

SERVICE AGREEMENT

between

AlphaOmega Soft, Inc.
2018 156th Avenue NE Suite 100
Bellevue WA 98007

and

Customer Name: _____
Company Name: _____
Shipping Address: _____
Phone: _____ Fax: _____
Email: _____

SIGNATURE PAGE

This Service Agreement (this "Agreement") is made by and between AlphaOmega Soft, Inc. ("AOS"), and the party identified above ("Customer"). The following terms and conditions are part of this Agreement:

Description of Services: To attempt to determine the existence and extent of recoverable data on Media that Customer provides ("Evaluation"), and to attempt to retrieve and/or provide access to any recoverable data ("Data Recovery").

Fees for Services: Evaluation Fee \$____ / Data Recovery Fee \$____

ACKNOWLEDGEMENT

THE UNDERSIGNED HEREBY ACKNOWLEDGE AND AGREE THAT THEY HAVE READ AND THAT THEY FULLY UNDERSTAND THE TERMS AND CONDITIONS OF THIS AGREEMENT, WHICH INCLUDE THE STANDARD TERMS AND CONDITIONS THAT ARE ATTACHED HERETO AND MADE A PART HEREOF, AND THAT BY SIGNING BELOW THEY BECOME PARTIES TO, AND AGREE TO BE BOUND BY, THIS AGREEMENT.

The Effective Date of this Agreement shall be _____, 2002

ALPHAOMEGA SOFT, INC.

CUSTOMER: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

STANDARD TERMS AND CONDITIONS

1. Definitions. For purposes of this Agreement, in addition to the capitalized terms defined elsewhere in this Agreement, the following terms shall have the meanings described below:

a. "Confidential Information" means all information of either party that is not generally known to the public, whether of a technical, business or other nature (including, without limitation, trade secrets, research and development plans, inventions, hardware, software, know-how and information relating to the technology, customers, business plans, marketing activities, finances and other business affairs of such party), transmitted by one party (the disclosing party) to the other party (the receiving party) and that has been identified as being proprietary and/or confidential or that by the nature of the circumstances surrounding the disclosure reasonably ought to be treated as proprietary and confidential.

b. "Media" means the software, data, electronic file, disk, CD-ROM, media, equipment, or other items that Customer provides to AOS in connection with this Agreement.

c. "Services" means the services described on the Signature Page, and any other service AOS provides to Customer pursuant to this Agreement.

2. Services. AOS shall use reasonable efforts to provide Customer the Services. Customer acknowledges and agrees that the Media it will provide AOS is already damaged, that the Services may cause further damage, and that AOS shall not be liable for any damaged Media. Customer represents and warrants that it has back up copies of all Media it provides to AOS. Customer acknowledges and agrees that the providing of Services may require the shipping or transmission of Media between Customer and AOS, and that AOS shall not be liable for any loss of, or damage to, Media during shipping or transmission. Customer acknowledges and agrees that, in performing the Services, AOS may develop various software, documentation or other intellectual property (collectively, the "Work Product"). Work Product may be developed alone by AOS or in conjunction with Customer. Customer hereby agrees that all right, title and interest in and to any Work Product shall belong to AOS and Customer hereby assigns, and agrees to assign, the same to AOS. Customer shall take such action as AOS may reasonably request to evidence or effect AOS's ownership of the Work Product.

3. Fees and Payment. The initial fee for the Services is set forth on the Signature Page. Fees for additional Services shall be charged by AOS at its then current rates. Customer shall pay all sales, use, or other applicable taxes, duties, or similar charges except income taxes of AOS. Customer shall also pay for any shipping and handling charges not included in the service fees. All payments are due upon invoice of services by AOS. Any amounts not paid when due shall accrue interest at 1% per month or the maximum amount allowed by law, whichever is less.

4. Warranties and Limitation of Liability. AOS represents and warrants to Customer that the Services shall be performed with due care and diligence. AOS's sole liability, and Customer's sole remedy, for any breach of the foregoing remedy shall be, at AOS's option, reperformance of defective Services, or a refund of the fees for such defective Services. AOS DOES NOT, BY VIRTUE OF THIS AGREEMENT, OR BY ANY COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE, MAKE ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. AOS EXPRESSLY DISCLAIMS ANY IMPLIED INDEMNITIES. AOS SHALL NOT BE LIABLE TO CUSTOMER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY LOSSES OR DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF GOODWILL, COVER, OR OTHER PECUNIARY LOSS, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TERMINATION OF THIS AGREEMENT, EVEN IF AOS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES. ANY DAMAGES THAT AOS IS REQUIRED TO PAY FOR ANY PURPOSE WHATSOEVER SHALL NOT EXCEED THE FEES PAID TO AOS UNDER THIS AGREEMENT.

5. Indemnity. Customer shall defend, indemnify and hold AOS harmless from and against any claims, liabilities, damages, and expenses (including reasonable attorneys' fees and costs) arising out of or relating to a claim that: Customer was not in lawful possession of the Media, Customer did not have sufficient rights in the Media to request the Services, or Customer's use of the Services was in violation of any applicable law.

6. Termination. Either party may terminate this Agreement if the other party materially fails to comply with any provision of this Agreement, and does not cure such breach within thirty (30) days after receiving written notice thereof. In addition, either party may terminate this Agreement at any time without cause by giving the other party sixty (60) days written notice of such termination. The parties' rights and obligations under this Agreement which by their

nature are intended to continue beyond the termination of this Agreement shall survive such termination, including but not limited to Sections 1, 4, 5, 6, 7, and 8.

7. Confidentiality. Each party expressly undertakes to retain in confidence, and to require its employees and consultants to retain in confidence, all Confidential Information of the other party and will make no use of such Confidential Information except pursuant to this Agreement. The receiving party will not disclose any item of Confidential Information to any person other than its employees, agents or contractors who need to know the same in the performance of their duties. The receiving party will protect and maintain the confidentiality of all Confidential Information of the disclosing party with reasonable care. The receiving party will be liable to the disclosing party for any non-compliance by its agents or contractors to the same extent it would be liable for non-compliance by its employees. Confidential Information does not include any data or information which the receiving party can prove (a) was in the receiving party's lawful possession prior to its disclosure by the disclosing party; (b) is later lawfully obtained by the receiving party from a third party not under an obligation of confidentiality; (c) is independently developed by the receiving party; or (d) is, or later becomes, available to the public through no breach of an obligation of confidentiality. If the receiving party becomes legally obligated to disclose Confidential Information by any governmental entity with jurisdiction over it, the receiving party will give the disclosing party prompt written notice sufficient to allow the disclosing party to seek a protective order or other appropriate remedy. The receiving party will disclose only such information as is legally required and will use its reasonable efforts to obtain confidential treatment for any Confidential Information that is so disclosed.

8. General Provisions.

a. Notices. All notices, authorizations, and requests in connection with this Agreement shall be deemed given on the day they are actually received. Notice may be: (i) given by the U.S. P.S., postage prepaid, certified or registered, return receipt requested; or (ii) sent by air courier, charges prepaid; or (iii) sent by facsimile with confirmed transmission. Notice shall be sent to a party at the address set forth on the Signature Page of this Agreement, or such other address as may have been furnished by or on behalf of such party by like notice.

b. Injunction. Customer acknowledges and agrees that AOS would suffer immediate and irreparable harm, not compensable by damages alone, if Customer repudiates or breaches Section 7 (Confidentiality), or threatens or attempts to do so. If any such actual, threatened or attempted repudiation or breach occurs, Customer agrees and stipulates that AOS, in addition to and not in limitation of any other rights, remedies or damages available to it at law or in equity, shall be entitled to obtain temporary, preliminary and permanent injunctions in order to prevent or restrain any such breach, and AOS shall not be required to post a bond as a condition therefor.

c. Governing Law; Attorneys Fees. This Agreement shall be construed and controlled by the laws of the State of Washington, and Customer consents to exclusive jurisdiction and venue in the federal courts sitting in King County, Washington, unless no federal subject matter jurisdiction exists, in which case Customer consents to exclusive jurisdiction and venue in the Superior Court of King County, Washington. Customer waives all defenses of lack of personal jurisdiction and forum non-conveniens. Process may be served on either party in the manner authorized by applicable law or court rule. In any action to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and other expenses.

d. Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and executed by the party waiving the right. Failure to properly demand compliance or performance shall not constitute a waiver of a party's rights hereunder.

e. Assignment. Customer shall not transfer or assign this Agreement in whole or in part without the prior written consent of AOS, which consent shall not be unreasonably withheld. A sale, purchase, merger, stock exchange, or any similar event shall be considered an assignment requiring AOS's consent under the previous sentence. Subject to the above limitations and conditions, this Agreement shall be binding upon and inure to the benefit of each party and their respective successors and assigns.

f. Relationship of the Parties. Nothing in this Agreement shall be construed as making either party the partner, joint venturer, agent, employer, or employee of the other. Neither party shall have the authority to make any statements, representations or commitments of any kind, or to take any action which shall be binding on the other, except as authorized in writing by the party to be bound.

g. Entire Agreement. This Agreement constitutes the entire agreement between the parties as its subject matter, and supersedes any and all prior or contemporaneous oral or written understandings and agreements as to such subject matter. This Agreement may be amended only by written amendment duly signed by an authorized representative of each party. In the event that any one of the provisions of this Agreement shall be found to be illegal or unenforceable, then such provision shall be deemed struck and the other provisions of this Agreement shall remain in full force and effect. The headings in this Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision.