

SOFTWARE DEVELOPMENT & BUSINESS PROCESS OUTSOURCING SUBCONTRACT AGREEMENT

This Software Development Agreement ("**Agreement**") is made as of January 07, 2011 (the "**Effective Date**") between mNm Infimedia Technologies, a company with an REGISTERED ADDRESS OF 1132, HSK 2ND STAGE, BSK III STAGE, BANGALORE AND HAVING ITS ADMINISTRATIVE BRANCH OFFICE at H No 8 Bauxite Road Samgemeshwar Nagar, Belgaum, Karnataka 590010 ("**Party-1**") REPRESENTED BY VINAYAK BHAT ,DIRECTOR and SHRI SAI RATNA INFOTECH , REPRESENTED BY ITS PROPRIETOR SANTOSH N SIDDANI an individual with an address at MANGURISH KRUPA OPP NEW BUS STAND KHANAPUR DIST BELGAUM KARNATAKA 593002 ("**Party-2**").

This Agreement describes Party-1's purchase of Services and Deliverables from Party-2.

Party-1 and Party-2 therefore agree as follows:

1. DEFINITIONS.

(a) "Deliverables" means the deliverables Party-2 provides to Party-1 as described in this Agreement, including, without limitation, the Software Deliverables.

(b) "Government Authority" means any governmental authority or court, tribunal, agency, department, commission, arbitrator, board, bureau, or instrumentality of the United States of America or any other country or territory, or domestic or foreign state, prefecture, province, commonwealth, city, county, municipality, territory, protectorate or possession.

(c) "Law" means all laws, statutes, ordinances, codes, regulations and other pronouncements having the effect of law of any Government Authority.

(d) "Services" means the services Party-2 provides to Party-1 as described in this Agreement.

(e) "Software Deliverables" means the software described in this Agreement, including for all software the following:

(i) Source Code. At least one (1) copy of the source code for the Software Deliverables on a computer-readable magnetic medium and a human-readable listing of such source code;

(ii) Documentation. Two (2) copies of the documentation ordinarily provided to licensees of the Software Deliverables; and

(iii) Technical Documentation. Technical documentation, program specifications, and any other documentation necessary to enable a reasonably skilled computer programmer to modify, customize, and create derivative works based on the Software Deliverables.

2. SERVICES. Party-2 agrees to provide the following Services: Software Development and Documentation for eLearning Services

3. PERSONNEL.

(a) **Competence.** Party-2 agrees to provide the Services through fully trained and competent personnel or subcontractors having a skill level appropriate for the tasks assigned to them.

(b) **Key Personnel and Project Managers.** Below appears an initial designation of a project manager for each party who is the principal point of contact between the parties for all matters under this Agreement. Either party may designate a new project manager by written notice to the other party.
Party-1's project manager: Uday B Deshpande Party-2's project manager: [INSERT TEXT]

4. DELIVERABLES. Including the Software Deliverables described below, Party-2 agrees to provide the following Deliverables: LMS LCMS VC elearning Components

Content Development

Programming and Authoring

5. DEADLINE. 1 man month per seat per calendar month

6. OWNERSHIP.

(a) Ownership, Title, and Risk of Loss. Ownership of, title to, and risk of loss for the Deliverables passes to Party-1 upon acceptance of the Deliverables by Party-1. However, ownership, title and risk of loss for the Software Deliverables applies to the copy only and does not extend to the intellectual property and other proprietary rights in the Software Deliverables. Additionally, if any Software Deliverables are downloaded, ownership of, title to, and risk of loss passes to Party-1 upon Party-1's complete download of the Software Deliverables.

(b) Pass-Through. Without limiting any other terms and conditions set forth in this Agreement, Party-2 agrees to pass through or assign to Party-1 any third party warranty and any other rights, rebates, discounts or benefits, which Party-2 receives in connection with any Deliverables.

