

DEVELOPMENT AGREEMENT

This AGREEMENT (the “Agreement”), by and between TopCoder, Inc., a corporation duly organized and existing under the laws of the State of Delaware, and doing business at 703 Hebron Avenue, Glastonbury, CT 06033 (“TopCoder”), and _____ residing at _____ (“Developer”).

WHEREAS, Developer has expertise in the development of contest challenges; and

WHEREAS, TopCoder has need for certain contest challenges; and

WHEREAS, Developer is ready, willing, and able to undertake the independent development of such contest challenges and to assign and transfer Developer’s rights in such contest challenges; and

WHEREAS, TopCoder wishes to engage Developer to develop such contest challenges, upon the terms and subject to the conditions set forth herein;

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

1.0 DEFINITIONS.

As used in this Agreement, the following capitalized terms shall have the following meanings unless otherwise indicated:

- 1.1. “Development(s)” shall mean any idea, design, concept, development, algorithm, process, method, formula, code, software, technique, discovery or improvement, whether or not patentable, made, conceived, created, discovered, invented or reduced to practice by Developer during the term of this Agreement and in connection with the performance of services hereunder.
- 1.2. “Intellectual Property Rights” shall mean all intellectual property rights worldwide arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued or acquired, including all patent rights; all rights associated with works of authorship including copyrights and moral rights; rights relating to the protection of trade secrets and confidential information; and any right analogous to those set forth herein and any other proprietary rights relating to intangible property, other than trademarks.
- 1.3. “TopCoder Information” shall mean TopCoder’s specifications, descriptions, architecture, plans, interfaces, and code for TopCoder’s

hardware, software, and web site; TopCoder's tournaments and tournament operation procedures; TopCoder's business and operational plans; and derivatives of the foregoing. The TopCoder Information shall be Confidential Information hereunder.

- 1.4. "Problem Statement" shall mean a statement of a contest problem in the form of, and of sufficient complexity to be used in, a TopCoder programming competition.
- 1.5. "Coded Solution" shall mean a computer program implemented in the Java programming language that is a solution to a specific Problem Statement.
- 1.6. "Test Input Data" shall mean such test input data that can be provided as input to a specific Coded Solution to verify that the Coded Solution is in fact a satisfactory solution to a specific Problem Statement.
- 1.7. "Contest Challenge" shall mean a Problem Statement, and the Coded Solution and Input Test Data for that Problem Statement, all developed by Developer for TopCoder hereunder in accordance with TopCoder's requirements. The Contest Challenges shall be Confidential Information hereunder.
- 1.8. "Division" shall mean a group of competitors as designated by TopCoder.

2.0 DEVELOPMENT UNDERTAKING.

2.1 Development Undertaking. Developer will, within five business days of Effective Date (defined below) of this Agreement, commence work upon and diligently proceed with the development of the Contest Challenges according to and in conformity with this Agreement.

2.2 Following are the responsibilities of Developer and TopCoder in the development of the Contest Challenges:

- a) Developer shall develop original Problem Statements, and submit each Problem Statement to TopCoder for approval. The approval of a Problem Statement is at TopCoder's sole discretion. In addition to approval, TopCoder will determine, in its sole discretion, and provide to Developer, the level of difficulty and Division of the Problem Statement, where the level of difficulty will be indicated as "Easy," "Moderate," or "Hard" and Division as either 1 or 2.
- b) Upon TopCoder's approval of each submitted Problem Statement, including but not limited to the level of difficulty and Division of the Problem Statement, Developer will program the Coded Solution for that Problem Statement.

- c) Developer will generate Test Input Data to test the Coded Solution.
- d) Developer will test the Coded Solution using the Test Input Data and verify the correctness of the Coded Solution and the Test Input Data.
- e) Upon successful testing and verification of the Contest Challenges, Developer will submit the Contest Challenge to TopCoder by sending the Problem Statement, Coded Solution, and Test Input Data to TopCoder.
- f) Upon receipt of each Contest Challenge, TopCoder will evaluate the Contest Challenge for approval. If, based upon its evaluation, TopCoder concludes a Contest Challenge does not meet TopCoder's requirements, it will so notify Developer, stating with specificity the respects in which the Contest Challenge fails to meet TopCoder's requirements. Developer will promptly take corrective action, at no cost to TopCoder, to make such changes to such Contest Challenge as may be necessary to receive TopCoder's approval.
- g) Upon TopCoder's approval of a submitted Contest Challenge, TopCoder will pay the Development Fee as set forth in Section 3 below.
- h) Upon receipt of payment for a Contest Challenge, Developer will destroy all tangible materials and computer data pertaining to such Contest Challenge.

