Master Services Agreement - Software Development

This Master Services Agreement - Software Development (the "**Agreement**"), dated as of [DATE] (the "**Effective Date**"), is by and between [SOFTWARE DEVELOPER NAME], a [STATE OF ORGANIZATION] [ENTITY TYPE] with offices located at [ADDRESS] ("**Developer**"), and HUMANETICS INNOVATIVE SOLUTIONS, INC. a Delaware Corporation with offices located at 2330 Haggerty Rd., Farmington Hills, MI 48335 ("**Humanetics**"). Developer and Humanetics may be referred to herein collectively as the "**Parties**" or individually as a "**Party**."

WHEREAS, Developer is engaged in the business of providing software development and related services and work product; and

WHEREAS, Humanetics desires to retain Developer to provide the software development and related services and work product described herein.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions.

    1.1   "**Background Technology**" means all Software, data, know-how, ideas, methodologies, specifications, and other technology in which Developer owns such Intellectual Property Rights as are necessary for Developer to grant the rights and licenses set forth in Section 8, and for Humanetics (including its licensees, successors, and assigns) to exercise such rights and licenses, without violating any right of any third party or any applicable law, or incurring any payment obligation to any third party, and that: (a) are identified as background technology in the Development Plan; and (b) were or are developed or otherwise acquired by Developer prior to the Effective Date.

    1.2   "**Humanetics Materials**" means all materials and information, including documents, data, know-how, ideas, methodologies, specifications, software, content, and technology, in any form or media, directly or indirectly provided or made available to Developer by or on behalf of Humanetics in connection with this Agreement, whether or not the same: (a) are owned by Humanetics, a third party, or in the public domain; or (b) qualify for or are protected by any Intellectual Property Rights.

    1.3   "**Deliverables**" means all Software, together with the Documentation therefor, that Developer is required to deliver to Humanetics under this Agreement as set forth in the Development Plan, and all other documents, work product, and other materials that Developer is required to or otherwise does provide to Humanetics or its designee under this Agreement and otherwise in connection with any Services.

    1.4   "**Development Plan**" means the Development Plan attached as **Exhibit A** hereto.

1.5   "**Documentation**" means any and all manuals, instructions, specifications, and other documents and materials in any medium that describe the functionality, components, features, or requirements of the Software, including the installation, configuration, integration, operation, use, support, or maintenance thereof.

1.6   "**Intellectual Property Rights**" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

1.7   "**Milestone**" means an event or task described in the Development Plan for which there is a corresponding date by which it must be completed in the Milestone Schedule.

1.8   "**Milestone Schedule**" means the schedule set forth in the Development Plan setting out the dates by which the Parties are required to achieve the Milestones.

1.9   "**Software**" means the computer program(s), including programming tools, scripts, and routines, Developer develops or otherwise provides under this Agreement, including all updates, upgrades, new versions, new releases, enhancements, improvements, and other modifications made or provided pursuant to the maintenance and support services set out in **Exhibit B**.

1.10   "**Source Code**" means the human readable source code of the Software to which it relates, in the programming language in which such Software was written, together with all related flow charts, code, and technical documentation, including a description of the procedure for generating object code, all of a level sufficient to enable a programmer reasonably fluent in such programming language to understand, build, operate, support, maintain, and develop modifications, upgrades, updates, adaptations, enhancements, new versions, and other derivative works and improvements of, and to develop computer programs compatible with, the Software.

1.11   "**Specifications**" means the specifications for the Software set forth in the Development Plan, together with any other specifications set forth in the RFP or Developer's proposal, if any, for such Software.

1.12   "**Third-Party Materials**" means materials and information, in any form or medium, including any software, documents, data, content, specifications, products, equipment, or components of or relating to the Software that are not proprietary to Developer, specifically excluding any open source software.

1.13   "**Work Product**" means all Software, Documentation, Specifications, and other documents, work product, and materials related thereto, that Developer provides to Humanetics or its designee hereunder, together with all ideas, concepts, processes, and methodologies developed in connection therewith, whether or not embodied therein other than materials expressly identified in an exhibit to this Agreement.

2.   Performance of Services.

2.1   General Service Obligations and Software Development. Humanetics hereby engages Developer, and Developer hereby accepts such engagement, to develop Software and provide services related thereto as further described in the Development Plan and herein (collectively, the "**Services**") on the terms and conditions set forth in this Agreement. Developer will perform the Services set forth therein in the Development Plan in accordance with this Agreement. Developer shall provide all Software to Humanetics in both object code and Source Code form.

2.2   Changes and Subcontractors. Humanetics may, at any time during the Term, request in writing changes to the Services. The Parties shall evaluate and, if agreed, implement all such changes in accordance with the change request procedure set forth in the Development Plan. No changes will be effective unless and until memorialized in a written change order signed by both Parties. Developer shall not, without the prior written approval of Humanetics, which consent may be given or withheld in Humanetics' sole discretion, engage any third party to perform the Services (including to create any Work Product) hereunder. Humanetics approval of any such third party (each approved third party, a "**Subcontractor**") shall not relieve Developer of its representations, warranties, or obligations under the Agreement.

2.3   Third-Party Materials. Developer shall not include in any Software, and operation of all Software in accordance with its Specifications and Documentation shall not require: (a) any Third-Party Materials, other than Third-Party Materials that Humanetics has specifically approved to be included in or for use in connection with any Software developed or provided hereunder and which are specifically identified in **Exhibit A** ("**Approved Third-Party Materials**"), and (b) any open source software.

3.   Humanetics Obligations. If Humanetics fails to perform any of its obligations set forth in **Exhibit A** on a timely basis, all subsequent due dates for Milestones may be extended by Developer, by written notice to Humanetics, up to the length of Humanetics delay. Notwithstanding the foregoing, Developer shall use its best efforts to meet due dates for Milestones without any extension. Humanetics failure to perform its obligations on a timely basis will not be deemed a breach of this Agreement, and the foregoing constitutes Developer's sole remedy, and Humanetics sole liability, for any such failure or delay.

4.   Delivery; Testing and Acceptance.

4.1   Delivery. Developer shall deliver or otherwise make available to Humanetics each Deliverable on or prior to the due date set forth in the Milestone Schedule in accordance with the delivery criteria set out in the Development Plan. The Parties agree that title to such Deliverables transfers upon delivery, and delivery will occur upon actual receipt by Humanetics. Developer will bear the risk of loss of all tangible Deliverables until Humanetics actual receipt.

4.2   Testing and Acceptance. Humanetics will review and test each Software Deliverable within [NUMBER] days ("**Testing Period**") after it is [delivered/installed], to

verify that the Software Deliverable conforms to the Specifications and performs in accordance with the Documentation ("**Acceptance Tests**"). If Humanetics notifies Developer that Humanetics has identified a failure of the Deliverable to conform to the Specifications and perform in accordance with the Documentation (each, a "**Nonconformity**"), Developer, at Developer's sole cost and expense, shall remedy all such Nonconformities and re-deliver the Software Deliverable(s), as promptly as commercially possible and, in any case, within Fifteen (15) days following, as applicable, its receipt of Humanetics notice identifying any Nonconformities. If Acceptance Tests identify any Nonconformity in any Software Deliverable after a second or subsequent delivery thereof, or Developer fails to re-deliver the Software Deliverable on a timely basis, Humanetics may, in its sole discretion, by written notice to Developer: (a) continue the process set forth in this Section 4.2; (b) accept the Software Deliverable as a nonconforming deliverable, in which case the Fees will be reduced equitably to reflect the value of the Deliverable as received relative to the value of the Deliverable without the Nonconformity; or (c) deem the failure to be a non-curable material breach of this Agreement and terminate this Agreement in accordance with Section 10.2(b).

5.   Maintenance and Support Services and Training. Developer shall provide Humanetics with maintenance and support services and training as, and on the terms and conditions, set forth in **Exhibit B**.

6.   Fees and Payment.

6.1   Fees. Humanetics shall pay Developer fees ("**Fees**") as set forth in **Exhibit C**. Developer shall submit detailed invoices to Humanetics for all Fees attributable to invoice period on a monthly basis at the rates set forth in **Exhibit C**. Developer shall be entitled to reimbursement from Humanetics only for documented travel and lodging expenses that are reasonably incurred and necessary for Developer's performance and which have been preapproved in writing by Humanetics. Unless otherwise agreed in writing and approved by an authorized Humanetics representative, Humanetics shall not be responsible or charged with any fees or expenses arising from any holiday, overtime or vacation time incurred by Developer and/or its employees, independent contractors or agents. Humanetics shall pay all undisputed invoices within Ninety (90) days after Humanetics receipt of a proper invoice. Humanetics shall make all payments hereunder in US dollars.

6.2   Payment Disputes. Humanetics may withhold from payment any and all payments of Fees that Humanetics disputes in good faith, pending resolution of such dispute, provided that Humanetics: (a) timely renders all payments on invoices that are not in dispute; (b) notifies Developer of the dispute prior to the due date for payment, specifying in such notice the amount in dispute and the reason for the dispute; (c) works with Developer in good faith to promptly resolve the dispute; and (d) promptly pays any amount determined to be payable by resolution of the dispute. Developer shall not fail to perform any obligation hereunder by reason of Humanetics good faith withholding of any Fees in accordance with this Section 6.2.

6.3   Taxes. All Fees and other amounts payable by Humanetics under this Agreement are exclusive of taxes and similar assessments. Humanetics is responsible for all

sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Humanetics hereunder, other than any taxes imposed on Developer's income.

6.4   Pricing.   All Fees shall be competitive in the industry and shall be no less favorable than the lowest fees extended by Developer to any other similarly situated company. Vendor shall provide immediate notice to Humanetics of any such more favorable pricing. If the Parties agree to extend the initial term of the Agreement, any price increases shall be capped at no more than the Consumer Price Index.

7.   Intellectual Property Rights.

7.1   Work Product. Except as set forth in Section 7.3, Humanetics is and will be the sole and exclusive owner of all right, title, and interest in and to all Work Product, including all Intellectual Property Rights therein. In furtherance of the foregoing, subject to Section 7.3: (a) Developer shall create all Work Product as work made for hire as defined in Section 101 of the Copyright Act of 1976; and (b) to the extent any Work Product or Intellectual Property Right therein does not qualify as, or otherwise fails to be, work made for hire, Developer shall, and hereby does: (i) assign, transfer, and otherwise convey to Humanetics, irrevocably and in perpetuity, throughout the universe, all right, title, and interest in and to such Work Product, including all Intellectual Property Rights therein; and (ii) irrevocably waive any and all claims Developer may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of *droit moral* with respect to the Work Product.

7.2   Further Actions. Developer shall, and shall cause its personnel to, take all appropriate action and execute and deliver all documents necessary or reasonably requested by Humanetics to effectuate any of the provisions or purposes of Section 7.1 or otherwise, as may be necessary or useful for Humanetics to prosecute, register, perfect, record, or enforce its rights in or to any Work Product or any Intellectual Property Right therein. Developer hereby appoints Humanetics as Developer's attorney-in-fact with full irrevocable power and authority to take any such actions and execute any such documents if Developer refuses, or within a period deemed reasonable by Humanetics otherwise fails, to do so.

7.3   Background Technology and Approved Third-Party Materials. Developer is and will remain the sole and exclusive owner of all right, title, and interest in and to the Background Technology, including all Intellectual Property Rights therein, subject to the license granted in Section 8.1. Ownership of all Approved Third-Party Materials, and all Intellectual Property Rights therein, is and will remain with the respective owners thereof, subject to any express licenses or sublicenses granted to Humanetics pursuant to or in accordance with this Agreement.

7.4   Humanetics Materials. Humanetics and its licensors are and will remain the sole and exclusive owners of all right, title, and interest in and to the Humanetics Materials, including all Intellectual Property Rights therein. Developer shall have no right or license to, and shall not, use any Humanetics Materials except as set forth in this Agreement. All other rights in and to the Humanetics Materials are expressly reserved by Humanetics.

8.   Licenses.

8.1   Background Technology License. Developer hereby grants to Humanetics such rights and licenses with respect to the Background Technology necessary for Humanetics to use and otherwise exploit perpetually throughout the universe for all or any purposes whatsoever the Work Product, to the same extent as if Humanetics owned the Background Technology, without incurring any fees or costs to Developer (other than the Fees set forth herein) or any other person in respect of the Background Technology. In furtherance of the foregoing, such rights and licenses shall: (a) be irrevocable, perpetual, fully paid-up, and royalty-free; (b) include the rights to use, reproduce, perform (publicly or otherwise), display (publicly or otherwise), modify, improve, create derivative works of, distribute, import, make, have made, sell, and offer to sell the Background Technology, including all such modifications, improvements, and derivative works thereof; and (c) be freely assignable and sublicensable. Developer reserves all rights in the Background Technology not expressly granted to Humanetics herein.

8.2   Humanetics Materials License. Humanetics hereby grants to Developer the limited, royalty-free, non-exclusive right and license to Humanetics Materials solely as necessary to incorporate such Humanetics Materials into, or otherwise use such Humanetics Materials in connection with creating, the Work Product. The term of such license shall commence upon Humanetics' delivery of the Humanetics Materials to Developer and shall terminate upon Humanetics acceptance or rejection of the Work Product to which the Humanetics Materials relate. Subject to the foregoing license, Humanetics reserves all rights in the Humanetics Materials. Humanetics Materials shall be deemed Humanetics Confidential Information.

8.3   Approved Third-Party Materials. Developer hereby grants, or prior to the delivery date for any Deliverables shall procure for Humanetics the grant of, such licensed rights in the Approved Third-Party Materials set forth in the Development Plan. Except as provided otherwise in **Exhibit A**, Developer shall secure, at its sole cost and expense, all necessary rights, licenses, consents, approvals, and authorizations necessary for Humanetics to use, perpetually and throughout the universe, all Approved Third-Party Materials as incorporated in or otherwise used in conjunction with Software as specified in this Agreement.

9.   Confidential Information. From time to time during the Term, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media/in written or electronic form or media, and whether or not marked, designated, or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party. The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its

obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

10.   Term and Termination.

10.1   Term. The term of this Agreement commences as of the Effective Date and, unless terminated earlier pursuant to any of the Agreement's express provisions, will continue in effect until [NUMBER] months from such date ("**Term**").

10.2   Termination. In addition to any other express termination right set forth elsewhere in this Agreement:

(a)   Humanetics may terminate this Agreement for convenience, for any reason or no reason, upon Thirty (30) days prior written notice to Developer.

(b)   Either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured Thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach.

(c)   Either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

10.3   Effect of Expiration or Termination. Upon any expiration or termination of this Agreement: (a) the licenses granted hereunder will also terminate except to the extent that any license has an express term that continues for a longer period or is perpetual; (b) Developer shall cease using and delete, destroy, or return all copies of the Humanetics Materials; and (c) each party shall cease using and delete, destroy, or return all copies of the other party's Confidential Information and certify in writing to such party that the Confidential Information has been deleted or destroyed.

10.4   Surviving Terms. The provisions set forth in the following Sections, and any other right or obligation of the Parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 1, Section 7, Section 9, this Section 10.4, Section 12, Section 13, and Section 14.

11.   Representations and Warranties.

11.1   Developer Warranties. Developer represents and warrants that (a) the Services will be performed in a professional and workmanlike manner in accordance with best industry standards and practices for similar services, using personnel with the requisite skill, experience, and qualifications; (b) it is in compliance with, and will perform all Services in compliance with, all applicable laws; (c) for 180 days following acceptance of the Software in accordance with Section 4.2, all Software will, and as installed on the Humanetics systems and used in accordance with the Documentation will, function in conformity with this Agreement and the Specifications; (d) Humanetics will receive good and valid title to all Work Product, free and clear of all encumbrances and liens of any kind; (e) no Deliverables contain any virus or other malicious code; (f) all Work Product, excluding Humanetics Materials and Third-Party Materials, is or will be the original creation of Developer; and (g) as delivered, installed, specified, or approved by Developer and used by Humanetics or any third party authorized by Humanetics, the Work Product (excluding Humanetics Materials): (i) will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights or other rights of any third party; and (ii) will comply with all applicable laws.

11.2   Disclaimer of Warranties. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTIONS 11.1, ALL SOFTWARE, SERVICES, AND WORK PRODUCT ARE PROVIDED "AS IS" AND DEVELOPER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. DEVELOPER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTIONS 11.1, DEVELOPER MAKES NO WARRANTY OF ANY KIND THAT THE SOFTWARE OR WORK PRODUCT, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET HUMANETICS' OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR-FREE.