7. ACCEPTANCE. After delivery of a Deliverable, Party-1 has thirty (30) days (the "**Test Period**") to test the Deliverable. If Party-1 fails to notify Party-2 of any nonconformities with this Agreement or Documentation for the Deliverable (collectively, "**Nonconformities**") within the Test Period, Party-1 is deemed to accept the Deliverable. The day that Party-1 accepts or is deemed to have accepted the Deliverable is the "Acceptance Date". If, before the Acceptance Date, Party-1 discovers any Nonconformities and notifies Party-2, Party-2 agrees to promptly (but no later than fifteen (15) days later) correct the Nonconformities at its own expense and notify Party-1 when the corrections are complete, at which point Party-1 may engage in a second Test Period. If Party-1 finds Nonconformities during a second Test Period, then Party-1 may: (i) continue to successively require Party-2 by notice to correct the Deliverable followed by a Test Period; or (ii) upon notice to Party-2 obtain a refund of any payment already made by Party-1 for this Deliverable, in which case Party-1 is relieved of any further duty to pay for this Deliverable and Party-1 may, in its sole discretion, terminate this Agreement and may return the Deliverable to Party-2 at Party-2's expense. "**Documentation**" means the user manuals and other published material applicable to the Deliverables, including the functional specifications for the Deliverables.

8. FEES. Except as expressly stated in this Agreement, there are no additional fees, charges or expenses incurred. In consideration for Party-2 providing each of the following, Party-1 agrees to pay Party-2 as

follows: **Rs 15,000/- per month per seat for our BPO services** and If any affiliate of Party-1 gives notice to Party-2 of an offer to make a purchase from Party-2 under the same fees, terms and conditions stated in this Agreement, then Party-2 agrees to accept each such offer. Under this Agreement, "affiliate" means: (a) any entity controlled by a party to this Agreement; or (b) any entity which controls a party to this Agreement; or (c) any entity controlling or under control of another entity described in (a) or (b). In this definition, "control" means owning or controlling the right to vote fifty one percent (51%) or more of the voting stock or voting equity interests of an entity.

9. INVOICES AND TAXES. Party-1 agrees to pay to Party-2 all fees owed under this Agreement within thirty (30) days after the date of Party-1's receipt of a complete invoice. A complete invoice is one that contains the invoice number, invoice date, description of the transaction, total invoice amount with miscellaneous charges listed separately and payment terms consistent with and not additional to any provisions under this Agreement. To the extent that the transactions under this Agreement are subject to any sales, use, value added or any other taxes, payment of these taxes, if any, is Party-1's responsibility. Party-2 is liable for any and all taxes on any and all income it receives under this Agreement.

10. RECORDS AND AUDITS.

(a) Retention of Financial Records. Party-2 agrees to maintain complete and accurate books and records regarding all financial matters under this Agreement in accordance with generally accepted accounting practices during the Term and for a period of at least six (6) years following the date of termination or expiration of this Agreement and for any additional time required by Government Authority with jurisdiction over Party-2 (the "**Retention Period**"); provided, however, that if any dispute arises with respect to this Agreement, the Retention Period lasts until the resolution of the dispute becomes final and non-appealable and all obligations of the parties are fully satisfied.

(b) Audits. Party-1 or its designee has the right, during the Term and the Retention Period, to audit and inspect at Party-1's expense, during normal business hours and with reasonable advance notice, Party-2's books and records and any materials described in this provision or elsewhere expressly indicated as auditable under this Agreement. Party-2 agrees to reasonably cooperate in any audit or inspection of such records that Party-1 may undertake. During the Retention Period, Party-2 agrees to:

(i) Availability and Copying. Make its books and records, as well as external audit opinions, external audit letters, external audit statements, and external audit reports relating to Party-2's obligations under this Agreement available for inspection by Party-1 and or its authorized representatives, who will have the right to make copies on Party-2's premises or by taking any of these materials to an off site location for the sole purpose of copying at Party-1's expense.

(ii) Access. In connection with the audit, give Party-1's authorized representatives reasonable access, during regular business hours, to Party-2's officers, employees and other representatives, including, without limitation, attorneys and accountants.

(iii) Reasonable Working Conditions. Provide, without charge, computer access, office space, furniture, telephone, and electric service as necessary for Party-1's authorized representatives to conduct the audit.

(c) Overcharge. If an auditor notifies Party-2 that Party-2 overcharged Party-1 with a reasonable description of how the auditor calculated the overcharge, Party-2 agrees to pay Party-1 the amount of the overcharge. Party-1 agrees to pay the costs of the audit unless the overcharge exceeds five percent (5%), in which case Party-2 agrees to pay the costs of the audit.

11. INTELLECTUAL PROPERTY RIGHTS IN THE DELIVERABLES. Party-2 acknowledges and agrees that Party-1 contracted with Party-2 to create the Deliverables for Party-1 and that the Deliverables are owned by Party-1 in the entirety as: (a) a "work made for hire" (to the extent permitted by Law) in which Party-1 owns all copyrights as the author and all other intellectual property and proprietary rights, if legally applicable; and (b) the exclusive owner or assignee of all intellectual property and proprietary rights to the Deliverables. To the extent that any works within the Deliverables may not be considered a "work made for hire" under the United States copyright Laws, and to the extent that any rights to the Deliverables may be vested in any person other than Party-1, Party-2 hereby irrevocably grants and assigns, and represents and covenants to cause any third party to irrevocably grant and assign, free and clear of any liens, claims or encumbrances, exclusively to Party-1, each and every right in the Deliverables throughout the world, including all copyright, patent, trade secret, and all other intellectual property and proprietary rights, together with all renewals and extensions thereto, and the right to

bring actions for past and future infringement. This grant and assignment may be confirmed in a form acceptable to Party-1. Party-2 acknowledges and agrees to take all appropriate steps at the request of Party-1 to secure for Party-1 all rights and benefits in and to the Deliverables, to protect Party-1's rights in the Deliverables and to appoint Party-1 as Party-2's attorney-in-fact to enable Party-1 to record, file and prosecute any application for, and acquire, maintain and enforce, any intellectual property and proprietary rights and any other rights in the Deliverables throughout the universe in all languages and in all media and forms of expression and communication now or later developed. Party-2 agrees to waive any and all rights of attribution and integrity Party-2 may have in any the Deliverables under Section 17 U.S.C. Â§106A of the United States copyright Laws and any right of privacy or publicity for the Deliverables identified for all uses as stated and contemplated. This provision survives this Agreement. However, Party-2 retains ownership of the Background Intellectual Property. "Background Intellectual Property" means Party-2's patentable and non-patentable manufacturing processes, inventions, ideas, discoveries, improvements, design rights, works of authorship, copyrights, patents, patent applications, trade secrets, and know-how, either: (a) existing prior to the Effective Date (as proved by documents created in the normal course of business); or (b) created by Party-2 after the Effective Date separate and apart from the activities contemplated under this Agreement (as proved by documents created in the normal course of business). Party-2 hereby grants to Party-1 an irrevocable, perpetual, non-exclusive, worldwide, sublicenseable, royalty-free license in any of the Background Intellectual Property which may be contained in the Deliverables, such license to be exercised by Party-1 solely in connection with the Deliverables. Such license is also transferable, but Party-1 may not under any circumstances transfer Party-2 Background Intellectual Property separate and apart from the Deliverables. This provision survives this Agreement. Grant Back License. This provision survives this Agreement. Party-1 grants to Party-2 an irrevocable, perpetual, non-exclusive, worldwide, transferable, sublicenseable, royalty-free license in the Deliverables to permit Party-2 to exercise all intellectual property and proprietary rights to the Deliverables for use in the following field of use: [INSERT TEXT] Party-1 may sublicense its Deliverables license to Party-1's third party contractors for Party-1's internal business purposes.

12. WARRANTIES.

(a) Mutual Warranties. Each party represents, warrants and covenants to the other that:

(i) General. It: (a) is a company duly organized and validly existing and in good standing under the Laws

of its jurisdiction of organization; (b) is qualified or licensed to do business and in good standing in every jurisdiction where qualification or licensing is required; and (c) has the corporate power and authority to negotiate, execute, deliver and perform its obligations under this Agreement.

(ii) Law Compliance. It complies with all applicable Laws.

(b) Warranties by Party-2. Party-2 represents, warrants and covenants to Party-1 that:

(i) Warranty Length. For a period of one (1) year after receipt, the Services and Deliverables conform to the requirements of this Agreement, are free from any defect in material and workmanship, and are free of all liens, claims and encumbrances of any kind.

(ii) Infringement. The Services and Deliverables do not violate any patent, trade secret, or other intellectual property or proprietary rights of any third party, and as of the Effective Date.

(iii) No Litigation. There is no actual or threatened litigation: (a) that affects its ability to comply with this Agreement, or (b) concerning the Services or Deliverables.

(iv) Services Performance. The Services are performed in a professional and competent manner, conforming to generally accepted standards applicable to services provided by nationally recognized firms specializing in the area of Services provided under this Agreement. Each of the individuals assigned to provide any Services under this Agreement have the proper skill, training, and background to provide the Services.

(v) Malicious Code Representation. All Software Deliverables are free of any "time-bombs," "worms," "viruses," "Trojan horses," "protect codes," "data destruct keys" or other programming devices or code that might, or might be used to, access, modify, delete, damage, deactivate or disable any Software Deliverables or other software, computer hardware, or data.

(c) Disclaimer. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, PARTY-1 AND PARTY-2 EACH MAKE NO REPRESENTATIONS AND EXTEND NO WARRANTIES OR COVENANTS OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS

FOR A PARTICULAR PURPOSE.

13. LIMITATION OF LIABILITY. THIS LIMITATION OF LIABILITY PROVISION APPLIES IN THE AGGREGATE AND NOT ON A PER CLAIM BASIS, WHETHER ANY DAMAGES ARE CHARACTERIZED IN TORT, NEGLIGENCE, CONTRACT, OR OTHER THEORY OF LIABILITY, REGARDLESS OF WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN ANY DAMAGES, AND IRRESPECTIVE OF ANY FAILURE OF ESSENTIAL PURPOSE OF A LIMITED REMEDY. THIS LIMITATION OF LIABILITY PROVISION DOES NOT LIMIT A PARTY'S LIABILITY FOR BREACH OF CONFIDENTIALITY REQUIREMENTS, INTENTIONAL MISCONDUCT, INTENTIONAL TORTS AND INTENTIONAL VIOLATIONS OF LAW. NEITHER PARTY IS LIABLE TO THE OTHER OR ANY THIRD PARTY UNDER THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RESULTING FROM THIS AGREEMENT. EACH PARTY'S LIABILITY SHALL NOT EXCEED THE AMOUNTS PAID UNDER THIS AGREEMENT PRIOR TO THE DATE THE CLAIM AROSE.

14. INDEMNIFICATION. The term "*Claim*" means any claim, suit or action by any third party, and the term "*Losses*" means any damages awarded and fines assessed in any Claim by a court of competent jurisdiction or pursuant to an arbitration proceeding, any amounts due under Claim settlement, and any other costs or expenses incurred in complying with any injunctive or equitable relief or any settlement requirements.

(a) Party Indemnification.

(i) Indemnification by Party-2. Upon receipt of notice from Party-1 requesting Party-2 to do so, Party-2 agrees to indemnify, defend, and hold harmless Party-1 and its affiliates, subsidiaries, shareholders, members, directors, officers, employees, agents, and parents, from and against any Claim, and any associated Losses to the extent caused by: (a) violation of any patent, copyright, trademark, trade secret, or other intellectual property or proprietary right due to Party-2 providing the Services or Deliverables (except to the extent a Claim is caused by Party-1's internally created specifications); (b) bodily illness and injury, death, tangible property damage and theft, to the extent caused by Party-2's negligent or willful acts and omissions; or (c) failure of the Services or Deliverables to conform with the requirements of this Agreement.

(ii) Indemnification by Party-1. Upon receipt of notice from Party-2 requesting Party-1 to do so, Party-1 agrees to indemnify, defend, and hold harmless Party-2 and its affiliates, subsidiaries, shareholders, members, directors, officers, employees, agents, and parents, from and against any Claim, and any associated Losses to the extent caused by violation of any patent, copyright, trademark, trade secret, or other intellectual property or proprietary right to the extent caused by Party-1's internally created specifications or Party-1's use of the Services or Deliverables.

(b) Indemnification Procedures. The term "***indemnifying party***" means the party assuming indemnification obligations under this Agreement, and the term "***indemnified party***" means all parties, including any third parties, which the indemnifying party agrees to indemnify under this Agreement.

(i) Notice. The indemnified party must give the indemnifying party prompt written notice of a Claim, provided, however, that failure of an indemnified party to give prompt written notice does not relieve the indemnifying party from its indemnification obligations under this Agreement except to the extent the defense is materially prejudiced by the failure. When the indemnifying party receives notice of a Claim from an indemnified party, the indemnifying party agrees, at its sole cost and expense, to assume the defense of the Claim by representatives chosen by the indemnifying party. The indemnified party may participate in the defense of the Claim and employ counsel at its own expense to assist in the defense of the Claim, subject to the indemnifying party retaining final authority and control over the conduct of the defense.

(ii) Conduct of Defense. The indemnifying party's defense attorneys must be reasonably experienced and qualified in the areas of litigation applicable to the defense. The indemnifying party has the right to assert any defenses, causes of action or counterclaims arising from the subject of the Claim available to the indemnified party and also has the right to settle the Claim, subject to the indemnified party's prior written consent to the extent the settlement affects the rights or obligations of the indemnified party. The indemnified party agrees to provide the indemnifying party with reasonable assistance, at the indemnifying party's expense, as may be reasonably requested by the indemnifying party in connection with any defense, including, without limitation, providing the indemnifying party with information, documents, records and reasonable access to the indemnified party as the indemnifying party reasonably deems necessary.

15. TERM AND TERMINATION.

- (a) Term.** The term of this Agreement (together with any renewals, the "**Term**") begins on the Effective Date and expires 1 year later. Immediately upon expiration this Agreement automatically renews on the same terms and conditions for additional successive periods of one (1) year on each anniversary of the Effective Date, unless either party gives the other party notice that the Agreement does not renew at least thirty (30) days before the end of the then applicable Term.
- (b) Survival.** The following captioned sections survive any termination, expiration or non-renewal of this Agreement: "Disclaimer", "Limitation of Liability", "Indemnification", "Survival", "Publicity" and "General", as well as any other provisions expressly stating that they are perpetual or survive this Agreement.
- (c) Termination for Insolvency.** If either party is adjudged insolvent or bankrupt, or upon the institution of any proceedings by it seeking relief, reorganization or arrangement under any Laws relating to insolvency, or if an involuntary petition in bankruptcy is filed against a party and the petition is not discharged within sixty (60) days after filing, or upon any assignment for the benefit of a party's creditors, or upon the appointment of a receiver, liquidator or trustee of any of a party's assets, or upon the liquidation, dissolution or winding up of its business (each, an "**Event of Bankruptcy**"), then the party affected by any Event of Bankruptcy must immediately give notice of the Event of Bankruptcy to the other party, and the other party may terminate this Agreement by notice to the affected party.
- (d) Termination for Breach.** If either party breaches any provision contained in this Agreement, and the breach is not cured within thirty (30) days after the breaching party receives notice of the breach from the non-breaching party, the non-breaching party may then deliver a second notice to the breaching party immediately terminating this Agreement.
- (e) Termination for Convenience.** This Agreement may be terminated at any time by Party-1 for its convenience, with or without cause, and for any reason or no reason, effective upon Party-2's receipt of notice.

16. FORCE MAJEURE. Any failure or delay by a party in the performance of its obligations under this Agreement is not a default or breach of the Agreement or a ground for termination under this Agreement to the extent the failure or delay is due to elements of nature or acts of God, acts of war, terrorism, riots, revolutions, or strikes or other factor beyond the reasonable control of a party (each, a "**Force Majeure Event**"). The party failing or delaying due to a Force Majeure Event agrees to give notice to the other party which describes the Force Majeure Event and includes a good faith estimate as to the impact of the Force Majeure Event upon its responsibilities under this Agreement, including, but not limited to, any scheduling changes. However, should any failure to perform or delay in performance due to a Force Majeure Event last longer than thirty (30) days, or should three (3) Force Majeure Events apply to the performance of a party during any calendar year, the party not subject to the Force Majeure Event may terminate this Agreement by notice to the party subject to the Force Majeure Event.

17. PUBLICITY. Each party agrees to not make, publish or distribute (whether in print, electronically or otherwise) any public announcements, press releases, advertising, marketing materials or promotional materials regarding the execution or performance of this Agreement without the prior written consent of the other party.

18. GENERAL. *Entire Agreement and Amendments.* This Agreement is the entire agreement between the parties and supersedes all earlier and simultaneous agreements regarding the subject matter, including, without limitation, any invoices, business forms, purchase orders, proposals or quotations. This Agreement may be amended only in a written document, signed by both parties. ***Independent Contractors, Third Party Beneficiaries, and Subcontractors.*** The parties acknowledge that they are independent contractors under this Agreement, and except if expressly stated otherwise, none of the parties, nor any of their employees or agents, has the power or authority to bind or obligate another party. Except if expressly stated, no third party is a beneficiary of this Agreement. The parties may not subcontract any of their obligations under this Agreement. ***Governing Law and Forum.*** All claims regarding this Agreement are governed by and construed in accordance with the Laws of India, applicable to contracts wholly made and performed in such jurisdiction, except for any choice or conflict of Law principles, and must be litigated in Karnataka , regardless of the inconvenience of the forum, except that a party may seek temporary injunctive relief in any venue of its choosing. The parties acknowledge and agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. ***Assignment.*** This Agreement binds

and inures to the benefit of the parties' successors and assigns. This Agreement is not assignable, delegable, sublicenseable or otherwise transferable by either party in whole or in part without the prior written consent of the other party. Any transfer, assignment, delegation or sublicense by a party without the other party's prior written consent is invalid. **No Waivers, Cumulative Remedies.** A party's failure to insist upon strict performance of any provision of this Agreement is not a waiver of any of its rights under this Agreement. Except if expressly stated otherwise, all remedies under this Agreement, at Law or in equity, are cumulative and nonexclusive. **Severability.** If any portion of this Agreement is held to be unenforceable, the unenforceable portion must be construed as nearly as possible to reflect the original intent of the parties, the remaining portions remain in full force and effect, and the unenforceable portion remains enforceable in all other contexts and jurisdictions. **Notices.** All notices, including notices of address changes, under this Agreement must be sent by registered or certified mail or by overnight commercial delivery to the address set forth in this Agreement by each party. **Captions and Plural Terms.** All captions are for purposes of convenience only and are not to be used in interpretation or enforcement of this Agreement. Terms defined in the singular have the same meaning in the plural and vice versa.

IN WITNESS WHEREOF, the parties execute this Agreement as of the Effective Date. Each person who signs this Agreement below represents that such person is fully authorized to sign this Agreement on behalf of the applicable party.

PARTY-1

By: _____

Print Name: _____

Title: _____

PARTY-2

By: _____

Print Name: _____

Title: _____