2.3 Developer will be solely responsible for developing the Contest Challenges; all Problem Statements, Coded Solutions and Test Input Data will be Developer's own original idea and work.

2.4 TopCoder will designate a Contest Challenge representative to coordinate the work under this Agreement. TopCoder reserves the right to change the Contest Challenge representative at any time, and agrees to promptly notify Developer of such change. Developer will communicate with the Contest Challenge representative regarding this Agreement and the work performed hereunder. TopCoder initially designates Gregory Paul as TopCoder's Contest Challenge representative.

3.0 FEES.

3.1 In consideration of Developer's development of the Contest Challenges and performance of Developer's obligations hereunder, TopCoder will pay to Developer a fee in U.S. Dollars for each approved Contest Challenge (the "Development Fee"). The Development Fee to be paid depends on the level of difficulty of the Problem Statement indicated by TopCoder in Section 2.2(a) above. The Development Fee:

- a) for a Division 2 Contest Challenge based on an Easy Problem Statement shall be fifty dollars (\$50);
- b) for a Division 2 Contest Challenge based on a Moderate Problem Statement shall be seventy-five dollars (\$75);
- c) for a Division 2 Contest Challenge based on a Hard Problem Statement shall be one hundred dollars (\$100);
- d) for a Division 1 Contest Challenge based on an Easy Problem Statement shall be one hundred dollars (\$100);
- e) for a Division 1 Contest Challenge based on a Moderate Problem Statement shall be one hundred twenty-five dollars (\$125); and
- f) for a Division 1 Contest Challenge based on a Hard Problem Statement shall be one hundred fifty dollars (\$150).

The Development Fee(s) shall be paid once per calendar month.

3.2 Developer will not be entitled to receive any other compensation or any benefits from TopCoder. Any and all out-of-pocket expenses incurred by Developer in connection with performing the obligations under this Agreement are the sole responsibility of Developer. TopCoder will not reimburse Developer for any expenses incurred. Except as otherwise required by law, TopCoder will not withhold any sums from payments made to Developer for social security or other federal, state or local tax liabilities or contributions, and all such withholdings, liabilities, and contributions will be solely the Developer's responsibility.

4.0 OWNERSHIP AND RIGHTS.

4.1 Developer hereby acknowledges and agrees that, as between TopCoder and Developer, TopCoder owns, solely and exclusively, all right, title and interest, including all Intellectual Property Rights, in and to the TopCoder Information. In furtherance of the foregoing, Developer hereby irrevocably and unconditionally agrees to transfer and assign and hereby transfers and assigns to TopCoder all right, title and interest it has, may have or acquire in or to the Contest Challenges and any and all Developments, and Developer agrees that Developer will execute and deliver such documents, certificates, assignments and other writings, and take such other actions as may be necessary or desirable to vest in TopCoder the ownership rights granted to TopCoder hereunder.

4.2 Developer further agrees that any and all works of authorship created, authored or developed by Developer hereunder will be deemed to be "works made for hire" within the meaning of the United States Copyright Law and, as such, all rights therein including copyright shall belong solely and exclusively to TopCoder from the time of their creation. To the extent any such work of authorship may

not be deemed to be a work made for hire, Developer agrees to, and does hereby, irrevocably and unconditionally transfer and assign to TopCoder all right, title and interest including copyright in and to such work.

4.3 All Intellectual Property Rights owned by a party as of the date hereof shall remain the property of such party and no licenses or other rights with respect to such intellectual property are granted to the other party except as expressly set forth in this Agreement.

4.4 Nothing in this Agreement should be construed as granting Developer any right or license under any Intellectual Property Right of TopCoder (including any rights TopCoder may have in any patents, copyrights, trademarks, service marks or any trade secrets), by implication, estoppel or otherwise, except as expressly set forth in this Agreement.

5.0 CONFIDENTIAL INFORMATION.

5.1 “Confidential Information” shall mean (a) any information, in whatever form, relating to the Contest Challenges whether provided by Developer or TopCoder and (b) any information, in whatever form, provided by TopCoder to Developer with obligation of confidentiality, or designated by TopCoder in writing as confidential, proprietary or marked with words of like import when provided to Developer, and information orally conveyed if TopCoder states at the time of oral conveyance or promptly thereafter that such information is confidential. Notwithstanding anything to the contrary contained herein, information about or relating to TopCoder’s software, TopCoder’s system interfaces, TopCoder’s hardware and software architecture, TopCoder’s business, operational and marketing plans, TopCoder’s member lists and database, all information and technology provided by TopCoder to Developer to enable Developer to perform its obligations hereunder, TopCoder Information, the Contest Challenges, and any and all Developments shall be considered Confidential Information of TopCoder under this Agreement.

5.2 Confidential Information shall not include information which (a) was in Developer’s possession without confidentiality restriction prior to disclosure by TopCoder hereunder; (b) at or after the time of disclosure by TopCoder becomes generally available to the public through no act or omission on Developer's part; or (c) has come into the possession of Developer without confidentiality restriction from a third party and such third party is under no obligation to TopCoder to maintain the confidentiality of such information.

5.3 Developer acknowledges the confidential and proprietary nature of Confidential Information and agrees (i) to hold Confidential Information in confidence and to take all reasonable precautions to protect such Confidential Information (including, without limitation, all precautions Developer employs with respect to his/her own confidential materials); (ii) not to divulge any such

Confidential Information to any third person; and (iii) to segregate all Confidential Information from information of other companies.

5.4 In the event that Developer is ordered to disclose Confidential Information pursuant to a judicial or government request, requirement or order, Developer will promptly notify TopCoder and take reasonable steps to assist TopCoder in contesting such request, requirement or order or in otherwise protecting TopCoder's rights prior to disclosure.

5.5 Developer agrees not to reproduce or copy by any means Confidential Information, except as reasonably required to accomplish the purposes of this Agreement. Upon termination of this Agreement, Developer's right to use Confidential Information will immediately terminate. In addition, upon such termination, or upon demand by TopCoder at any time, or upon expiration of this Agreement, Developer will destroy all tangible materials and computer data that disclose or embody Confidential Information.

5.6 If a particular portion or aspect of Confidential Information becomes subject to any of the exceptions set forth in Section 5.2 above, all other portions or aspects of such information will remain subject to all of the provisions of this Agreement.

5.7 Developer shall not disclose or otherwise make available to TopCoder in any manner any confidential and proprietary information received by Developer from third parties. Developer has not entered into, and agrees not to enter into, any agreement, either written or oral, in conflict herewith.

5.8 Developer agrees that because the Contest Challenges are an important part of the basis of TopCoder's programming competitions, any breach of this Agreement by Developer could cause irreparable damage to TopCoder. In view of the difficulties of placing a monetary value on the Confidential Information, TopCoder will have, in addition to any and all remedies of law, the right to an injunction or other equitable relief, and may be entitled to a preliminary and final injunction without the necessity of posting any bond or undertaking in connection therewith to prevent any further breach of this Section or further unauthorized use of Confidential Information. This remedy is separate from any other remedy TopCoder may have.

5.9 Neither party may disclose to any third party the specific terms of this Agreement without first obtaining the prior written consent of the other party, except as may be required to perform this Agreement or as may be required by law; provided, however, that each party may disclose this Agreement or its content, on a confidential basis, to its professional advisors, investors, potential investors and prospective permitted assignees.

