**SOFTWARE DEVELOPMENT AGREEMENT**

This Software Development Agreement (the “Agreement”) is made as of the date of execution on the signature page below by and between [SOFTWARE DEVELOPER], (the “Software Developer”), and [CLIENT] (the “Client”), with each having a place of business at the address indicated on the signature page below. Both the Software Developer and the Client may be referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS, the Software Developer is in the business of software development and the Client desires to engage the Software Developer to utilize such services in accordance with the terms and conditions herein.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, the Parties agree as follows:

1. **SCOPE OF WORK.** The Software Developer shall perform the services as described on the Software Developer’s Project Proposal attached hereto as Exhibit A (the “Services”). The Client agrees to and acknowledges the following with regard to the Software Developer’s provision of the Services:
   1. *Client Cooperation.* The Client shall: (i) provide all resources as may be specified in the Software Developer’s Project Proposal; (ii) provide personnel with an understanding of the Client’s goal as is necessary to answer any questions the Software Developer may have regarding the functionality of the software components of the Work Product (the “Software”); (iii) ensure the Client has an ability to test all Software as necessary for the Software Developer to complete the Services; and (iv) provide all cooperation and assistance the Software Developer reasonably requests to enable the Software Developer to perform the Services.
   2. *Effect of Client Delay.* The Client is not responsible or liable for any late delivery or delay or failure of Software caused in whole or in part by the Client’s delay in performing, or failure to perform, any of its obligations under this Agreement.
   3. *Testing and Acceptance.* Upon delivery of any Software, the Client shall provide to the Software Developer any notice of nonconformity with the Software Developer’s Project Proposal within ten (10) days of such delivery. Any failure to provide such notice in writing to the Software Developer shall be deemed an acceptance of the subject Software.
   4. *Training.* The Software Developer shall provide to the Client up to [NUMBER OF HOURS] hours training with regard to use of the Software to the Client free of charge. All additional training shall be billed to the Client at an hourly rate of $[HOURLY RATE FOR TRAINING] per hour.
   5. *Maintenance and Support.* The Software Developer shall provide to the Client up to [NUMBER OF HOURS] hours of maintenance and technical support with regard to use of the Software to the Client free of charge. All additional maintenance and technical support shall be billed to the Client at an hourly rate of $[HOURLY RATE FOR MAINTENANCE AND TECHNICAL SUPPORT] per hour
2. **FEES.**
   1. *Deposit.* The Client shall pay to the Software Developer an upfront deposit of $[DEPOSIT AMOUNT] which shall be due and payable upon execution of this Agreement (the “Deposit”). the Software Developer shall deduct the Deposit from any amounts due and payable upon the final due date indicated below.
   2. *Hourly Rate.* The Client shall pay to the Software Developer a rate of $[HOURLY RATE] per hour for all Services completed.
   3. *Invoices.* The Software Developer shall invoice the Client for Services every thirty (30) days throughout the term for the Services. Each invoice shall include a description of the Services provided and shall be due and payable thirty (30) days from receipt by the Client.
   4. *Non-Payment Penalty.* The Client agrees and acknowledges that any non-payment shall incur a penalty of ten percent (10%) per annum or the highest interest rate allowable by the law of the applicable jurisdiction
3. **TERM; TERMINATION.**
   1. *Term.* This Agreement shall commence as of the date of execution and shall continue thereafter until the completion of the Services unless sooner terminated in accordance with this Agreement.
   2. *Termination.* The Parties may terminate the Agreement prior to completion of the Services in accordance with the following:
      1. *Software Developer Right.* The Software Developer may terminate this Agreement, effective on written notice to the Client, if the Client: (i) fails to pay any amount when due hereunder, and such failure continues more than five (5) days after the Software Developer’s delivery of written notice thereof; or (ii) breaches its representations regarding its intellectual property rights to any content provided to the Software Developer for integration into the Work Product.
      2. *Upon Material Breach by Either Party.* Either Party may terminate this Agreement, effective on written notice to the other party, if the other Party materially breaches this Agreement, and such breach remains uncured fifteen (15) days after the non-breaching party provides the breaching party with written notice of such breach.
   3. *Effect of Termination.* Upon termination of this Agreement for any reason, the Client shall immediately pay to the Software Developer any amounts due and payable under this Agreement.
4. **CONFIDENTIALITY.**
   1. *“Confidential Information” Defined.* “Confidential Information” includes written machine-reproducible and visual materials; all verbal disclosures made by or on behalf of the Parties under this Agreement; any software, whether in object, source or executable code; documentation and nonpublic financial information; information relating to either Party’s methods of operations; names, addresses, telephone numbers and other identifying information relating to clients of the Parties; personnel data relating to employees and contractors; and other documents prepared by or for the Parties or otherwise in furtherance of such Party’s business; nonpublic plans for new products and services; improvements and marketing strategies; and business contacts, pricing, business plans, techniques, methods and processes.
   2. *Receipt of Confidential Information.* During the term of this Agreement, each Party (a “Recipient Party”) may acquire Confidential Information about the other (a “Disclosing Party”), including information regarding business activities and operations, technical information, and trade secrets (the “Confidential Information and Trade Secrets”). Each Recipient Party agrees to hold in confidence all Confidential Information and Trade Secrets, not use Confidential Information or Trade Secrets for purposes other than to accomplish the aims of this Agreement, and not to disclose Confidential Information or Trade Secrets to any third party.
   3. *Exceptions.* The foregoing confidential obligations shall not apply to Confidential Information (i) which is or becomes publicly available other than through the breach of this Agreement, (ii) which was known to the recipient prior to the disclosure by the other party, (iii) which a party rightfully receives from a third party not bound by any confidentiality agreement with respect thereto, (iv) which is independently developed by the recipient, or (v) which is required to be disclosed pursuant to legal or governmental requirements; provided, that disclosure under this clause shall be limited to persons legally entitled to receive the information.
   4. *Effect Upon Termination.* In the event this Agreement expires or is terminated for any reason or should either Party request the other to do so for any reason, such Party will promptly return, erase, or destroy all Confidential Information or Trade Secrets in its possession or control, including Confidential Information or Trade Secrets stored in any computer memory or data storage apparatus.
   5. *Publicity.* The Client acknowledges and agrees that the Software Developer may indicate that it is working with the Client in its marketing materials.
5. **INTELLECTUAL PROPERTY COVENANTS.**
   1. *Definitions.*
      1. “Intellectual Property” means: all logos, pictorial or graphical representations of brands, advertisements, graphics, designs, text, design elements, software code (object code and source code), software development tools, and any and all other information or materials and underlying intellectual property.
      2. “Work Product” means all inventions, innovations, improvements, developments, methods, designs, analyses, network programming and configuration, other programming and configuration, documentation, technology, hardware, hardware design and layout, hardware configuration, software code (both object and source code) drawings, reports, schematics and all similar or related information (whether or not patentable or copyrightable) and all associated intellectual property rights, including trade secrets, copyrights, patents or patentable information, mask works and other intellectual property that relate to Client's actual or anticipated business, research and development or existing or future products or services and, that are conceived, developed, designed, made, or reduced to practice by the Software Developer during the term of this Agreement and all derivations, adaptations, modifications or compilations thereto, except for Software Developer or third party Intellectual Property, which is specifically not included as part of the Work Product.
   2. *Already-Existing IP.* The Work Product developed by the Software Developer for the Client may include or use the Software Developer's Intellectual Property or the Intellectual Property of a third party for which the Software Developer has the unlimited right to utilize in the manner it is used in any Work Product. The Software Developer hereby grants Client a perpetual, worldwide, royalty-free, non-exclusive, transferable, assignable, sublicenseable license to use such Intellectual Property to the extent that such property is needed to use or utilize the Work Product.
   3. *Work Made for Hire*. If any of the Work Product may not, by operation of law or otherwise, be considered work made for hire by the Software Developer for the Client or otherwise the intellectual property of the Client, or if ownership of all right, title and interest of the intellectual property rights therein shall not otherwise vest exclusively in the Client, the Software Developer agrees to irrevocably waive and assign without further considerationall rights, title and interest in any Work Product to the Client.
   4. *Representation of Rights and Non-Infringement.*
      1. *By the Software Developer.* All Work Product delivered to the Client shall be free and clear of all liens, claims, encumbrances and other restrictions and shall not infringe or misappropriate any third party's related intellectual property rights.
      2. *By the Client.* The Client represents and warrants that the Client owns the intellectual property rights to or holds a right to publish any content provided to the Software Developer for the purpose of performing the Services herein.
6. **INDEMNIFICATION; LIMITATION OF LIABILITY.**
   1. *Indemnification.* Each Party will indemnify, defend, and hold the other Party, its officers, directors, employees, and/or shareholders, harmless from and against any and all damages (whether ordinary, direct, indirect, incidental, special, consequential, or exemplary), judgments, liabilities, fines, penalties, losses, claims, actions, demands, lawsuits, costs, and expenses including, without limitation, reasonable attorneys' fees, which arise out of or relate to any material breach of this Agreement, breach of the representations or warranties contained herein, or acts or omissions of negligence, willful misconduct, or fraud of either such Party.
   2. *Exclusion of Certain Damages.* IN NO EVENT SHALL THE SOFTWARE DEVELOPER BE LIABLE TO THE CLIENT FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT THE SOFTWARE DEVELOPER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
   3. *Limitation of Liability.* IN NO EVENT SHALL THE SOFTWARE DEVELOPER’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO THE SOFTWARE DEVELOPER PURSUANT TO THIS AGREEMENT. THIS LIMITATION SHALL NOT BE APPLICABLE IN CASES OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.
7. **MISCELLANEOUS.** 
   1. *Independent Representation.* Each Party acknowledges that he or she has been represented by independent legal counsel of his or her own choice throughout all of the negotiations which preceded the execution of this Agreement (or has waived such right) and that he or she has executed this Agreement with the consent and upon the advice of such independent legal counsel.
   2. *Assignment.*No Party may assign or transfer its rights or obligations under or interest in this Agreement without the prior written consent of the other Party.
   3. *Integration.* This Agreement constitutes the entire understanding and agreement of the Parties with respect to its subject and supersedes any prior agreements.
   4. *No Waiver.* No term of this Note may be waived, modified, or amended except by an instrument in writing signed by both of the Parties. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given.
   5. *Governing Law; Venue.* This Agreement shall be construed with and governed by the substantive laws of the State of [STATE]. Should any claim or controversy arise between the Parties under the terms of this Note or in furtherance of this Agreement, such claim or controversy shall be resolved only in the state or federal courts located in [COUNTY, STATE].
   6. *Counterparts.*This Agreement may be executed in one or more counterparts, each of which shall be deemed original, but all of which together shall constitute one and the same instrument.
   7. *Notices.* All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received only when delivered (personally, by courier service such as Federal Express, or by other messenger) or when deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, or by email, addressed as set forth below or as communicated by either Party after the execution of this Agreement:

Software Developer

Name: [NAME]

Address: [ADDRESS]

Email Address: [EMAIL ADDRESS]

Client

Name: [NAME]

Address: [ADDRESS]

Email Address: [EMAIL ADDRESS]

* 1. *Attorney’s Fees.* The prevailing party in any action arising out of this Agreement shall be entitled to recover reasonable attorney’s fees as part of any judgment.

IN WITNESS WHEREOF, the Parties have executed this Agreement in accordance with the dates as indicated below.

**[SOFTWARE DEVELOPER]:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_

Signature Date

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Name

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Address

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City, State, Zip

**CLIENT:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_

Signature Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name

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Address

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City, State, Zip

**EXHIBIT A – SOFTWARE DEVELOPER PROJECT PROPOSAL**

[SPECIFICATIONS OF SOFTWARE AGREED TO BY THE PARTIES – E.G., FUNCTIONALITY, DESIGN ELEMENTS, MOCKUPS, TIMELINES, MILESTONES, ETC.]