#  CONSULTING SERVICES AGREEMENT

THIS CONSULTING SERVICES AGREEMENT ("Agreement") is made and entered into as of this 7th day of January, 2013 (“Effective Date”), by and between Lambda Solutions, Inc., having its principal place of business at 110 West Hastings Street, Second Floor, Vancouver, BC V6B 1G8, Canada (“Consultant”), and Catholic Charities Society, having its principal place of business at 8815 99 Street, Edmonton, AB T6E 3V3, Canada (“Client”).

For and in consideration of the mutual promises, representations and covenants set forth herein, Consultant and Client agree as follows:

**1. Services.** This Agreement states the general terms and conditions upon which Consultant agrees to perform certain services (“Services”) for Client. At the time Consultant and Client mutually agree to the particular type of Service required, such Service shall be described in a schedule (the “Service Schedule”) which when executed by the parties shall incorporate by reference the terms and conditions of this Agreement.

Any executed Service Schedule shall serve only to supplement the understanding of the parties with respect to this Agreement and shall incorporate all terms and conditions of this Agreement by reference as fully as if they were set forth in the Service Schedule. In no way shall a Service Schedule alter the terms and conditions of this Agreement. To the extent that any conflicting terms and conditions are in any Service Schedule, this Agreement shall prevail to the complete exclusion of said conflicting terms and conditions.

**2. Term.** This Agreement shall enter into full force and effect on the Effective Date for a period of twelve (12) months, unless earlier terminated, as provided herein. Both parties may extend the term of this Agreement or any Service Schedule subject to written approval by both parties.

**3. Services Fees.** The charges for the Services shall be set forth in the Service Schedule (Schedule A). Payment for the Service charges shall be due and payable thirty (30) days from receipt of invoice. Client shall pay on demand interest at the lesser of 2% per month or the highest rate allowed by law on all non-disputed invoices not paid within thirty (30) days of receipt.

**4. Material Charges.** Client shall reimburse Consultant for the use or acquisition of any software, hardware, manuals, guides or other materials, including applicable taxes thereon where taxes are not refundable under Canadian federal or provincial tax law, purchased by Consultant in the performance of this Agreement. Client must approve all Material Charges in advance and in writing.

**5. Reimbursable Expenses.** Client shall reimburse Consultant for all pre-approved travel and other subsistence expenses incurred by Consultant or its employees in connection with the performance of the Services. Client must approve all Reimbursable Expenses in advance and in writing.

**6. Invoicing.** Client shall pay the amounts agreed to in Service Schedule upon receipt of approved invoices which shall be sent by Consultant as set forth in the “Invoicing” section applicable Service Schedule. For any additional statement(s) of work based on time and materials, the invoice shall set forth (i) the number of hours worked, the materials provided, and the expenses incurred by Consultant’s personnel during the period covered by said invoice; and (ii) the total amount due and owing to Consultant for Services Fees, Material Charges, and/or Reimbursable Expenses.

**7. Engagement Assumptions.** In the event any Client assumptions contained in the Agreement or Service Schedule or other documentation agreed to by the parties are not met or turn out to be inaccurate Client agrees to negotiate in good faith to mutually develop a work-around plan, revised schedule of delivery and revised payment of Services Fees, Material Charges and/or Reimbursable Expenses where it is determined that Consultant was not negligent in performance of duties or should have reasonably anticipated Clients expectations. Consultant agrees to perform all responsibilities reasonably requested by Client and provide reasonable information and assistance in identifying, assessing, verifying, reproducing and correcting defects.

Client understands that Consultant’s performance hereunder is dependent on Client’s timely decisions and approvals. Consultant shall be entitled to rely on all of Client’s decisions and approvals in connection with the Services. Client further understands that Consultant is relying upon the information that Client provides and Client represents that such information is true, accurate and complete. Because of the importance of such information to the Services, Client agrees to release Consultant and its personnel from any liability and costs relating to Consultant’s performance of the Services under this Agreement attributable to any false or inaccurate information provided by Client.

**8. Access and Use of Resources.** Client agrees to provide Consultant with reasonable assistance, cooperation and access to Client's staff, materials and resources, as necessary, for Consultant’s performance of the Services. Client represents and warrants that it has the legal rights to authorize Consultant’s use of the software, systems, hardware, documentation materials and/or resources at Client premises.

**9. Intellectual Property Ownership.** Client shall have all right, title and interest, including copyright and patent rights with respect to, and shall be free to use of all materials created by Consultant as a result of performing Services under this Agreement. Consultant shall have all right, title and interest, including copyright and patent rights with respect to, and shall be free to use a) materials created by Consultant prior to performing Services under this Agreement; b) concepts, techniques, know-how, practices, methodologies, refinements to methodologies, processes, and/or procedures used and developed under this Agreement. Subject to the obligations of confidentiality provided herein, Consultant shall continue to be free to perform similar services for its other clients using its general knowledge, skills and experience.

**10. Confidential Information.** Each party agrees to keep confidential and to disclose only to third parties with a need to know and who have executed a confidentiality agreement with such party on terms at least as stringent as these, or employees with a need to know, information received from the other party which has been identified as proprietary or confidential, or which by the nature of the circumstances surrounding disclosure, should in good faith be treated as proprietary or confidential, including without limitation information regarding the other party’s customers, business, pricing, know-how, documentation, manuals, or other printed material (collectively, “Information”). Information shall not include any information which (i) was in the public domain prior to disclosure, (ii) comes into the public domain through no fault or omission of a party, (iii) is disclosed to a party without restriction by a third party who has a legal right to make such disclosure; (iv) is already in the rightful possession of a party prior to its receipt from the other party as evidenced by documentation; or (v) is disclosed pursuant to a court order or other legal compulsion.

**11. Employees of Consultant.** Consultant is an independent contractor and neither Consultant nor Consultant's employees are, or shall be deemed to be, employed by Client. Consultant is, and shall remain, an independent contractor responsible for the obligation to pay all employment, income and social security taxes and secure employee worker's compensation insurance for its employees performing Services hereunder. Consultant agrees to provide and maintain in force at all times during the term of the Agreement, Worker's Compensation (which includes Employer's Liability) insurance covering its employees performing Services hereunder. As permitted by law, Consultant’s personnel shall observe the working hours, working rules and holiday policy of the Client for Services performed at the Client's premises.

**12. Subcontractors.** If it becomes necessary for Consultant to contract with subcontractors to assist in the performance of Services Consultant shall advise Client and obtain written approval to use a Subcontractor. Consultant shall ensure that the nominated , Subcontractor shall execute an agreement containing provisions of the character, scope and purpose of Sections 9, 10 and 11 above and Consultant expressly agrees to ensure that Subcontractor is bound by the same terms and conditions as stipulated in this Agreement.

**13. Solicitation of Personnel.** During the term of this Agreement and for twelve (12) months following termination of this Agreement, the parties mutually agree not to solicit the employment of, hire, employ or retain (either directly or indirectly) any employee, contractor or other personnel of the other party who was introduced to Client in connection with this Agreement. In the event a party violates this prohibition, it shall immediately be obliged to pay to the other party an amount equal to the greater of: a) Thirty Thousand Dollars ($30,000); or, b) thirty percent (30%) of the employee’s or contractor’s annual salary immediately prior to the solicitation, hiring, employment or retention.

**14. Representations and Limited Warranty.** Consultant warrants that Services will be performed in a professional and workmanlike manner in accordance with applicable professional standards and that Services provided shall comply with the agreed functional specifications and all applicable laws.. Consultant agrees to utilize best efforts to correct any identified defects. Consultant shall commit sufficient time and resources required in order to perform the Services. During the term of this Agreement, Consultant will not accept work, enter into a contract, or accept any obligation, inconsistent or incompatible with Consultant's obligations under this Agreement. Any special requirements for format or standards to be followed shall be attached as an additional document and agreed to in writing by both Client and Consultant. Consultant does not warrant, nor will Consultant be responsible for, the performance of any Products created by third parties. Client’s sole and exclusive rights and remedies with respect to any Products created by third parties, including rights and remedies in the event a Product created by a third party gives rise to an infringement claim, will be against the third party and not Consultant. The preceding is Consultant’s only warranty concerning the services and any work product, and is made expressly in lieu of all other warranties and representations, express or implied, including any implied warranties of fitness for a particular purpose, merchantability or otherwise.

**15. Insurance.** Consultant agrees to procure and maintain in full force and effect the following insurance coverage during the term of this Agreement: a) commercial general liability insurance for bodily injury and property damage with an aggregate limit of liability of $1,000,000; b) workers' compensation insurance as required by law; and, c) automobile insurance with a combined single limit of liability of $1,000,000.00. Consultant agrees to furnish certificates, including renewal certificates, evidencing such coverage upon Client’s written request.

**16. Limited Liability.** Except for consultant’s and client obligations of confidentiality or intellectual property set forth in the agreement, neither party shall be liable to the other party for indirect, incidental, special, exemplary, punitive, or consequential damages (including without limitation lost profits, revenue, data, or data use) whether an action in contract, tort, or based on any other legal theory even where a party has been advised of the possibility of such damages. These limitations shall apply notwithstanding any failure of essential purpose resulting from any limited remedy and to the maximum extent permitted by law.

**17. Termination.** Either party may terminate this Agreement or any Statement of Work under this Agreement: a) upon thirty (30) days written notice, said notice specifically identifying a material breach or condition of this Agreement, provided the breaching party shall not have cured such breach within a thirty day notice period; or, b) upon thirty (30) days written notice, which notice identifies specifically each Statement of Work and/or personnel of Consultant with respect to which termination is sought. This Agreement shall remain in effect with respect to all Statement(s) of Work not so terminated as provided herein.

In the event of termination of this Agreement, Client shall pay Consultant all Services Fees, Material Charges, Reimbursable Expenses and other expenses provided for in this Agreement, accrued and approved as completed as of the date of such termination with respect to the Agreement, Statement of Work or personnel of Consultant so terminated.

**18. Indemnity.** Each party shall indemnify and save harmless the other party from and against any loss, expense or claim asserted by third parties for damage to third party tangible property, or for bodily injury, or both, arising out of the performance of a Service Schedule, to the extent such damage or injury is attributable to the negligence of the indemnitor; provided, indemnitee gives the indemnitor prompt notice of any such claim and all necessary information and assistance so that indemnitor, at its option, may defend or settle such claim, and indemnitee does not take any adverse position in connection with such claim. In the event that any such damage or injury is caused by the joint or concurrent negligence of both parties, the loss, expense or claim shall be borne by each party in proportion to its negligence.

# **19. General Provisions.** Consultant may not assign or otherwise transfer its obligations under this Agreement or any Service Schedule except with the written consent of Client, which shall not be unreasonably withheld.

Consultant shall exercise commercially reasonable efforts to perform the Services in a timely manner, but shall not be responsible for delays or failures to perform, which are due to causes beyond its reasonable control.

No action under this Agreement may be brought by either party more than two (2) years after the cause of action has accrued.

If any provision of this Agreement Is deemed, by a court of competent jurisdiction, invalid or unenforceable, such judgment shall not invalidate or render unenforceable the remainder of the Agreement.

This Agreement constitutes the entire agreement between the parties with respect to the subject matter, and supersedes all prior agreements and understandings, both written and oral.

Any notice, under this Agreement, shall be in writing and shall be effective upon receipt via registered mail or nationally recognized courier.

All changes to this Agreement must be in writing and executed by both parties.

This Agreement and any Service Schedule may be executed in multiple counterparts, each of which shall be deemed an original of equal force and effect.

**20. Notices.** Any notice required or permitted to be given hereunder shall be deemed sufficient if made in writing and deposited in the mail, postage prepaid, registered or certified mail, and addressed:

1. If to Consultant, at:

Lambda Solutions

VP of Research and Development

110 West Hastings Street, Second Floor

Vancouver, BC V6B 1G8

Attn: Jim Yupangco

1. If to Client, at:

8815 99 Street
Edmonton, AB T6E 3V3
Canada

Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

OR such other address as may from time to time be specified in writing and given by the parties.

**21. Severability.** If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each term and provision hereof shall be valid and enforced to the fullest extent permitted by law.

**22. Force Majeure.** Consultant shall not be liable for any delays in the performance of any of its obligations hereunder due to causes beyond its reasonable control, including, unavailability or shortages of software, hardware, materials or equipment, or failure of Client to reasonably cooperate with Consultant.

**23. Headings Not Controlling.** Headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

**24. Complete Agreement.** This Agreement, including all executed attachments, exhibits and addenda shall supersede all prior agreements and understanding and shall constitute the entire agreement between the parties respecting the subject matter hereof. No representations or statements made by any representative of Client or Consultant which are not stated herein shall be binding. No modifications, addition to, or amendment of this Agreement shall be binding unless in writing and signed by a duly authorized officer of each party.

**25. Acknowledgment.** Both Client and Consultant have full power and authority to enter into and perform the Agreement and acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms and conditions.

**26. Authorization.** This Agreement shall not be binding or enforceable unless executed by an authorized officer of both parties. Both parties warrant and represent that its signatory who has executed this Agreement below is authorized and empowered by all necessary and appropriate legal action to execute this Agreement.

**27.** **Choice of Law.** This Agreement and all Service Schedules shall be governed by the laws of the Province of British Columbia and Canada, without regard to conflict of laws principles.

**28. Jurisdiction.** The parties irrevocably and unconditionally waive any objection they have to the jurisdiction of the courts of the Province of British Columbia and Canada, including without limitation, objections to venue or the convenience of such forum. Final judgment in any action shall be conclusive and may be enforced in other jurisdictions by suit on the judgment.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed as of the Effective Date stipulated above.

|  |  |  |  |
| --- | --- | --- | --- |
| **Consultant** |  | **Client** |  |
| By: |  |  | By: |  |
| Name: |  |  | Name:  |  |
| Title: |  |  | Title: |  |
| Date: |  |  | Date: |  |

# **SERVICE Schedule: SCOPE OF WORK**

**MANAGED HOSTING IN PRIVATE CLOUD ON A VIRTUAL DEDICATED SERVER - BRONZE**

Services included:

Setup & Managed Hosting in Secure Private Cloud on a VM Server

Totara Server 100 GB Storage, 100 GB Bandwidth\*\*\*

Installation and setup of Totara

Installation and setup of up to 5 Totara application plug-ins

Totara branding to match with your website look & feel\*

10 Hours of Totara Expert Support (Tier 3-4)\*\*

Year 1 set-up and hosting cost

**YEARLY TOTARA PRODUCT SUBSCRIPTION**

For installations of up to 3000 users

Full access to all features

**THEME DEVELOPMENT FOR TOTARA**

Enhanced theme branding

**Costs**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **# of Items** | **Service Description** |  | **Rate** | **Price in CAD** |
| 1 | Managed Hosting – Totara – Bronze Virtual Machine |  | $9,200 | $9,200.00 |
| 1 | Theme Development - Advanced |  | $1,600 | $1,600.00 |
| 1 | Totara Product Subscription - Annual |  | $4,950 | $4,950.00 |
| 1 | Integration with MS Great Plains - current estimate |  | $4,800 | $4,800.00 |
|  |  |  | **TOTAL** | **$20,550.00** |

**Payment Schedule and Terms:**