**Systems Development Agreement**

 THIS SYSTEMS DEVELOPMENT AGREEMENT (“Agreement”) is made September 27, 2011.

 BETWEEN ABC Company, located at 123 Maple Street New York, NY 10001 (ABC) AND XYZ Computers located at 6-7-8 Roppongi, Minato-ku, Tokyo, Japan 102-3334 (XYZ).

 WHEREAS:

 A. ABC wishes to develop and implement a computer system that will be known as Angel System for the purpose of improving its internet security, XYZ is in the business of the development, implementation, installation and marketing of computer systems.

B. XYZ has agreed to draft a Statement of Work for acceptance by ABC and to proceed with the development of a system in accordance with and subject to the terms of this Agreement.

 NOW THIS AGREEMENT WITNESSES as follows:

**1 DEFINITIONS**

 1.1 In this Agreement and in any schedules or annexes hereto unless the contrary intention appears:

(a)                 'Statement of Work' means the Statement of Work developed pursuant to Clause 3 below, including any variations thereof;

(b)                 'Application System' means all the computer programs prepared by XYZ and supplied to ABC under this Agreement including both source code and object code versions;

(c)                 'Computer Hardware and Systems Software' means all the equipment and operating system software provided by XYZ to ABCpursuant to the Statement of Work;

(d)                 'Development’ means the analysis and programming services provided by XYZ pursuant to this Agreement and the establishment of tables, codes, reference files and editing rules for ABCs reasonable requirements in relation to a Statement of Work;

(e)                 'Installation’ means the delivery, setting up and configuring of the Computer Hardware and System Software and Application Software pursuant to the terms hereof in accordance with the Statement of Work accepted by ABC;

(f)                   'Office Procedures' means all office staff, facilities, forms and manual processes specified by XYZ as required to use the Computer System;

(g)                 'Related Items' means all information and all manuals, documentation, notes, improvements, modifications and alterations prepared by XYZ and supplied to ABC under this Agreement;

(h)                 'Computer System' means all Computer Hardware and Systems Software, Application Software, Office Procedures and Related Items developed pursuant to the Statement of Work;

(i)                   ‘Response Time’ means the elapsed time between the user of the Computer System depressing a key which causes information to be transmitted to the hardware and, where a response is required, for the first character of a response to be received at the terminal of the said user;

(j)                   ‘Further Investigation is Authorized’ means both ABC and XYZ have approved the proposed change for further investigation and ABC has agreed to any charges that may be applicable for such investigation;

(k)                 ‘Materials’ means all Systems Software, Application Software, Office Procedures and Related Items developed pursuant to the Statement of Work;

 (l)               ‘Grievance’ means any dispute or difference concerning the claimed violation of any provision of this Agreement.

(m)                 ‘Delivery’ means installing the Computer System in a place and server specified by ABC.

(n)                 ‘Effective Date of Termination’ means the date on which the notice of termination is given in accordance with paragraphs 14(1) and 14(2).

 **2 TERM**

 2.1 This Agreement will take effect from the date hereof and will continue until terminated in accordance with the terms hereof.

**3 STATEMENT OF WORK**

 3.1XYZ shall create a Statement of Work for the Development and Installation of the Computer System. The Statement of Work document shall be entitled “ANGEL STATEMENT” and include:

(a)                 the matters set out in the ABC Request for Proposal entitled RFP TITLE

(b)                 a description of the deliverables and the criteria for acceptance by ABC;

(c)                 a payment schedule;

(d)                 a description of XYZ’s responsibilities;

(e)                 a description of the ABC's responsibilities;

(f)                   an estimated project plan;

(g)                 any other applicable terms.

3.2 Except in circumstances beyond the control of XYZ, or variations in the requirements or other instructions from ABC that prevent XYZ from completing the Statement of Work within the time allowed herein, it is a condition of this Agreement that a preliminary draft of the Statement of Work be delivered by XYZ to ABC by October 27, 2011 when the agreement is approved.

3.3 Upon delivery of the Statement of Work to ABC for its approval, ABC shall within fourteen (14) days thereafter:

(a)                 approve it;

(b)                 reject it; in which case the Agreement shall be deemed to be terminated or,

(c)                 request variations to and/or explanations of any aspect or aspects of the Statement of Work.

3.4 The Statement of Work shall be deemed approved when ABC explicitly indicates approval in writing to XYZ.

3.5 If ABC requests variations to the Statement of Work then, upon reply by XYZ, the same conditions shall apply as in 3.3 and 3.4 with the addition that ABC maywithdraw such requestsforchangein the Statement of Work.

3.6 When agreed to by the parties, the terms of the Statement of Work described in the document entitled “Statement of Work for Angel System" shall be and are hereby imported and incorporated as terms of this Agreement.

**4 CHANGES TO THE STATEMENT OF WORK**

 4.1               The Statement of Work as agreed upon by the partiesshall not be changed except by written agreement developed pursuant to the process described in paragraph 4.2.

4.2 The following is the process to change the Statement of Work.

(a)                 Each party shall designate a person to act as a project manager.

(b)                 A Project Change Request (PCR) will be the vehicle for communicating change. The PCR must describe the change, the rationale for the change and the effect the change will have on the project.

(c)                 The project managers of both parties will review the proposed change and approve it for further investigation or reject it. XYZ will specify any reasonable charges that may be applicable for such further investigation. If the Further Investigation is authorized by ABC, the project managers will sign the PCR that will constitute approval for the further investigation and any applicable charges. XYZ will invoice ABC for any applicable charges. The investigation will determine the effect that the implementation of the PCR will have on price, project plan and other terms and conditions of the agreement.

(d)                 A written change authorization must be signed by both parties to authorize implementation of the investigated changes.

(e) The project manager has no authority to act as an agent of ABC except that is especially provided for in this Agreement.

**5 THE PROJECT**

 5.1 For the consideration herein, XYZ will build the Computer System in accordance with and subject to the terms of this Agreement.

5.2               In building the Computer System, XYZ will be responsible for directing its own employees.

5.3               In building the Computer System, XYZ agrees that time is of the essence under this Agreement.

5.4               In providing the services to be performed or procured pursuant to this Agreement, XYZ warrants that all programming and other services will be provided in a proper and workmanlike manner and at all times in compliance with the standards and procedures for the like programming and services specified at the time of entering this Agreement.

 **6 DELIVERY**

 6.1 When the Computer System operates in conformity with the deliverables described in the Statement of Work, XYZ shall make the Computer System available to ABC.

6.2 All items which XYZ is to deliver will be delivered to the premises of ABC as advised by a person authorized by the Director of ABC.

**7 OWNERSHIP**

 7.1 From the time that the parties mutually agreein writing upon the terms of the Statement of Work pursuant to Clause 3 of this Agreement.

(a)                 XYZ grants the ABC an irrevocable, nonexclusive, paid up (provided that all payments required under this Agreement have been made) licensefor the term of ninety nine years to use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon, the Materials. This license includes the right to grant sublicences to ABC’s affiliates.

(b)                 Without prejudice to 7.1 (c) and 7.1 (d) either party is free to use, for any purpose, any idea, concept, know-how or technique, which either party individually or jointly, develops or provides during the term of the Project.

(c)                 Each party agrees to treat as confidential all information received from the other that is not information, which is already in the public domain, or is not required by law to be disclosed. Each party agrees to disclose such information only to those of its employees who need to know it for the performance of this Agreement.

(d)                 XYZ further agrees that all employees or agents of XYZ touching any clause matter or thing whatsoever herein contained or the operation or construction thereof or any matter or thing in any way connected with this Agreement will sign the confidentiality agreement which is at exhibit 1 of this Agreement.

**8 WARRANTIES**

 8.1 XYZ will indemnify and hold ABC harmless from and against any direct loss, damage, cost, liability or expense incurred by ABC to the extent directly and proximately caused by any of the services performed by XYZ for ABC upon the patent, copyright, trade secret or other proprietary rights of any third party.

8.2 XYZ warrants that upon completion of the project milestones set out in the Statement of Work the Computer System will conform to the deliverables described in the Statement of Work. This warranty shall not apply in respect of ABC's use of the Computer System in a manner not consistent with its specifications or intended purposes, or in respect of damages or errors arising from maintenance, repair, modification or adjustment by ABC or any third party.

8.3 XYZ does not warrant uninterrupted or "error free" operation of a Product or Service that is not due to their negligence.

