ABC

DEVELOPMENT AND LICENSE AGREEMENT

This Development and License Agreement ("**Agreement**") is entered into as of November ___, 2001 (the "**Effective Date**") by and between ABC and XYZ maintaining its principal place of business.

RECITALS

A.   ABC is in the business of developing products and providing consulting services for the communications industry.

B.   XYZ is in the business of developing hardware and related products for wireless communications.

C.   XYZ desires ABC (i) to perform certain development services to create an IOTA client for a compact flash card being developed by XYZ and (ii) to grant to XYZ a non-exclusive license for the IOTA client, and ABC desires to perform such work and grant such license on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as set forth below.

AGREEMENT

1.   **DEFINITIONS.**

1.1   **"Development Services"** means the development services to be performed by ABC under this Agreement for the purpose of developing the IOTA Client.

1.2   **"Flash Card"** means the CDMA 1xRTT compact flash card being developed by XYZ.

1.3   **"IOTA Client"** means the IP-based Over-the-Air (IOTA) client software (including object code and source code) and related documentation that ABC will develop during the course of performing the Development Services; such software to be integrated by XYZ into the Flash Card.

2.   **DEVELOPMENT OF IOTA CLIENT.**

2.1   **Development by ABC.** Subject to the terms of this Agreement, ABC agrees to use commercially reasonable efforts to perform the Development Services and deliver the IOTA Client to XYZ in accordance with the schedule set forth in Exhibit A (the "**Schedule**") and substantially in accordance with the parties mutually agreed upon specifications (the "**Specifications**"). The preliminary Specifications are set forth in Exhibit B and will be completed and modified by the parties as provided in Section 2.4 ("Change Orders"). XYZ acknowledges that the Development Services will be performed primarily at ABC' facilities. The parties acknowledge and agree that the Specifications and the Schedule represent the target specifications and schedule and that the Specifications and the Schedule may be revised by mutual written agreement of the parties.

2.2   **XYZ Assistance.** XYZ agrees (i) to make available any and all required XYZ personnel necessary to assist and enable ABC to complete the Development Services; (ii) to request and facilitate the participation, as necessary, of any third party vendors, solution providers, or other resources familiar with XYZ's technology and products related to the Development Services, if any; (iii) to deliver to ABC any XYZ hardware, software, API's, development environment information, or technical materials necessary for ABC to perform the Development Services; and (iv) perform its obligations set forth in the Schedule. XYZ acknowledges and agrees that ABC' ability to perform the Development Services in accordance with the terms of this Agreement is dependent upon and subject to XYZ's timely performance of its obligations under this Agreement.

2.3   **Project Managers.** ABC and XYZ agree to appoint a project manager to be the point of contact for issues and discussions regarding the Development Services (the "**Project Managers**"). The Project Managers are responsible for monitoring the Development Services and facilitating the delivery of the deliverables and achievement of the milestones as set forth in the Schedule. Either party may changes its Project Manager upon written notice to the other party.

2.4   **Change Orders.** From time to time after the execution of this Agreement, the parties may decide to amend the Schedule or the Specifications or both by mutual written agreement, including without limitation completing the preliminary Specifications set forth in Exhibit B. In the event that either party desires to change the Schedule or the Specifications, such party shall deliver to the other party a written request for such change (a "**Change Order**"). Each Change Order shall describe in detail the requested change, the nature of the changes required to the Specifications to accomplish the change and the anticipated impact of such change on the Schedule and the Fee (as defined in Section 5.1 ("Fees Due ABC")). Promptly after delivery of a Change Order, the parties shall discuss the requested change and negotiate the terms of implementing the change. If the parties agree to make any changes to the Schedule, the Specifications or the Fee, the authorized representatives of the parties will sign a written amendment to this Agreement describing the changes that will be made and their effect on the Schedule, the Specifications and the Fee. Upon execution of such written document, the Specifications, the Schedule and the Fee shall be deemed modified to reflect the changes described in the written document. No modification or amendment to the Schedule, the Specifications or the Fee shall be effective or binding on either party unless documented in writing as set forth herein.

3.   **ACCEPTANCE.**

3.1   **Acceptance Procedure.** XYZ will have six (6) months from the date on which ABC delivers the IOTA Client to XYZ (the "**Acceptance Period**") to determine whether the IOTA Client substantially conforms to the Specifications. XYZ may reject the IOTA Client only if the IOTA Client fails to substantially conform to the Specifications. XYZ may not reject the IOTA Client for any other reason, including without limitation any malfunction of the Flash Card, any communication network, or any other component reasonably necessary for the proper operation of the Flash Card. Within the Acceptance Period, XYZ will provide ABC with written acceptance or a written statement detailing the nonconforming aspects of the IOTA Client (a "**Statement of Errors**"). If XYZ does not provide ABC with a written acceptance or Statement of Errors prior to the expiration of the Acceptance Period, the IOTA Client will be deemed accepted by XYZ.

3.2   **Correction of Errors.** If XYZ provides a Statement of Errors to ABC during the Acceptance Period, ABC will use its commercially reasonable efforts to correct the nonconformities described in the Statement of Errors and redeliver the IOTA Client to XYZ within thirty (30) days after receipt of XYZ's Statement of Errors. After delivery of the corrected IOTA Client to XYZ, XYZ will have the longer of (i) the remainder of the original Acceptance Period or (ii) thirty (30) calendar days to determine that the corrected IOTA Client substantially conforms to the Specifications. Within such

period, XYZ will provide ABC with written acceptance or a Statement of Errors. If XYZ does not provide ABC with a written acceptance or Statement of Errors within the specified period, the redelivered IOTA Client will be deemed accepted by XYZ. If XYZ provides a further Statement of Errors during the specified period, then the procedure set forth above in this Section 3.2 ("Correction of Errors") shall be repeated once more. If XYZ does not provide ABC with a written acceptance or a Statement of Errors during the ABCABCABCXYZlast evaluation period, the redelivered IOTA Client will be deemed accepted by XYZ. If XYZ does provide a third Statement of Errors within the specified period, ABC, in its sole discretion, may terminate this Agreement upon written notice to ABCXYZ. In the event of such termination, then (i) XYZ shall not be required to pay ABC the third installment of the Fee in the amount of Two Hundred Thousand Dollars ($200,000) and (ii) ABC shall deliver to XYZ the IOTA Client in its then-current form. The foregoing shall be XYZ's sole and exclusive remedy in the event XYZ terminates this Agreement as provided in this Section.

3.3   **ABC Assistance.** Between January 21, 2002 and April 30, 2002, ABC will provide XYZ with up to fifteen (15) hours per week of technical assistance regarding the operation and testing of the IOTA Client. ABC shall provide such assistance via telephone and e-mail at no additional cost to XYZ. The parties may mutually agree on additional on-site technical support to be provided by ABC, including any fees due ABC for such on-site support.

4.   **LICENSE GRANT.** Subject to the terms of this Agreement, ABC hereby grants to XYZ a non-exclusive, perpetual, worldwide, royalty-free, fully paid-up, irrevocable license to use, reproduce, modify and distribute the IOTA Client. The license granted in this Section shall include the right to sublicense through multiple tiers of distribution. Except for the foregoing license to the IOTA Client, no license, right or interest is being granted to XYZ by ABC to any of ABC' technology or intellectual property rights, including without limitation patents, copyrights, trade secrets and trademarks. All rights not expressly granted herein are retained by ABC and its suppliers and licensors.

5.   **FEES AND PAYMENT TERMS.**

5.1   **Fees due ABC.** XYZ shall pay ABC a fixed fee of Five Hundred Thousand Dollars ($500,000) for performing the Development Services (the "**Fee**"). The Fee shall be payable in three (3) installments as set forth herein and each installment shall be non-refundable once paid. The first installment shall be in the amount of One Hundred Fifty Thousand Dollars ($150,000) and shall be payable concurrently with the execution of this Agreement. The second installment shall also be in the amount of One Hundred Fifty Thousand Dollars ($150,000) and shall be payable upon ABC' delivery of the IOTA Client to XYZ. The third installment shall be in the amount of Two Hundred Thousand Dollars ($200,000) and shall be payable upon XYZ's acceptance of the IOTA Client pursuant to Section 3 ("Acceptance"). All payments due ABC under this Agreement shall be made in U.S. currency via wire transfer or electronic funds transfer (EFT) in immediately payable funds to an account designated by ABC.

5.2   **Fees due XYZ.** In the event that ABC grants to a Competitor (as defined below) a license to the IOTA Client as delivered to XYZ under this Agreement during the two (2) year period after the Effective Date, ABC shall pay to XYZ twenty percent (20%) of the license fees actually received by ABC from the Competitor for the license. The twenty percent (20%) license fee shall be payable only on license fees and will not apply to any other amounts received by ABC from the Competitor, including without limitation fees for development services, demonstration license fees, technical support or consulting. For purposes of this Section, **"Competitor"** means any of the following companies: (i) Airprime, Inc.; (ii) Novatel Wireless, Inc.; or (iii) Sierra WirelessXYZ. Within a reasonable time after the grant of any such license to a Competitor, ABC shall provide XYZ with a report describing the license fees actually received by ABC for granting the license, together with payment for the license fees due to

XYZ for such license. No license fees will be due XYZ under this Section for revisions or modifications to or derivative works of the IOTA Client licensed to a CompetitorXYZXYZABCABC.

5.3   **Additional Services.** In the event that XYZ requests that ABC perform any additional services beyond those required as part of the Development Services, and ABC agrees in writing to perform such additional services, XYZ shall pay ABC for those services on a time and materials basis at ABC' then-current rates. Payment for these services shall be due within thirty (30) days following the date of the invoice for the services, unless otherwise specified by ABC before the commencement of any such services.

5.4   **Travel Expenses.** In the event that XYZ requests that ABC travel to XYZ's facilities or any other location to perform any services, including the Development Services, XYZ agrees to pay ABC for all reasonable travel, lodging, and meal expenses related to such travel.

5.5   **Late Payment and Taxes.** The rate per annum of interest on overdue payments under this Agreement shall be six percent (6%) or the highest rate allowed by law, whichever is less. Interest will be calculated from the date due until payment is received by ABC. The failure to timely pay amounts due under this Agreement will be deemed a material breach of this Agreement.   Any tax, customs duty or other charge of whatever nature imposed by governmental or any other authority of any country upon the activities of or deliveries by ABC or the payments by XYZ will be separately identified on the invoice and will be paid by XYZ. All amounts due to ABC shall be paid without deduction for any taxes, levies, or charges of any nature which may be imposed, including without limitation, any taxes and customs duties. If XYZ is required by any applicable law to make any such deduction from any payment due ABC under this Agreement, then the amount due to ABC in respect of such payment shall be increased by the amount of the deduction, and will result, notwithstanding the deduction, in ABC' receipt of the amount that ABC would have received if XYZ had not been required to make such deduction. XYZ agrees to deliver to ABC a receipt or similar documentation evidencing payment of any such deductions or tax. In the event that ABC pays for any taxes on behalf of XYZ, then XYZ shall reimburse ABC therefore within thirty (30) days of the invoice date.

6.   **OWNERSHIP OF INTELLECTUAL PROPERTY.**

6.1   **Ownership by ABC.** Subject to the express license granted to XYZ under this Agreement, ABC and its licensors are and shall remain the sole and exclusive owners of all right, title and interest in and to the IOTA Client, all components thereof and all intellectual property rights therein (including without limitation patent rights and copyrights).

6.2   **Ownership by XYZ.** XYZ and its licensors are and shall remain the sole and exclusive owners of all right, title and interest in and to the Flash Card (but expressly excluding the IOTA Client) and all intellectual property rights therein (including without limitation patent rights and copyrights).

7.   **WARRANTY.**

7.1   **Limited Warranty.** For a period of thirty (30) days following XYZ's acceptance of the IOTA Client, ABC warrants to XYZ that the IOTA Client will substantially conform to the Specifications. In the event of a breach of the foregoing warranty, XYZ will provide written notice to ABC detailing the nature of the non-conformance. Upon receipt of such notice ABC may either use commercially reasonable efforts to repair or replace the IOTA Client with a new version that conforms to the foregoing warranty, or if ABC determines that such repair or replacement is not commercially reasonable, ABC may terminate this Agreement and refund to XYZ the third installment of the Fee paid

by XYZ to ABC. ABC does not warrant that the operation of the IOTA Client will be uninterrupted or error free. The foregoing warranty shall be void if the IOTA Client is (i) customized, modified, altered or otherwise changed by anyone other than ABC, (ii) not installed or configured properly, (iii) used in a manner or for an application other than as contemplated in this Agreement, or (iii) abused, damaged or misused. THE REMEDIES SET FORTH IN THIS SECTION 7.1 ("LIMITED WARRANTY") ARE XYZ'S SOLE AND EXCLUSIVE REMEDIES REGARDING THE OPERATION OR PERFORMANCE OF THE IOTA CLIENT OR ANY PORTION THEREOF.

   7.2 **Disclaimer of Warranties.** EXCEPT FOR THE EXPRESS WARRANTY PROVIDED IN SECTION 7.1 ("LIMITED WARRANTY"), ABC MAKES NO WARRANTIES REGARDING THE DEVELOPMENT SERVICES, THE IOTA CLIENT OR ANY PORTION THEREOF AND EXPRESSLY EXCLUDES ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, AND ANY OTHER WARRANTY THAT MIGHT ARISE FROM COURSE OF DEALING OR USAGE OF TRADE.

   8. **CONFIDENTIAL INFORMATION.**

   8.1 **Definition of Confidential Information. "Confidential Information"** as used in this Agreement shall mean any and all technical and non-technical information including patent, copyright, trade secret, and proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source code and documents, and formulae related to the current, future and proposed products and services of a party, a party's suppliers and customers, and includes without limitation a party's information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing manufacturing, customer lists, business forecasts, sales and merchandising and marketing plans and information. The terms of this Agreement (including without limitation all price terms and fees) are also Confidential Information. The fact that this Agreement exists between the parties is not Confidential Information.

   8.2 **Nondisclosure and Nonuse Obligations.** Except as permitted in this paragraph, neither party (the **"Receiving Party"**) shall use nor disclose the Confidential Information of the other party (the **"Disclosing Party"**) except as necessary to perform its obligations under this Agreement. The Receiving Party agrees that it shall treat all Confidential Information of the Disclosing Party with the same degree of care as the Receiving Party accords to its own Confidential Information, but in no case less than reasonable care. The Receiving Party may disclose Confidential Information only to those of its employees and contractors who need to know such information, and the Receiving Party certifies that such employees and contractors have previously agreed, either as a condition of employment or in order to obtain the Confidential Information, to be bound by terms and conditions substantially similar to those terms and conditions applicable to the Receiving Party under this Section 8 ("Confidential Information"). The Disclosing Party agrees not to communicate any information to the Receiving Party in violation of the proprietary rights of any third party. The Receiving Party will immediately give notice to the Disclosing Party of any unauthorized use or disclosure of the Confidential Information. The Receiving Party agrees to assist the Disclosing Party in remedying any such unauthorized use or disclosure of the Confidential Information. A breach of this Section 8.2 ("Nondisclosure and Nonuse Obligations") by the Receiving Party will cABCe irreparable harm and injury to the Disclosing Party for which money damages are inadequate. In the event of such breach, the Disclosing Party shall be entitled to injunctive relief, in addition to its legal and other equitable remedies.

8.3 **Exclusions from Nondisclosure and Nonuse Obligations.** The Receiving Party's obligations under Section 8.2 ("Nondisclosure and Nonuse Obligations") with respect to any portion of the Confidential Information shall not apply to any such portion which the Receiving Party can demonstrate, (a) was in the public domain at or subsequent to the time such portion was communicated to the Receiving Party by the Disclosing Party through no fault of the Receiving Party; (b) was rightfully in the Receiving Party's possession free of any obligation of confidence at or subsequent to the time such portion was communicated to the Receiving Party by the Disclosing Party; or (c) was developed by employees of the Receiving Party independently of and without reference to any information communicated to the Receiving Party by the Disclosing Party. A disclosure of Confidential Information by the Receiving Party, either (a) in response to a valid order by a court or other governmental body, (b) otherwise required by law, or (c) necessary to establish the rights of either party under this Agreement, shall not be considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided, however, that the Receiving Party shall provide prompt prior written notice thereof to the Disclosing Party to enable the Disclosing Party to seek a protective order or otherwise prevent such disclosure.

8.4 **Ownership and Return of Confidential Information.** The Receiving Party, at the Disclosing Party's request and no later than fifteen (15) days after such request, shall destroy or deliver to the Disclosing Party, at the Disclosing Party's option, all Confidential Information of the Disclosing Party and written certification of the Receiving Party's compliance with its obligations under this sentence. All right, title and interest in and to the Disclosing Party's Confidential Information shall remain with the Disclosing Party.

9. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON OR ENTITY FOR THE COST OF SUBSTITUTE GOODS OR SERVICES, ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, HOWEVER CABCED, ARISING OUT OF OR RESULTING FROM THIS AGREEMENT, THE DEVELOPMENT SERVICES, THE IOTA CLIENT OR ANY PORTION THEREOF, REGARDLESS OF THE FORM OF ACTION, WHETHER FOR BREACH OF CONTRACT, BREACH OF WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE (INCLUDING WITHOUT LIMITATION DAMAGES BASED ON LOSS OF PROFITS, DATA, FILES, OR BUSINESS INTERRUPTION OR OPPORTUNITY), AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY FOR ALL CLAIMS, WHETHER IN CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, EXCEED AN AMOUNT EQUAL TO THE FEES ACTUALLY PAID TO ABC BY XYZ HEREUNDER. THE LIMITATIONS SET FORTH ABOVE SHALL BE DEEMED TO APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDIES SET FORTH IN THIS AGREEMENT. THE PARTIES ACKNOWLEDGE AND AGREE THAT THEY HAVE FULLY CONSIDERED THE FOREGOING ALLOCATION OF RISK AND FIND IT REASONABLE, AND THAT THE FOREGOING LIMITATIONS ARE AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

10. **NO INDEMNIFICATION.** XYZ acknowledges and agrees that since ABC is developing the IOTA Client pursuant to the Specifications provided by XYZ, ABC shall have no obligation to indemnify, defend or hold XYZ harmless from or against any claims, liabilities, losses, damages, expenses or any other amounts arising or resulting from third party claims that the IOTA Client, either as integrated into the Flash Card or on a stand-alone basis, infringes any intellectual property rights of any third partyABCABC.

11.   **TERM AND TERMINATION.**

11.1   **Term.** This Agreement shall commence on the Effective Date and shall continue until the expiration of the warranty period set forth in Section 7.1 ("Limited Warranty"), unless earlier terminated as provided in this Agreement.

11.2   **Termination for ABC.** If, during the term of this Agreement, either party is in material breach of the terms of this Agreement, the non-breaching party may give written notice of such breach to the breaching party and an opportunity to cure the breach within thirty (30) days. If such breach is not cured within such thirty (30) day period, the non-breaching party may immediately terminate this Agreement by subsequent written notice to the party in breach. Notwithstanding the foregoing, if XYZ fails to pay any amount when due and fails to cure such breach within seven (7) days of receiving notice from ABC of the failure to pay, ABC may immediately suspend its performance under this Agreement and/or terminate this Agreement upon written notice to XYZ.

11.3   **Survival.**   The following sections shall survive the expiration or earlier termination of this Agreement: Sections 1 ("Definitions"), 4 ("License to IOTA Client"), 5 ("Fees and Payment Terms"), 6 ("Ownership of Intellectual Property"), 7.2 ("Disclaimer of Warranties"), 8 ("Confidential Information"), 8.4 ("Limitation of Liability"), 11.3 ("Survival") and 12 ("General").

12.   **GENERAL.**

12.1   **Export.**   XYZ understands that the IOTA Client and related technical information may be subject to the export control laws and regulations of the U.S. or other applicable jurisdictions. XYZ agrees that it will not export or re-export the IOTA Client or any related technical information in violation of such laws or regulations.

12.2   **Independent Contractor Relationship.** ABC' relationship with XYZ is that of an independent contractor, and nothing in this Agreement is intended to, or should be construed to, create a partnership, agency, joint venture or employment relationship.

12.3   **Non-Solicitation.** During the term of this Agreement and for a period of one (1) year after its termination, neither party shall directly solicit or knowingly indirectly solicit any employee of the other party to leave its employ, excluding general employment solicitations printed in a newspaper, magazine or regular trade periodical.

12.4   **Assignment.**   Neither party may assign this Agreement or any rights or obligations under this Agreement without the written consent of the other party, which consent may not be unreasonably withheld. Notwithstanding the foregoing, either party may assign this Agreement to a third party, without such consent, in the event of a merger, reorganization, change of control, or the sale of all, substantially all or a majority of that party's assets or voting securities. This Agreement shall be binding upon and will inure to the benefit of the legal successors and assigns.

12.5   **Governing Law.** This Agreement shall be governed in all respects by the laws of the State of California, as such laws are applied to agreements entered into and to be performed entirely within California between California residents. Each party will voluntarily appear before and hereby consents and submits to the jurisdiction of the state and federal courts in San Diego, California. In addition, each party consents to venue and hereby waives objections to venue for any action commenced in such courts. The prevailing party in any such litigation or dispute shall be entitled to recover from the other party its costs and fees, including attorneys' fees, associated with such litigation or dispute. Each party agrees to perform its obligations and exercise its rights under this Agreement in accordance with all

applicable laws and regulations. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods (1980) is specifically excluded from application to this Agreement.

12.6　　**Waiver**. The failure of either party to require performance by the other party of any provision of this Agreement shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.

12.7　　**English Language**. This Agreement is prepared and executed in the English language only and any translations of this Agreement into any other language shall have no effect. All proceedings related to this Agreement shall be conducted in the English language.

12.8　　**Entire Agreement and Amendment**. This Agreement together with all Exhibits hereto (which are hereby incorporated by reference) completely and exclusively states the agreement of the parties regarding its subject matter. It supersedes, and its terms govern, all prior or contemporaneous understandings, term sheets, memoranda of understanding, agreements, representations, or other communications between the parties, oral or written, regarding such subject matter. This Agreement may be executed in counterparts all of which taken together shall constitute one single agreement between the parties. In the event of a conflict between the terms in the body of this Agreement and the terms in one or more of the Exhibits attached hereto, the terms in the body of this Agreement shall control. This Agreement may be amended only in a written document signed by both parties.

12.9　　**Headings.** The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or extent of such paragraph or in any way affect such paragraph.

12.10　　**Construction.** This Agreement has been negotiated by the parties and their respective counsel. This Agreement will be fairly interpreted in accordance with its terms and without any strict construction in favor of or against any party. Any ambiguity will not be interpreted against the drafting party.

12.11　　**Publicity.**　　Neither party may issue external press or publicity releases mentioning the other party without the coordination, and prior written approval, of such other party, except as may be required by applicable law. The approval of any such press or other public release will not be unreasonably withheld or delayed. Notwithstanding the foregoing, ABC may refer to XYZ in ABC' publicity material as XYZ being a licensee of ABC, but shall not, without XYZ's permission (which shall not be unreasonably withheld), publicize the nature of ABC' work under this Agreement.

12.12　　**Force Majeure.**　　Except for the payment of any amounts due under this Agreement, neither party shall be liable for nonperformance or delays, under any circumstances, which occur due to any ABC beyond its reasonable control. These ABC shall include, but shall not be limited to, the nature of the Flash Card, acts of God, wars, riots, strikes, fires, storms, floods, earthquakes, shortages of labor or materials, labor disputes, vendor failures, transportation embargoes, acts of any government or agency thereof and judicial actions. In the event of any such delay or failure of performance, the date of delivery or performance shall be deferred for a period equal to the time lost by reason of the delay. In no event shall either party be liable to the other for any delay or re-procurement costs for failure to meet any shipment or performance date.

12.13　　**Notice.** Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows, with notice deemed given as indicated: (a) by personal delivery, when delivered personally; (b) by overnight courier, upon written verification of receipt; (c) by telecopy or

facsimile transmission, upon acknowledgement of receipt of electronic transmission; or (d) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the addresses set forth below or to such other address as either party may specify in writing.

ABC

XYZ

_____

_____
Telephone: _____
Fax: _____
E-mail: _____

      12.14   **Severability.** If any provision of this Agreement is held by a court of law to be illegal, invalid or unenforceable, (i) that provision shall be deemed amended to achieve as nearly as possible the same economic effect as the original provision, and (ii) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby.

      IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date and the person signing below represents and warrants that he/she is duly authorized to sign for and on behalf of the respective party.

ABC   XYZ

By:_____   By:_____

Print Name:_____   Print Name:_____

Title:_____   Title:_____

EXHIBIT A

SCHEDULE

Deliverable / Milestone	Responsible Party	Estimated Delivery / Performance Date
Commencement of Development Services	ABC	Effective Date
Delivery of IOTA Client and related documentation	ABC	December 14, 2001
Testing of IOTA Client	XYZ	Complete within 6 months from delivery of IOTA Client
Delivery of final versions of object code and source code	ABC	Within 30 days from XYZ's acceptance of IOTA Client and payment of third installment of Fee

Additional Tasks:

EXHIBIT B

SPECIFICATIONS

[To be attached or inserted]