12.   Indemnification. Developer shall indemnify, defend, and hold harmless Humanetics from and against any and all losses, damages, liabilities, and costs (including attorneys' fees) ("**Losses**") incurred by Humanetics resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that Humanetics' use of the Software (excluding Humanetics Materials) in compliance with this Agreement infringes or misappropriates such third party's Intellectual Property Rights, provided that Humanetics promptly notifies Developer in writing of the claim, cooperates with Developer, at Developer's expense, and allows Developer sole authority to control the defense and settlement of such claim. If such a claim is made or appears possible, Humanetics agrees to permit Developer, at Developer's sole expense, to (a) modify or replace the Software, or component or part thereof, to make it non-infringing, or (b) obtain the right for Humanetics to continue use. If neither of these alternatives are commercially reasonable, Developer may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Humanetics, provided that Developer shall refund or credit to Humanetics all amounts Humanetics paid in respect of the Software except any amounts clearly allocable to Software that the Humanetics can reasonably use as intended under this Agreement.

13.   Limitations of Liability. EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN THIS SECTION 13, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES REGARDLESS OF WHETHER EITHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN THIS SECTION 13, IN NO EVENT WILL THE AGGREGATE LIABILITY OF EITHER PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED 3 TIMES THE TOTAL AMOUNTS PAID AND AMOUNTS ACCRUED BUT NOT YET PAID TO DEVELOPER UNDER THIS AGREEMENT IN THE 12 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR $250,000.00, WHICHEVER IS GREATER. The exclusions and limitations in this Section 13 do not apply to claims pursuant to Section 9 and Section 12.

14.   Miscellaneous.

14.1   Entire Agreement. This Agreement, together with any other documents incorporated herein by reference and all related Exhibits, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related Exhibits, and any other documents incorporated herein by reference, the following order of precedence governs: (a) first, this Agreement, excluding its Exhibits; (b) second, the

Exhibits to this Agreement as of the Effective Date; and (c) third, any other documents incorporated herein by reference.

14.2 <u>Notices</u>. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the Parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (a) upon receipt by the receiving Party; and (b) if the Party giving the Notice has complied with the requirements of this Section.

14.3 <u>Force Majeure</u>. No party shall be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such party's failure or delay is caused by or results from the following force majeure events: (a) acts of God; (b) flood, fire, earthquake, other potential disaster(s) or catastrophe(s) such as epidemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; and [(i) other similar events beyond the control of the impacted party.

14.4 <u>Amendment and Modification; Waiver</u>. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (a) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof, and (b) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

14.5 <u>Severability</u>. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

14.6 <u>Governing Law; Submission to Jurisdiction</u>. This Agreement is governed by and construed in accordance with the internal laws of the State of Michigan without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Michigan. Any legal suit, action, or proceeding arising out of this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of Michigan in each case located in the County of Oakland, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

14.7 <u>Assignment</u>. Developer may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Humanetics. No assignment or delegation will relieve Developer of any of its obligations hereunder. Any purported assignment or delegation in violation of this Section will be null and void. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

14.8 <u>Export Regulation</u>. Humanetics shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Software available outside the US.

14.9 <u>Equitable Relief</u>. Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 9 would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

14.10 <u>Counterparts</u>. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

14.11 <u>Independent Contractor.</u> The relation of Developer to Humanetics shall be that of independent contractor. Nothing herein shall be deemed or construed to create a joint venture, partnership, agency or employee/employer relationship between the Parties. Employees, independent contractors and agents engaged by Vendor to perform Services are employees or agents of Developer and are not entitled to any of Humanetics' employee benefits. Venter shall be solely responsible for payment of Workers' compensation, disability benefits or unemployment insurance, and shall be responsible for withholding or paying employment related taxes for Developer, it's employees and agents. Developer understands that Humanetics is hiring Developer's personal services and Developer may not subcontract, delegate its responsibilities to any third party the Services, or any part thereof, without the prior written consent of Humanetics.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

[DEVELOPER NAME]

By:_____

Name: _____

Title: _____

HUMANETICS INNOVATIVE SOLUTIONS, INC.

By:_____

Name: _____

Title: _____

EXHIBIT A

DEVELOPMENT PLAN

EXHIBIT B

MAINTENANCE AND SUPPORT SERVICES AND TRAINING

EXHIBIT C

FEES