended only by a written instrument signed by duly authorized representatives of Customer and InfoVista. Neither party may, without the prior written consent of the other party, assign or transfer this Agreement or any obligation incurred hereunder, except by merger, reorganization, consolidation, or sale of all or substantially all of such party's assets. The pre-printed terms and conditions of any purchase order or other ordering document issued by Customer in connection with this Agreement which are in addition to or inconsistent with the terms and conditions of this Agreement shall not be binding on InfoVista and shall not be deemed to modify this Agreement. Customer and its subsidiaries shall be jointly and severally liable to InfoVista for any breach of this Agreement and each subsidiary that uses the Deliverables agrees, by its use, to be bound by the provisions of this Agreement. No term or provision contained herein shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by InfoVista. Neither party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of the terms or conditions contained in this Agreement due to causes entirely beyond the control of that party, including, without limiting the generality of the foregoing, strikes, boycotts, labor disputes, embargoes, acts of God, acts of public enemy, acts of governmental authority, floods, riots or rebellion. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE JURISDICTION OF INCORPORATION OF THE INFOVISTA SUBSIDIARY WHICH IS THE CONTRACTING PARTY. All notices which either party hereto is required or may desire to give the other hereunder shall be given by addressing the communication to the address set forth on the first page of this Agreement, and shall be given by certified or registered mail. This agreement constitutes the entire agreement, understanding and representations, express or implied, between customer and infovista with respect to the services to be furnished hereunder. This agreement supersedes all prior communications between the parties.