

mistywest

Professional Services Agreement

Professional Services Agreement

This MistyWest Professional Services Agreement is effective as of May 2, 2019, (the “**Effective Date**”) between MistyWest Energy and Transport Ltd. (“**MistyWest**”) of 554 East 15th Ave, Vancouver, BC V5T2R5 and First Responder Technologies Inc. (“**Client**”) of First Responder Technologies Inc.. MistyWest agrees to provide Client with services in accordance with the terms and conditions set out below.

1 PROVISION OF SERVICES.

During the term of this Agreement, MistyWest shall provide services to Client as described in mutually agreed upon work order(s) (each, a “**Work Order**”) and which are governed by this Agreement (the “**Services**”). The first Work Order is attached as Schedule A to this Agreement.

2 MODIFICATION OF SERVICES.

- 2.1 If Client desires to modify the scope of Services, it shall submit written notice to MistyWest detailing such modification (“**Change Request**”). MistyWest shall, within 10 days following receipt of a Change Request, respond and describe any Work Order amendments required to accomplish the Change Request. Amendments may include, but are not limited to, changes to costs/fees, staffing levels or deadlines/milestones.
- 2.2 Upon the parties’ mutual agreement to a Change Request and amendments to a Work Order, Client shall submit in writing to MistyWest a change order (“**Change Order**”), specifying the changes agreed to and, once received and signed by MistyWest, the Change Order and related amendments to the Work Order take effect.
- 2.3 If at any time MistyWest discovers that it cannot perform the Services within the times contemplated in the Work Order due to events beyond MistyWest’s reasonable control, it will immediately advise Client in writing and provide a revised timeframe and amended Work Order to be mutually agreed upon by the parties.
- 2.4 Notwithstanding clause 2.3, the parties agree that MistyWest’s failure to meet any deadlines or milestones contained in a Work Order due to Client’s failure to: fulfill its obligations under this Agreement, to respond to MistyWest inquiries or to cooperate with MistyWest, does not constitute a breach of this Agreement. In the case of a delay caused by Client, MistyWest shall charge, and Client shall pay, all costs and expenses incurred by MistyWest to make up for such delay.

3 TERM.

The Agreement commences on the Effective Date and, unless terminated pursuant to clause 14, ends when the Services (under all outstanding Work Orders) are complete. Completion of the Services occurs when all deliverables included in the Work Order(s) are delivered to Client and MistyWest has received payment. Any Services performed by MistyWest or its subcontractors prior to the Effective Date will be deemed to have been provided under this Agreement.

4 COMPENSATION.

Client shall pay MistyWest compensation for the Services as set forth in the applicable Work Order. Unless an alternative payment schedule is set out in a Work Order, MistyWest shall invoice Client bi-weekly for the Services and invoices are due 15 days following submission. Unless specifically negotiated, hourly rates will increase by 5% per annum. In addition to any other remedy available to MistyWest at law and/or as set out in this Agreement, invoices not paid within 15 days are subject to interest at the rate of 2% per month, compounded daily, on any unpaid sum with interest accruing from the invoice date. If payment is past due, MistyWest may suspend performance of the Services and withhold documentation or deliverables until all payments due are received.

5 METHODS USED, SUBCONTRACTORS & ASSISTANTS.

- 5.1 **Method of Provision of Services.** MistyWest shall be solely responsible for determining the method, details, manner and means of performing the Services. MistyWest shall provide instrumentalities, tools, insurance and the place where the Services are performed.
- 5.2 **Subcontractors & Assistants.** MistyWest may employ or engage the services of its own employees, subcontractors, partners or agents as MistyWest deems necessary to perform the Services (collectively, "**Assistants**"). MistyWest shall be wholly responsible for the professional performance of the Services by Assistants, including all required assignments of work created by the Assistants and relating to this Agreement. MistyWest shall expressly advise the Assistants of the terms of this Agreement and shall require each Assistant to execute and deliver, if requested by Client, a Non-Disclosure Agreement.

6 EXPENSES.

Unless otherwise specified in a Work Order, Client shall reimburse MistyWest for all expenses that Client previously approved of in writing and Client acknowledges that expenses are excluded from and in addition to any budget allowance, or similar, included

in a Work Order. Client agrees that all approved expenses are subject to a 10% administration fee charged by MistyWest. MistyWest shall furnish to Client an invoice, together with statements or receipts evidencing such expenses, within 45 days of the end of each two months in which the expenses were actually incurred (unless otherwise agreed in writing by the parties) and Client shall pay such invoices in accordance with clause 4.