6.0 REPRESENTATIONS AND WARRANTIES.

6.1 Developer represents and warrants to TopCoder that:

- a) Developer is eighteen years of age or older, is legally able and has the power and authority to execute, deliver and perform this Agreement and any other agreements contemplated hereby and to consummate the transactions contemplated hereby;
- b) No impediment exists to Developer entering into this Agreement, and no other Agreement has been or will be made with any third party which will interfere with his/her performance under this Agreement;
- c) Developer will use Developer's own independently developed Problem Statements, Coded Solutions and Test Input Data, and will not copy or include the ideas or code from any other party, including without limitation publicly available "Open Source" code that is or may be subject to licensing restrictions;
- d) Developer will not participate as a contestant or aid, directly or indirectly, any contestant in preparing or participating in any TopCoder competition in which Contest Challenges developed by Developer are used; and
- e) Any services performed by Developer in connection with this Agreement will be performed in a professional and workmanlike manner.

6.2 TopCoder represents and warrants to Developer that:

- a) TopCoder is a corporation duly organized and validly existing under the State of Delaware and has all requisite corporate power and authority to execute, deliver and perform this Agreement and any other agreements contemplated hereby and to consummate the transactions contemplated hereby; and
- b) No impediment exists to TopCoder's entering into this Agreement, and no other Agreement has been or will be made with any third party which will interfere with its performance under this Agreement.

7.0 TERM AND TERMINATION.

7.1 This Agreement will become effective upon execution by both Developer and TopCoder (the "Effective Date"), and will continue in effect for 3 months or until terminated pursuant to Sections 9.1 or 9.2 below. This Agreement will be automatically renewed for additional 3 month terms unless terminated by either party by written notice received at least 30 days before the end of the applicable term.

7.2 Either party may terminate this Agreement if the other party breaches any representation or warranty or fails to perform any material obligation thereunder, and such breach is not remedied within thirty (30) days after written notice thereof to the party in default.

7.3 TopCoder may at any time terminate this Agreement. In such case, TopCoder's liability will be limited to payment of any Development Fee(s) owed for approved Contest Challenges and no further services will be rendered by Developer. Such payment will constitute a full and complete discharge of TopCoder's obligations. In no event will TopCoder's liability to Developer exceed the Development Fee(s) owed for approved Contest Challenges.

7.4 Upon the expiration or termination of this Agreement, Developer will (i) discontinue the use of and return to TopCoder or destroy (at TopCoder's option) all TopCoder Information, Contest Challenges, and Confidential Information in Developer's possession, including without limitation tangible materials and computer data; and (ii) certify in writing to TopCoder within ten (10) days following expiration or termination of this Agreement that Developer has complied with the foregoing.

7.5 The provisions of Sections 4, 5, 6, 7, 8, 9, and 10 will survive any termination or expiration of this Agreement.

8. LIMITATION OF LIABILITY.

8.1 EXCEPT FOR AMOUNTS PAYABLE UNDER THE INDEMNITY PROVISIONS OF SECTION 9, OR THE CONFIDENTIALITY PROVISIONS OF SECTION 5 HEREOF, NEITHER TOPCODER NOR DEVELOPER WILL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHETHER SUCH DAMAGES ARISE UNDER THIS AGREEMENT, IN TORT, UNDER STATUTE, IN EQUITY, AT LAW, OR OTHERWISE.

9. INTELLECTUAL PROPERTY INDEMNIFICATION.

9.1 Developer will indemnify, hold harmless and defend TopCoder and its customers from and against any and all suits, actions, damages, costs, losses, expenses (including settlement awards and reasonable attorneys' fees) and other liabilities arising from or in connection with any claim alleging that the Contest Challenges or any Development violates any patent, copyright, trademark, trade secret, or other intellectual property interest in any country and will pay all costs and damages awarded. TopCoder will promptly notify Developer of any such claim of which TopCoder is aware.

9.2 Developer's obligations under this Section will not extend to any claim for infringement resulting solely from the following, if such infringement would have been avoided but for the following:

- a) Developer's compliance with any specific or direct written instructions from TopCoder; or
- b) The use or combination of the Contest Challenges with software programs or components not developed or supplied by Developer; or

- c) Any modification of the Contest Challenges by any party other than Developer.

10. ASSIGNMENT.

10.1 This Agreement is personal to Developer. Developer will not assign this Agreement or delegate or subcontract any services, rights, or obligations to be performed or owed under this Agreement without the prior written consent of TopCoder.