8.4 These warranties replace any conflicting statement of limitation of warranty included with component products.

8.5 XYZ shall make available to ABC any manufacturer warranties associated with any software, tool, and/or products utilized that XYZ does not manufacture, but supplies, in connection with this agreement. Except to the extent prohibited by applicable law, except as expressly set forth herein, XYZ makes no warranties, expressed or implied, including warranties of merchantability, or fitness for a particular purpose, in connection with this agreement and the transactions contemplated hereby. In no event shall XYZ be liable to ABC for any indirect, special or consequential damages or lost profits arising out of or related to this Agreement or the performance or breach hereof, even if XYZ has been advised of the possibility thereof.

**9 PAYMENTS**

 9.1 In consideration for XYZ drafting and agreeing the Statement of Work pursuant to the process described in clause 3 ABC will pay XYZ $1000.

9.2 ABC will pay XYZ the fee set forth in the Statement of Work for the performance of the services provided that, performance and delivery of the results of the services are specified in the Statement of Work. ABC shall have no obligation to make any payment specified for such milestone until completion and delivery of that milestone to ABC's reasonable satisfaction. The Statement of Work will contain mutually agreed criteria for system acceptance. ABC will have a period of 14 days after the completion of each milestone to notify in writing XYZ of any discrepancies between the Statement of Work and the services delivered.

9.3 In the event of termination of this Agreement by ABC without cause or completion of a phase specified in the Schedule and prior to completion of the next specified phase ABC shall pay XYZ a termination fee equal to the same percentage of the payment due for the next phase as the percentage of time passed against the time allowed for completion of the next phase, and 30 days written notice.

**10 PAYMENTS ASSOCIATED WITH CHANGES**

 10.1 The drafting of any changes to the Statement of Work pursuant to Clause 4.1 shall be invoiced in accordance with the charges specified in the Project Change Request.

**11 PAYMENT TERMS**

 11.1 Payment terms are net sixty (60) days from date of invoice. XYZ reserves the right to suspend or terminate delivery of services for non-payment.

**12 REPORTS**

 12.1 XYZ will provide ABC with written reports on all aspects of the project as defined in the Statement of Work. ABC will respond to all questions put forth by XYZ within a period of fourteen (14) days of the request.

**13 TITLES AND PARAGRAPH HEADINGS**

 13.1 Headings and paragraph headings contained in this agreement are for convenient reference and do not constitute part of this Agreement.

**14 TERMINATION**

 14.1 Either party hereto may terminate this Agreement if the other party fails to observe or perform any provision of this Agreement and fails to remedy such breach within thirty (30) days after written notice thereof has been given to the party in breach.

14.2 In the event that this Agreement is terminated then each party shall within seven (7) days of the Effective Date of Termination deliver to the other all documents and other materials (including magnetic tapes, disks or other storage media) containing any confidential information obtained from the other during the term hereof and the receiving party shall certify its obliteration by erasure or other appropriate means.

14.3 Any rights and obligations under this Agreement which by their nature continue after this Agreement ends, will remain in effect until they are completed. The terms of this Agreement will also apply to anyone who receives or is assigned rights under the Agreement.

**15 NOTICES**

 15.1 Any notice required or permitted by this Agreement shall be in writing, and service shall take effect by one of the following methods:

(a) delivering copies personally; or

(b) by prepaid mail; or

(c) by facsimile transmission; or

(d) by electronic mail to the party.

15.2 Notice shall be deemed to have been given

(a) in the case of mail - seven (7) days after the date of posting,

(b) in the case of personal delivery - on the date of such delivery, or

(c) in the case of other methods - one (1) day after the date of transmission.

15.3 Either party may change its addresses or numbers by a written notice to the other party given in a manner specified by this Clause.

**16 AMENDMENTS**

 16.1 No amendment or modification of this Agreement or any provision of this Agreement shall be effective unless agreed to by the parties in writing.

**17 GOVERNING LAW**

 17.1 This Agreement shall be governed by and construed in accordance with the law of the state of New York at the time of entering this Agreement.

**18 RESOLUTION OF GRIEVANCE**

 18.1 Any grievance arising out of or in connection with this Agreement shall be referred to mediation and the parties hereto agree first to try in good faith to settle the dispute by mediation before resorting to arbitration.

18.2 The Mediator shall be appointed by agreement between the parties or, in default of agreement, appointed by the Chamber of Commerce in that order of priority. The Mediator shall determine the procedure.

18.3 Any grievance arising out of or in connection with this Agreement not resolved in the mediation process shall be referred to and determined by a sole arbitrator unless specific performance is being sought by one of the parties. The parties shall endeavour to appoint a single arbitrator by agreement failing which the appointment provisions of the Arbitration Act 1986 shall apply and the decision of the arbitrator shall be final upon the parties hereto. The arbitrator shall determine the procedure.

**19 FORCE MAJEURE**

 19.1 Not withstanding any other provision in this Agreement, no default, delay or failure to perform on the part of either party shall be considered a breach of this Agreement if such default, delay or failure to perform is shown to be due entirely to causes beyond the reasonable control of the party charged with such default including, but not limited to causes such as strikes, lock-outs or other labour disputes, riots, civil disturbances, actions or inaction of Governmental authorities or suppliers, epidemics, wars, embargoes, storms, floods, fires, earthquakes, acts of God, of the public enemy, computer downtime that arises out of causes beyond the control of XYZ or the default of a common carrier (hereinafter called the ‘Force Majeure Event').

19.2 If XYZ is prevented from delivering the Computer Systemdue to the Force Majeure Event, it shall notify ABC of the fact in writing within ten (10) days commencing with the contractual delivery date.

19.3 If XYZ is prevented from delivering the Computer System due to the Force Majeure Event then XYZ shall make a reasonable effort to remove or eliminate the circumstances preventing delivery and upon cessation of the cause diligently pursue performance of this Agreement.

19.4 If the circumstances preventing delivery are still continuing sixty (60) days from and including the date when XYZ sends such notice, then either party may give written notice to the otherterminatingthe Agreement after reasonably determining that the delay will likely prevent successful performance of the Agreement.

19.5 If the Agreement is terminated in this way, XYZ shall refund any payment which ABC has already made for milestones which, as a result of the termination, have not been reached.

19.6 XYZ shall not be liable for any excess costs if failure to perform the Agreement is due to a Force Majeure Event.

**20 EMPLOYEES AND CONTRACTORS**

 20.1 Under no circumstances shall XYZ use in the provision of services any sub-contractor or employee unless and until the written consent of ABC has first been obtained.

**21 LIMITATION OF LIABILITY**

 21.1 Circumstances may arise where ABC is entitled to recover damages from XYZ. In each such instance, XYZ is liable for no more than:

(a) payments referred to in schedule 10 and 11;

(b) damages for physical harm to persons caused by XYZ’s negligence;

(c) damages for physical harm to tangible personal property and real property caused by XYZ’s negligence; and

(d) any other direct damages up to the greater of the charges paid for the Computer System that is the subject of the claim or $10,000.

21.2 This limitation also applies to XYZ's subcontractors and employees. It is the most ABC is entitled to receive from XYZ and its subcontractors and program developers combined.

21.3 Under no circumstances is XYZ liable for any of the following:

(a) damages of third parties claimed against ABC (other than any for which it is liable under 21.1 (a), 21.1(b) and 21.1(c) above);

(b) harm to ABC's records or data; or which was not caused by XYZ, its agent or its employee’s fault or negligence.

(c) special, indirect or consequential damages (other than any for which it is liable under 21.1(b) above), including but not limited to lost profits, lost business revenue, or failure to realize expected savings, even if XYZ informed ABC of their possibility.

21.4 This "Limitation of Liability" subsection applies regardless of the basis on which ABC is entitled to claim damages from XYZ, including but not limited to:

(a) breach of contract even if a fundamental breach, or

(b) tort, including but not limited to negligence or misrepresentation.

**22 SCHEDULE OF DOCUMENTS**

 22.1 The documents in the Schedule of Documents are incorporated in this Agreement and form part of it. Reference Statement of Work “SOW” for deliverables

**23 ENTIRE AGREEMENT**

 23.1 This Agreement and the “Statement of Work for Angel System” developed pursuant to Clause 3, including any variations thereof constitutes the entire Agreement between the parties regarding the subject matter hereof, and supersedes and replaces all agreements arrangements and understandings related to the subject matter hereof, whether reduced to writing or not, that may have preceded this Agreement.

**IN WITNESS WHEREOF**, ABC, and XYZ have executed this Agreement the day and the year first above written.

Signed

Director of ABC

Director of XYZ: