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## Embrava API Licence Agreement

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THIS IS A LEGAL AGREEMENT BETWEEN YOU (LICENSEE) AND EMBRAVA PTY LTD ACN 605 530 238 OF LEVEL 38, TOWER 3, 300 BARANGAROO AVENUE, SYDNEY NSW 2000 (EMBRAVA), A COMPANY DULY INCORPORATED UNDER THE LAWS OF AUSTRALIA, STATING THE TERMS AND CONDITIONS THAT GOVERN THE LICENCING OF OUR APPLICATION PROGRAMMING INTERFACE (API) TO YOU. PLEASE READ THIS API LICENCE AGREEMENT BEFORE PRESSING THE AGREE BUTTON AND CHECKING THE BOX AT THE BOTTOM OF THIS PAGE. BY PRESSING "AGREE" YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, PRESS "CANCEL".

### 1 DEFINITIONS & INTERPRETATION

1.1 In this agreement:

**API** means Embrava's Application Programming Interface licensed under this agreement and any update, modification or enhancement of all or part of that, and all related tools, content and services made available by Embrava, including any documentation and user manuals.

**Business Day** means a day which is not a Saturday, Sunday or public holiday in Sydney, Australia.

**Intellectual Property** means all rights relating to the API including patents, designs and copyright.

**Licence** means the license granted to the Licensee to use the API for the purpose for which it was intended within the terms and conditions of this agreement.

**Nuclear Facility** means:

- (a) all kind of nuclear (power and test) reactors including those comprised in any means of transport;
- (b) nuclear power plants;
- (c) factories for the manufacture or processing of Nuclear Substances;
- (d) factories for the separation of isotopes of Nuclear Fuel such as nuclear waste treatment plants;
- (e) factories for the reprocessing of irradiated Nuclear Fuel;
- (f) facilities for the storage of Nuclear Substances;
- (g) all means of transport powered by Nuclear Fuel such as but not limited to submarines or icebreakers; and
- (h) facilities for the assembling of Nuclear Fuel for the determination of the limits of a sustainable chain reaction.

**Nuclear Fuel** means fissionable material in the form of uranium metal, alloy or chemical compound (including natural uranium), plutonium metal, alloy or chemical compound, thorium metal, alloy or chemical compound.

**Nuclear Substances** means Nuclear Fuel (other than natural uranium, natural thorium or depleted uranium) and radioactive products or waste.

**Products** means any software or documentation provided or supplied by Embrava.

**Taxes** means taxes, duties and other statutory charges (including stamp duty) but excluding income tax.

1.2 In this agreement, unless specifically advised otherwise:

- (a) the singular includes the plural and vice versa;
- (b) the word **person** or **entity** includes a natural person, firm, body corporate, partnership (whether limited or otherwise), joint venture, trust and an unincorporated association;

- (c) words denoting any gender include all genders;
- (d) a reference to a day is a reference to a period of time commencing at midnight and ending the following midnight;
- (e) if the time for performing an obligation under this agreement expires on a day that is not a Business Day, time will be extended until the next Business Day;
- (f) a reference to a month is a reference to a calendar month;
- (g) a reference to a Clause, Schedule or Annexure is to a clause of or schedule or annexure to this agreement;
- (h) a reference to any party to this agreement includes the party's successors and permitted assigns.

## **2 LICENCE**

Subject to the terms and conditions of this agreement, Embrava grants to the Licensee a non-exclusive, non-transferable licence for the Licensee to access and use the API solely for developing software and applications for the Licensee's internal business purposes.

## **3 THIRD PARTIES**

3.1 The Licensee may work with third party service providers and contractors as necessary to facilitate use of the API to develop, reproduce, display and distribute applications that interoperate with the Products in accordance with these terms and conditions, including sublicensing the API to those third party service providers, but only if the Licensee enters into a binding agreement with such third party service providers, requiring the third party service providers to:

- (a) exercise such sublicense solely for the purpose of developing software and applications for the Licensee's internal business purposes and non commercial use; and
- (b) comply with the terms and conditions of this agreement.

3.2 The Licensee acknowledges and agrees that any act or omission by any service provider that amounts to a breach of the terms and conditions of this agreement will be deemed to be a breach by the Licensee.

## **4 Use of the API**

4.1 The Licensee acknowledges and agrees that the API is valuable Intellectual Property of Embrava.

4.2 The Licensee agrees not to:

- (a) sell, lease, sub-license, lend, rent, redistribute, assign, give, transfer, make available to any third party, or commercially exploit in any way, the API, except as permitted by the express terms and conditions of this agreement;
- (b) operate the API for other than its intended purpose;
- (c) use the API for any illegal, unauthorized or otherwise improper purposes, or in any manner which would breach this agreement;
- (d) use the Embrava name to endorse or promote any product;
- (e) alter, modify, adapt or copy the whole or any part of the API, or permit third parties to do the same;
- (f) decompile, disassemble, reverse engineer, modify, enhance or alter the whole or any part of the API;
- (g) do anything that would prejudice Embrava's right, title or interest in the API;
- (h) remove or obscure any copyright, trademark or other proprietary notice on the API;
- (i) use the API call moral, legal or call any other purpose which may be determined opening, abusive or harmful including but not limited to the creation or transmission of the virus, worms, Trojan horse, cancel-bot or any other destructive contaminating program; or
- (j) use the API any application that replicates were attempts to replace essential user experience of the Products all use the API to create a product which functions substantially the same as the API or a Product and offer it for use by third party.

- 4.3 Embrava may:
- (a) suspend access to the API at any time for any reason and may change, suspend or discontinue any aspect of the Licensee's access to the API at any time without notice or liability to the Licensee;
  - (b) impose limits on certain features and services or restrict the Licensee's access to part or all of the API without notice or liability;
  - (c) release subsequent versions of the API and require the Licensee to use the most recent version and the Licensee's continued use of the API will be deemed acceptance of such modifications.

## 5 COMPLIANCE WITH LAW

The Licensee agrees to use the API in compliance with all applicable laws, including local laws of the country or region in which the Licensee resides or in which the Licensee uses the API including without limitation any or all laws and regulation of Australia and/or the United States with respect to the API and any technical data received under this agreement.

## 6 ADDITIONAL OBLIGATIONS

- 6.1 The Licensee must not sell, lease or otherwise make available the API for use in a Nuclear Facility or for installation at the site of a Nuclear Facility for use by such Nuclear Facility, unless Embrava provides prior written approval expressly issued in writing. If such approval has been granted, the Licensee's right to use the API is granted under the condition that Embrava will under no circumstances and at no time (whether during or after the term of this agreement) be liable to the Licensee for any damage, loss or claim arising in any country in connection with a nuclear incident in any way relating to the API, including but not limited to any damage, loss or claim based on personal injury or death of any person, damage to property of any person or entity, damage to a Nuclear Facility itself, and any property on or off the site where the Nuclear Facility is situated.
- 6.2 The Licensee represents and warrants to Embrava that they are:
- (a) not involved, directly or indirectly, in the design, production, use or stockpiling of chemical, biological or nuclear weapons or missile delivery systems, or any military-related activities;
  - (b) not located in a country that is subject to a United States Government embargo or has been designated by the United State Government as a "terrorist supporting" country; and
  - (c) not listed on any United States Government list of prohibited or restricted parties.

## 7 FEES

- 7.1 No fee is chargeable for the use of the API in accordance with this agreement except where the Licensee seeks to commercialise or implement any software or application developed using the API.
- 7.2 The Licensee must not commercialization the API without the express prior written consent of Embrava).
- 7.3 Embrava reserves the right to charge the Licensee a fee or royalty for the commercialization and/or implementation, on such terms as Embrava may advise the Licensee.

## 8 TAX

The Licensee is liable for all Taxes payable in respect of this agreement.

## 9 GST

- 9.1 Any consideration or amount payable under this Agreement, including any non-monetary consideration (as reduced in accordance with clause 8.5 if required) (**Consideration**) is exclusive of GST.
- 9.2 If GST is or becomes payable on a Supply made under or in connection with this Agreement, an additional amount (**Additional Amount**) is payable by the party providing consideration for the Supply (**Recipient**) equal to the amount of GST payable on that Supply as calculated by the party making the Supply (**Supplier**) in accordance with the GST Law.

- 9.3 The Additional Amount payable under clause 8.2 is payable without set off, demand or deduction at the same time and in the same manner as the Consideration for the Supply, and the Supplier must provide the Recipient with a Tax Invoice within 14 days after the time of payment of the Additional Amount.
- 9.4 If an Adjustment Event occurs, the parties must do all things necessary to make sure that the Adjustment Event may be appropriately recognised, including the issue of an Adjustment Note.
- 9.5 Despite any other provision in this Agreement:
- (a) if an amount payable under or in connection with this Agreement (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that Amount Incurred; and
  - (b) no Additional Amount is payable under paragraph (b) in respect of a Supply to which s 84-5 of the GST Law applies.
- 9.6 Any reference in this clause to an Input Tax Credit to which a party is entitled includes an Input Tax Credit arising from a Creditable Acquisition by that party but to which the Representative Member of a GST Group of which the party is a member is entitled.
- 9.7 For the purposes of this clause any capitalized term that is defined in the GST Law, but is not defined in this agreement, has the meaning given to it in the GST Law, and:

**GST** means a goods and services tax, or a similar value added tax, levied or imposed under the GST Law.

**GST Law** has the meaning given to it in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) or any similar applicable legislation in the relevant jurisdiction.

## 10 COMMENCEMENT AND TERM

This agreement commences on the date the Licensee accepts the terms of this agreement.

## 11 UPDATES AND DISCONTINUANCE

Embrava may modify or discontinue the availability of some or all of the API at any time for any reason with or without notice to the Licensee.

## 12 INTELLECTUAL PROPERTY

- 12.1 The Licensee agrees that Embrava and its licensors are the sole and exclusive owners of the Intellectual Property in and relating to the API and any documentation relating to the API (including without limitation any and all modifications and derivative works of it), and the Licensee must not do anything to prejudice or challenge that Intellectual Property during or after the term of this agreement.
- 12.2 The Licensee's rights to use the API rest in contract only and neither the Licensee, its servants, employees nor agents obtain any proprietary rights or interest in respect of the API.
- 12.3 The Licensee must take all necessary precautions to prevent the unauthorised copying or use of the API and the documentation relating to it.
- 12.4 The Licensee must ensure that anyone who has access to the API under this agreement is first made aware of the rights of Embrava and its licensors.
- 12.5 Except as expressly stated in this agreement, this agreement does not grant the Licensee any rights to, or in, patents, copyrights, database rights, trade name, trademark (whether registered or unregistered) or any other rights or licenses in respect of the Intellectual Property, the API or any materials published by Embrava.
- 12.6 The Licensee must ensure that any references to Embrava and/or the functions provided by the API in its products, or in any other material to be seen by end users and potential end users, including must follow any brand guidelines published by Embrava from time to time.
- 12.7 The Licensee acknowledges that it holds the API as a mere bailee at its risk.
- 12.8 The Licensee owns all Intellectual Property rights in and to any application its creates using the API subject to clause 7.3.

### **13 LIABILITY OF Embrava**

- 13.1 IF UNDER ANY LAW ANY TERMS, CONDITIONS OR WARRANTIES WHICH APPLY TO THE SUPPLY OF GOODS OR SERVICES UNDER THIS AGREEMENT CANNOT LEGALLY BE EXCLUDED, RESTRICTED OR MODIFIED THEN THOSE TERMS, CONDITIONS AND WARRANTIES APPLY TO THE EXTENT REQUIRED BY THAT LAW.
- 13.2 EXCEPT AS STATED IN THIS AGREEMENT ALL TERMS, CONDITIONS AND WARRANTIES WHICH WOULD OTHERWISE BE IMPLIED ARE EXCLUDED.
- 13.3 THE LICENSEE DOES NOT RELY ON ANY REPRESENTATION, WARRANTY OR OTHER PROVISION MADE BY OR ON BEHALF OF EMBRAVA WHICH IS NOT EXPRESSLY REPEATED IN THIS AGREEMENT. IN PARTICULAR, EMBRAVA MAKES NO WARRANTY THAT THE API IS ERROR FREE.
- 13.4 THE LICENSEE EXPRESSLY ACKNOWLEDGES AND AGREES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, THAT:
- (a) USE OF THE API IS AT THE LICENSEE'S SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH THE LICENSEE;
  - (b) THE API AND SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND EMBRAVA AND ITS LICENSORS HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE API, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS;
  - (c) EMBRAVA DOES NOT WARRANT AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE API, THAT THE FUNCTIONS CONTAINED IN THE API WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE API WILL BE UNINTERRUPTED OR ERROR-FREE, THAT THE API WILL BE COMPATIBLE OR WORK WITH ANY THIRD PARTY SOFTWARE, APPLICATIONS OR THIRD PARTY SERVICES, OR THAT DEFECTS IN THE API WILL BE CORRECTED;
  - (d) INSTALLATION OF THE API MAY AFFECT THE AVAILABILITY AND USABILITY OF THIRD PARTY SOFTWARE, APPLICATIONS OR THIRD PARTY SERVICES, AS WELL AS EMBRAVA'S PRODUCTS AND SERVICES;
  - (e) THE API IS NOT INTENDED OR SUITABLE FOR USE IN SITUATIONS OR ENVIRONMENTS WHERE THE FAILURE OR TIME DELAYS OF, OR ERRORS OR INACCURACIES IN THE CONTENT, DATA OR INFORMATION PROVIDED BY, THE API COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE, INCLUDING WITHOUT LIMITATION THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, LIFE SUPPORT OR WEAPONS SYSTEMS;
  - (f) SHOULD THE API PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION;
  - (g) NEITHER EMBRAVA NOR ITS LICENSORS WILL BE LIABLE TO THE LICENSEE AT LAW, BY STATUTE, IN EQUITY OR OTHERWISE FOR ANY LOSS, DAMAGE OR INJURY INCURRED BY THE LICENSEE ARISING DIRECTLY OR INDIRECTLY FROM THE RELATIONSHIP BETWEEN THE LICENSEE AND EMBRAVA, THE API OR THIS AGREEMENT, EXCEPT TO THE EXTENT TO WHICH IT IS UNLAWFUL TO EXCLUDE SUCH LIABILITY UNDER THE APPLICABLE LAW.
- 13.5 IF, DESPITE THE OTHER PROVISIONS OF THIS AGREEMENT, EMBRAVA OR ITS LICENSORS IS FOUND TO BE LIABLE TO THE LICENSEE, THEN ITS LIABILITY (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) EQUITY OR OTHERWISE) FOR ANY SINGLE EVENT OR SERIES OF RELATED EVENTS, SUBJECT TO CLAUSE 13.6, IS LIMITED TO THE INITIAL LICENCE FEE THE LICENSEE PAID FOR THE API

13.6 NEITHER EMBRAVA NOR ITS LICENSORS ARE LIABLE (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), EQUITY OR OTHERWISE) FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE WHICH MAY ARISE IN RESPECT OF THE API, ITS USE OR THE SERVICES OR EQUIPMENT PROVIDED BY EMBRAVA UNDER THIS AGREEMENT OR FOR LOSS OF PROFIT, BUSINESS, REVENUE, GOODWILL OR ANTICIPATED SAVINGS.

#### **14 INDEMNITY**

14.1 The Licensee unconditionally and irrevocably indemnifies Embrava, and will hold it harmless against each claim, action, proceeding, judgment, damage, loss, expense, or liability incurred or suffered by or brought or made or recovered against Embrava in connection with any breach of any provision of this agreement by the Licensee.

14.2 Any claim made by Embrava on the Licensee under clause 14.1 is payable on demand.

14.3 This indemnity survives the expiry or termination of this agreement.

#### **15 TERMINATION**

15.1 This agreement is effective until terminated.

15.2 In addition to any other right to terminate this agreement, Embrava may terminate this agreement immediately without notice to the Licensee if:

- (a) the Licensee fails to comply with any terms of the agreement;
- (b) the Licensee suspends payment of its debts or is insolvent;
- (c) a receiver or a manager or a receiver and manager is appointed for the whole or part of the Licensee's undertaking or assets;
- (d) an encumbrancer takes possession of the whole or part of the Licensee's undertaking or assets or appoints an agent to exercise its rights;
- (e) the Licensee is subject to an administration order or makes any voluntary arrangement with its creditors;
- (f) the Licensee goes into liquidation (except for an amalgamation or reconstruction where the new company takes over the Licensee's responsibilities);
- (g) the Licensee ceases to carry on business; or
- (h) the Licensee is in default under another agreement with Embrava.

15.3 No waiver by either party of a provision or breach of this agreement operates as a waiver of any other provision or breach unless in writing and signed by the party against whom it is sought to be enforced.

#### **16 EFFECT OF TERMINATION**

16.1 On termination of this agreement for any reason the Licensee must immediately:

- (a) pay any outstanding Licence Fee to Embrava; and
- (b) stop using the API; and
- (c) return to Embrava or destroy the API and all copies of them in its possession or control.

16.2 Termination of this agreement does not affect any accrued rights or liabilities of either party.

#### **17 CONFIDENTIALITY**

17.1 The Licensee must treat as confidential all information received from Embrava (**Confidential Information**). This includes but, is not limited to, the commercial terms reflected in this agreement.

17.2 A party must not disclose the confidential information of the other without the other's consent. The exceptions are where:

- (a) disclosure is required by law;
- (b) the information is in the public domain;

- (c) the information was received in good faith by the party from a third party who did not prohibit the proposed disclosure.
- 17.3 The Licensee must be any username, password, API key or other credentials (**Credentials**) utilised to access the API secret and confidential at all times and must ensure that no third party has access to the API utilising the Licensee's Credentials. In the event that the Licensee suspects that any third party making use of its Credentials, the Licensee must immediately inform Embrava of that fact and provide all reasonable assistance to Embrava in relation to any subsequent investigation or other activities undertaken by Embrava in connection to such use.
- 17.4 The Licensee not use or otherwise export or re-export any Confidential Information received from Embrava except as authorized by Australian or the United States law and the laws of the jurisdiction in which the Confidential Information was obtained. In particular, but without limitation, the Confidential Information may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List or any other restricted party lists. By using any Confidential Information, the Licensee represents and warrants that it is not located in any such country or on any such list. The Licensee also agrees that it will not use any Confidential Information for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of nuclear, chemical or biological weapons.
- 17.5 Certain Confidential Information may be considered "Commercial Items", as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States.

## 18 **AUDIT**

During the Term and for a period of three years thereafter, Embrava has the right to audit and inspect, on 30 days' notice (unless shorter notice is required due to the mandatory directions or requirements of any governmental body) that the Licensee has and is complying with the terms of this agreement:

## 19 **THIRD-PARTY CODE**

The API may contain or be provided with components subject to the terms and conditions of "open source" software licences (**Open Source Software**). Embrava will provide a list of Open Source Software applicable to the API on request from the Licensee. To the extent required by any Open Source Software licence, the terms of any such licence will apply and prevail over the terms of this agreement only in relation to the components of the API that are Open Source Software.

## 20 **CHANGE TO THIS AGREEMENT**

Embrava may time to time revise this agreement and if it makes any substantial change to this agreement, it will notify the Licensee by prominently posting notice of the changes on its website or sending the Licensee an email to the address that it provided for the purposes of registering for the use of the API.

## 21 **FORCE MAJEURE**

Except for any payment obligations, neither party will be liable to the other for failure to fulfil obligations under this agreement if such failure is due to causes beyond its reasonable control, including acts of nature, earthquake, fire, flood, embargo, catastrophe, sabotage, utility or transmission failures, governmental prohibitions or regulations, national emergencies, insurrections, riots or wars, or viruses which did not result from the acts or omissions of such party, its employees or agents, strikes, work stoppages or other labour difficulties or outages any network.

## **22 NOTICES**

22.1 Any notice must be in writing addressed to the intended recipient at its address:

- (a) which in the case of the Licensee is the address provided to Embrava when registering for the use of the API; and
- (b) in the case of Embrava is  
Level 38 Tower 3  
300 Barangaroo Avenue  
Sydney, NSW 2000 Australia  
[licensing@embrava.com](mailto:licensing@embrava.com)

or the address last notified.

22.2 A notice will be taken to be duly given and received:

- (a) if delivered by hand, when delivered;
- (b) if delivered by ordinary pre-paid post, on the second business day after posting; and
- (c) if delivered by email, on the earlier of:
  - (i) receipt by the sender of an automated message confirming delivery; or
  - (ii) four hours after the time sent (as recorded on the sender's email system) unless the sender receives an automated message that the email has not been delivered or the recipient is 'out of office'.

## **23 GENERAL**

23.1 Nothing in this agreement will create a partnership, or the relationship of principal and agent, between the parties.

23.2 This agreement contains the entire agreement between Embrava and the Licensee in respect of the Licensee's use of the API and may not be varied except by an instrument in writing signed by authorised representatives of the parties.

23.3 Embrava may assign or novate this agreement (in whole or in part) to any person on written notice to the Licensee.

23.4 The Licensee agrees that all promises and obligations of the Licensee and the disclaimers, exclusions and limitations under this agreement will also apply for the benefit of and are directly enforceable by its licensors, even though its licensors are not a signatory to this agreement

23.5 If a provision of this agreement is found to be unlawful, invalid or unenforceable for any reason, this agreement will remain in force apart from that provision which is deemed to be deleted.

23.6 Headings are for convenience only and do not affect interpretation.

23.7 Any individual executing this agreement warrants that he or she has been duly authorised to do so and to bind the party on whose behalf he or she is executing.

23.8 This agreement is governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.