7 INTELLECTUAL PROPERTY.

- 7.1 **Work Product.** Notwithstanding that MistyWest has contracted with Client to provide the Services, Client and MistyWest acknowledge that all works including, but not limited to, all intellectual property, concepts, developments, designs, inventions, improvements, technologies or trade secrets that MistyWest makes, conceives, reduces to practice or creates, either alone or jointly with others, during the course of MistyWest's Services for Client shall initially be the property of MistyWest (collectively, "**Work Product**"). "Work Product" excludes MistyWest Intellectual Property as defined in clause 7.4 below.
- 7.2 **Assignment.** Upon MistyWest's receipt of payment from Client in accordance with the terms of this Agreement and/or any applicable Work Order for its provision of the Services, MistyWest shall transfer and assign to Client, without further consideration, all of its ownership, right, title, and interest in and to all Work Product, including, without limitation:
- a. all copyrights, patents, rights in mask works, trademarks, trade secrets, and other intellectual property rights and all other rights that may hereafter be vested relating to Work Product, arising under Canadian, U.S. or any other law, together with all national, foreign, state, provincial and common law registrations, applications for registration, and renewals and extensions thereof;
 - b. all goodwill associated with Work Product;
 - c. all benefits, privileges, causes of action, and remedies relating to any of the foregoing, whether before or hereafter accrued (including without limitation the exclusive rights to apply for such registrations, renewals, and/or extensions, to sue for all past infringements or violations of any the foregoing and to settle and retain proceeds from any such actions).

MistyWest shall further waive, and is hereby deemed to have irrevocably and unconditionally waive any and all moral rights to any copyrightable works that are developed by MistyWest as part of the Work Product.

- 7.3 **Backup License.** To the extent, if any, that clause 7.2 does not provide Client with full ownership, right, title and interest in and to Work Product, MistyWest shall grant Client an exclusive, perpetual, irrevocable, fully-paid, royalty-free, worldwide license to reproduce, create derivative works from, distribute, publicly display, publicly

perform, use, make, have made, offer for sale, sell or otherwise dispose of and import Work Product, with the right to sublicense each and every such right.

- 7.4 **MistyWest Intellectual Property.** MistyWest shall retain all right, title and interest in any previously created intellectual property, proprietary information, tools, processes or development aids owned by MistyWest or developed by MistyWest in the course of providing the Services, that is not Work Product (“**MistyWest Intellectual Property**”), including improvements, modifications, and/or enhancements made to MistyWest Intellectual Property during, or as a result of, performing the Services. For clarity, Work Product excludes product test procedures and all associated fixtures, equipment and analysis methods, including custom software code; process design algorithms; design software tools; modelling and simulation processes; processes and templates used in project management and data sharing; custom materials and moulding processes; and source data. Except for the license set forth in clause 7.5, this Agreement does not grant Client any rights in or to MistyWest Intellectual Property.
- 7.5 **License to MistyWest Intellectual Property.** To the extent that MistyWest uses or incorporates any MistyWest Intellectual Property, MistyWest shall grant Client a nonexclusive, perpetual, irrevocable, fully-paid, royalty-free, worldwide license to reproduce, create derivative works from, distribute, publicly display, publicly perform, make, have made, offer for sale, sell or otherwise dispose of, import, and use such MistyWest IP, solely in conjunction with the product, service or process in question, with the right to sublicense each and every such right, provided MistyWest Intellectual Property is kept and protected as Confidential Information pursuant to clause 9.1.
- 7.6 **Further Assurance.** MistyWest shall assist Client, at Client’s request and expense, to secure Client’s right, title and interest in Work Product, in any and all jurisdictions throughout the world. MistyWest shall execute all assignments, applications, specifications or other documents that Client deems necessary to apply for or to obtain such rights and to assign and convey to Client, its successors and assigns all right title and interest in Work Product. If MistyWest is unable for any reason whatsoever to comply with the obligations contained in this clause 7.6, MistyWest hereby irrevocably designates and appoints Client and its duly authorized officers and agents as MistyWest’s agents and attorneys-in-fact to act for and on MistyWest’s behalf to execute and file any such document and to do all other lawfully permitted acts to further the purposes of the foregoing with the same legal force and effect as if executed by MistyWest.

8 INDEPENDENT CONTRACTOR.

- 8.1 **Independent Contractor Relationship.** MistyWest’s relationship with Client is that of an independent contractor and not that of an employee. Nothing in this Agreement shall be construed to create any partnership, joint venture, employer-employee or agency relationship between Client and MistyWest. Assistants engaged by MistyWest

to perform any of the Services as provided for by clause 5 of the Agreement are not and shall not be employees of Client.

- 8.2 **No Authority to Bind Client.** MistyWest acknowledges and agrees that it has no authority to enter into contracts that bind Client or create obligations on behalf of Client without Client's prior written authorization.

9 NON-DISCLOSURE AND LIMITED USE OF CONFIDENTIAL INFORMATION.

- 9.1 **Confidential Information.** In consideration of the disclosure of Confidential Information by Client to MistyWest, and of the disclosure of any Confidential Information by MistyWest to Client, neither party, without the prior written approval of the other party, shall disclose or use for any purpose other than performance of its obligations under this Agreement any Confidential Information of the other party that may come to its knowledge or possession by reason of performance under this Agreement, exchange of information under this Agreement or the entry of this Agreement. "Confidential Information" means all information about a party or its business or operations that is not generally known to the public or that, by the nature of its disclosure or its own nature, ought reasonably be known to be confidential or proprietary to a party including its products, projects, designs, developmental or experimental work, computer programs, software, databases, know-how, processes, formulas, customers, business partners, suppliers, business plans, marketing plans and strategies, finances, employee compensation or personnel and information obtained from third parties under confidentiality agreements.
- 9.2 **Reverse Engineering Prohibited.** Both parties shall not reverse engineer or disassemble any prototypes, samples, software, flowcharts, graphical layouts and descriptions of other tangible objects, which embody Confidential Information of the other party.
- 9.3 **Permitted Disclosures.** Each party may disclose Confidential Information of the other party to any employee, agent, permitted sub-contractors or other person on a strictly "need-to-know" basis and where such person is bound by confidentiality undertakings at least as stringent as those contained herein. Notwithstanding the foregoing:
- a. each party may disclose the terms of this Agreement to its affiliates, solicitors, auditors, insurers or accountants for the purpose of their rendering professional services to such party.
 - b. each party may disclose the terms of this Agreement to prospective or actual investors, acquirers or lenders provided that such party first enters into a written confidentiality agreement with such investor, acquirer or lender no less protective than those contained in this Agreement; and
 - c. each party shall be fully responsible for any breach of confidentiality caused by such persons to whom Confidential Information is disclosed by it as if such breach were committed by such party.

9.4 **Exceptions.** Confidential Information does not include, to the extent that an allegedly wrongfully disclosing party can establish, through documentary evidence, that such information:

- a. is already or becomes publicly known through no wrongful act of such party;
- b. was required to be disclosed to comply with law or the valid order of a court of competent jurisdiction or government agency, provided such party notifies the owner of such Confidential Information in writing prior to disclosure.

10 NON-SOLICITATION.

Client shall not, within a period of two years commencing upon termination of this Agreement, whether directly or indirectly, alone, in partnership or in conjunction with any person(s) or entity in any capacity or manner whatsoever:

- a. solicit, divert, contract or hire, or attempt to solicit, divert, contract or hire any person employed by MistyWest or its subcontractors, or persuade or attempt to persuade anyone to terminate their employment with MistyWest or its subcontractors; or
- b. directly or indirectly impair or seek to impair the reputation of MistyWest, or any relationships that MistyWest has with its employees, subcontractors, customers, suppliers, agents or other parties with which it does business or has contractual relations.

11 REPRESENTATIONS AND WARRANTIES.

MistyWest represents and warrants to Client as follows:

- a. that Work Product delivered to Client shall be the original works of MistyWest and its subcontractors, excluding any open source software used;
- b. that Work Product, or its use, reproduction, marketing, sublicensing or distribution, does not, to the best of MistyWest's knowledge, infringe on or violate any patent, copyright, trade secret, trade name, trade mark or other proprietary right, in existence during the term of this Agreement, of any third party; and
- c. that, as of the Effective Date and during the term of this Agreement, MistyWest is not under any pre-existing obligation in conflict or in any way inconsistent with the provisions of this Agreement and that MistyWest's performance of all terms of this Agreement is not a breach of any agreement to keep in confidence proprietary information acquired by MistyWest in confidence or in trust prior to the Effective Date.

12 TAX.

All charges set forth in this Agreement and in the Work Order (unless expressly set out in Work Order) are exclusive of all provincial, municipal, federal or other government, excise,

sales, value added, use, occupational or like taxes, rates or assessments or any applicable duty now in force or which may be enacted in the future. Should MistyWest be or become responsible for payment or collection of any such tax, rate, assessment or duty (except taxes based on MistyWest's income), then MistyWest may charge Client, and Client shall pay, such tax, rate, assessment or duty.

13 PUBLICITY.

MistyWest shall have the right to document the work performed under this Agreement and the Work Order, while in progress and when completed, by photography or other means, which MistyWest may use for portfolio, brochure, public display and similar publicity purposes only upon successful completion of the Agreement, and in accordance with any non-disclosure or confidentiality agreements. The name of Client and location of the work may be used in connection with such publicity. If MistyWest chooses to document the work, MistyWest shall pay the costs of documentation.

14 TERMINATION.

14.1 **Termination by Either Party.** The Agreement may be terminated as follows:

- a. if either party (the "**Defaulting Party**") at any time neglects, fails or refuses to perform under any of the provisions of this Agreement, the other party may serve the Defaulting Party with notice of intention to terminate this Agreement and specifying the alleged neglect, failure or refusal and, if within 10 days after the date of service of such notice, the Defaulting Party has not fully cured all the defaults indicated in the notice, or presented a plan acceptable to the other party to cure these defaults, then upon expiration of the 10 days, the other party may, at its option, elect to terminate this Agreement, in writing;
- b. or either party may at any time prior to the completion of all the Services and for any reason terminate this Agreement by written notice to the other party not less than 14 days prior to the effective date of such termination.

14.2 Effect of Termination.

- a. If MistyWest terminates this Agreement pursuant to clause 14.1(a) or Client terminates this Agreement pursuant to clause 14.1(b), Client shall reimburse MistyWest for costs and/or charges MistyWest incurred to terminate any secondary agreements MistyWest entered into in connection with the Services to be performed under this Agreement and Work Order.
- b. In addition, upon termination, whether by Client or MistyWest under either 14.1(a) or (b), Client shall pay MistyWest for Services performed by it or its subcontractors up to the date of termination for any completed milestones in the Work Order and a prorated amount for partially completed milestones, calculated at MistyWest's then applicable current hourly rates. In addition, Client shall pay MistyWest for expenses incurred pursuant to clause 6. These amounts are due and payable immediately upon receipt of invoice by Client. All other outstanding invoices will become due

immediately upon termination. Upon payment by client to MistyWest, MistyWest shall transfer and assign Work Product up to the date of termination to Client pursuant to clause 7.2.

15 INDEMNITY.

- 15.1 **Indemnity by MistyWest.** MistyWest shall indemnify, defend and hold harmless Client and its directors, officers and employees from and against all third party claims, demands, causes of action, suits, and related losses, damages and costs, liabilities, expenses and judgments (including all actual legal costs) which Client incurs, suffers or is put to arising out of or in connection with any fraudulent or negligent act of MistyWest or its directors, officers or employees.
- 15.2 **Indemnity by Client.** Client shall indemnify, defend and hold harmless MistyWest and its directors, officers and employees from and against all third party claims, demands, causes of action, suits, and related losses, damages and costs, liabilities, expenses and judgments (including all actual legal costs) which MistyWest incurs, suffers or is put to arising out of or in connection with any fraudulent or negligent act of Client or its directors, officers or employees.

16 LIMITATION OF LIABILITY.

Notwithstanding anything to the contrary herein, the total aggregate liability of MistyWest to the Client under this Agreement, whether arising out of contract, tort (including without limitation negligence and strict liability) or any other legal theory, will be limited to the value of services contained in the Work Order or the Client's total fees payable under this Agreement, whichever is greater. Any liability that MistyWest may have under this Agreement will cease entirely as of the date that is one year following the completion of the Services and the Client agrees that it will have no, and will not bring any, legal claim whatsoever against MistyWest after this such date. MistyWest is a corporation. The Client will limit any claim they may have to the corporation, without liability on the part of any officer, director, member, employee, or agent of such corporation.


17 MISCELLANEOUS.

- 17.1 **Governing Law.** This Agreement shall be deemed to have been made and performed in and shall be construed pursuant to the laws of the province of British Columbia, excluding application of its conflict of laws principles. In the event Client or MistyWest initiates any legal proceeding with regard to the interpretation or enforcement of this Agreement, the parties hereby agree to submit to the exclusive jurisdiction of the appropriate provincial and federal courts in the province of British Columbia. Each party irrevocably waives, to the maximum extent permitted by applicable law, any objection that it may now or hereafter have to the laying of

venue for any such proceeding brought in such courts and any claims that any proceeding brought in any such court has been brought in an inconvenient forum.

- 17.2 **Entire Agreement.** This Agreement expresses the entire understanding between MistyWest and Client and supersedes any other prior agreements or understandings between MistyWest and Client relating to the matters contained herein.
- 17.3 **Survival.** Clauses 7, 9, 10, 11, 12, 13 and 15 survive termination of this Agreement.
- 17.4 **Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable or invalid, that provision shall be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions shall remain in full force and effect.
- 17.5 **Amendment, Waiver.** Any amendment or waiver to the terms of this Agreement shall be effective only if made in writing and signed by an authorized and duly empowered representative of each of the parties hereto. No failure to exercise and no delay in exercising any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude further exercise of any right hereunder.
- 17.6 **Notice.** The parties shall deliver any notice required in writing pursuant to this Agreement to the address, or email address, set forth on the signature page.
- 17.7 **Counterparts.** This Agreement may be executed in any number of counterparts, and may be delivered by electronic means, each of which when so executed and delivered shall be deemed an original, and all of which together shall constitute one and the same agreement.

MistyWest Energy and Transport Ltd.



Authorized Signatory

Name: Josh Usher

Title: President

Date: May 2, 2019

First Responder Technologies Inc.


Michael Malana (May 2, 2019)

Authorized Signatory

Name: Michael Malana

Title: CFO and Director

Date: May 2, 2019

Schedule A: Work Order

Order # FR01

Date: May 2, 2019

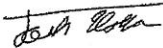
Deliverable	Delivery Date	Description / Notes	Total Fees
As per client request	As agreed to on a project basis		\$180 USD + GST per hour

The Client can initiate work requests in writing to MistyWest employees or subcontractors and MistyWest will use their professional discretion to provide the services, time and materials required to complete the projects given by the company. Any available engineer with the skills appropriate to the task requested may be assigned to complete the work. Unless otherwise discussed via written documentation, MistyWest will not have a fixed budget allowance and will provide only estimates which are non-binding amounts to complete specific tasks.

MistyWest will provide ongoing updates of budget/time allocation. MistyWest will charge at the agreed upon hourly rate above plus applicable taxes for all staff time and bill in 15 minute increments for all work done including engineering, design, meetings and correspondence, project management and any travel time from our office in Vancouver, BC, to Client offices.

An initial deposit of \$40,000 USD is due prior to commencement and is applied to the final invoice. Invoices will be provided bi-weekly and are due on Net 15 terms.

MistyWest Energy and Transport Ltd.



Authorized Signatory

Name: Josh Usher

Title: President

Date: May 2, 2019

First Responder Technologies Inc.



Michael Malana (May 2, 2019)

Authorized Signatory

Name: Michael Malana

Title: CFO and Director

Date: May 2, 2019











2019-04-17 First Responder Technologies PSA and SOW FR01 V1

Final Audit Report

2019-05-02

Created:	2019-04-17
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-  Document created by Oleha Riden (oleha@mistywest.com)
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-  Document emailed to kal@bullruncapital.ca for signature
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-  Oleha Riden (oleha@mistywest.com) replaced signer kal@bullruncapital.ca with Michael Malana (michael.malana@gmail.com)
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-  Document emailed to Josh Usher (josh@mistywest.com) for signature
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✓ Signed document emailed to Josh Usher (josh@mistywest.com), Oleha Riden (oleha@mistywest.com), kal@bullruncapital.ca, and Michael Malana (michael.malana@gmail.com)

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