10.2 Subject to Section 10.1 above, this Agreement will be binding upon and inure to the benefit of the permitted successors and assigns of the parties hereto.

11.0 GENERAL.

11.1 Independent Contractors.

(a) TopCoder and Developer expressly agree and understand that Developer is an independent contractor and nothing in this Agreement nor the services rendered hereunder is meant, or shall be construed in any way or manner, to create between them a relationship of employer and employee, principal and agent, partners or any other relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the provisions of the Agreement. Accordingly, Developer acknowledges and agrees that Developer shall not be entitled to any benefits provided by TopCoder to its employees. Developer shall be responsible for any and all out-of-pocket expenses incurred in connection with this Agreement. In addition, Developer shall have sole and exclusive responsibility for the payment of all federal, state and local income taxes, for all employment and disability insurance and for Social Security and other similar taxes with respect to any compensation provided by TopCoder hereunder. Developer further agrees that if TopCoder pays or becomes liable for such taxes or related civil penalties or interest as a result of the Developer's failure to pay taxes or report same, or due to TopCoder's failure to withhold taxes, Developer shall indemnify and hold TopCoder harmless for any such liability. Developer shall assume and accept all responsibilities which are imposed on independent contractors by any statute, regulation, rule of law, or otherwise. Developer is not the agent of TopCoder and is not authorized and shall not have the power or authority to bind TopCoder or incur any liability or obligation, or act on behalf of TopCoder. At no time shall Developer represent that it is an agent of TopCoder, or that any of the views, advice, statements and/or information that may be provided while performing the Services are those of TopCoder.

(b) While TopCoder is entitled to provide Developer with general guidance to assist Developer in completing the scope of work to

TopCoder's satisfaction, Developer is ultimately responsible for directing and controlling the performance of the task and the scope of work, in accordance with the terms and conditions of this Agreement. Developer shall use its best efforts, energy and skill in its own name and in such manner as it sees fit.

11.2 All headings used in this Agreement and its attachments are intended for convenience of reference only and should not affect the construction or interpretation of the Agreement.

11.3 This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to conflict of laws principles. The parties hereby consent to the jurisdiction, of the state and federal courts located in the Commonwealth of Massachusetts.

11.4 No waiver, alteration or modification of any of the provisions of this Agreement will be binding unless made in writing and signed by each of the parties hereto.

11.5 If either party fails to enforce any term of this Agreement or fails to exercise any remedy, such failure to enforce or exercise on that occasion will not prevent enforcement or exercise on any other occasion.

11.6 All rights and remedies, whether conferred by this Agreement or by any other instrument or by law will be cumulative, and may be exercised singularly or concurrently.

11.7 If any provision of this Agreement is held invalid by any law, rule, order, or regulation of any government or by the final determination of any court of competent jurisdiction, such invalidity will not affect the enforceability of any other provisions and such provisions will be interpreted so as to best accomplish the objectives of such invalid provisions within the limits of applicable law or applicable court decision.

11.8 Neither party to this Agreement will be liable for its failure to perform any of its obligations hereunder during any period in which such performance is delayed by fire, flood, earthquake, other natural disaster, war, embargo, riot or the intervention of any government authority, provided that the party that is unable to perform immediately notifies the other party of such inability.

11.9 Notices to be given under this Agreement will be in writing, and sent by prepaid registered or certified mail, return receipt requested, or by prepaid overnight courier service, to the addresses set forth immediately below (or to such other addresses as the parties may designate by notice given in accordance with this provision):

For TopCoder:

TopCoder Inc.
Attention: Gregory Paul
703 Hebron Avenue
Glastonbury, CT 06033
(Fax:) 860.657.4276

For Developer:

(Fax:)

All such notices, if properly addressed, will be effective when received.

11.10 This Agreement constitutes the complete and exclusive statement of the agreement between the parties, and supersedes all prior agreements, proposals, negotiations and communications between the parties, both oral and written, regarding the subject matter hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives under seal as of the Effective Date.

TopCoder, Inc.

Developer

By: _____
Signature

By: _____
Signature

Name:

Name:

Title: