

Some Terms of this **AGREEMENT** highlighted in **GREEN**, protect the interests of the **CUSTOMER**. The Terms highlighted in **RED** warn the **CUSTOMER** to avoid making harm to both parties of the **AGREEMENT** if misused by the **CUSTOMER**.

TERMINOLOGY AND DEFINITIONS FOR HEREINAFTER REFERENCE

“**AUTHOR**” means a freelance developer - Alexander Borisovich Prokopyev.

“**SOFTWARE**” means some custom scripts created by the **AUTHOR** for the **CUSTOMER**.

“**CUSTOMER**” means a freelance customer of the **AUTHOR** which is also the **SOFTWARE** licensee.

“**LICENSOR**” means a licensor of the **SOFTWARE** to the **CUSTOMER**. Generally, the **AUTHOR** is also the **LICENSOR** unless the opposite is agreed in advance with both parties.

“**LICENSORS**” means both the **AUTHOR** and the **LICENSOR**.

“**PARTY**”. The **CUSTOMER**, the **AUTHOR**, and the **LICENSOR** hereinafter individually and collectively referred to respectively as the “**PARTY**” and the “**PARTIES**”.

“**KURGAN**” means Kurgan city which is a regional center of Region 45 of the Russian Federation. Region 45 is also known as Kurganskaya Oblast' of the Russian Federation.

“**AGREEMENT**” means this preliminary agreement between the **PARTIES** of this **AGREEMENT**. The place of the **AGREEMENT** execution is **KURGAN**.

“**REJECTABLE WORK EFFORTS**” means a small portion of the **AUTHOR** yet unredeemed work with a duration of **NOT more than 10-40 hours** which can be rejected by the **CUSTOMER** at any point of time unless it is already paid. The exact maximum amount of rejectable hours in the range between 10 and 40 hours is mutually agreed upon by both **PARTIES** in advance.

THE AUTHOR WORK TERMS

The **AUTHOR** works only remotely from his home part-time **up to 80 hours a month in a total of actual non-idle billed work efforts**. For urgent work the dedication of **up to 11 hours a day is possible temporary** if and when needed urgently on some days only, **an urgent (10 minutes) response to such “all hands” incidents** is acceptable during predefined in an advance time, anyway a monthly total of active billed work shall not exceed already mentioned above 80 hours of work (at least as an average per month for continuous three months). Scheduled upgrade works are also possible on weekends and holidays during the offline time for services if and when needed on preliminary request (at least one day in advance).

For urgent work, the minimum amount of monthly billed work efforts is 22 hours a month, it looks like a minimum monthly subscription which is paid at the end of the month if the **CUSTOMER** is still interested in the **AUTHOR** quickly and promptly responding to the **CUSTOMER** incidents. Otherwise, the **CUSTOMER** must directly notify the **AUTHOR** in advance about his inability to bid and pretend for future urgent work of the **AUTHOR** with him under this **AGREEMENT**. If the **CUSTOMER** cannot load the **AUTHOR** at least 22 hours per month, but at the same time, provided that the **AUTHOR** can sustain the load of 22 hours a month, then the **AUTHOR** will look for other more demanding projects that will get higher priority compared to the old **CUSTOMER** which is already without sufficient workload for the **AUTHOR** and, therefore, without enough payment for the **AUTHOR** too.

The **AUTHOR** generally works **without prepay**s, but the **CUSTOMER** gets only **protected binary deliverables of new versions of the CUSTOMER’S project with some restrictions like an expiration date for being tested executables**, which the **CUSTOMER** can test if needed in his sand-boxed environment on his test server before payment. The source codes for the current phase of work are **NOT** available for the **CUSTOMER** in his testing environment until his payment for this phase of work is received by the **LICENSOR**. The source code for a phase of work is provided under a license agreement each time after the corresponding payment is received by the **LICENSOR**.



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TERMINATION AND CUSTOMER'S RIGHT TO REJECT A PAYMENT

If the CUSTOMER rejects **REJECTABLE WORK EFFORTS** then the AUTHOR may terminate his future work with the CUSTOMER and/or prohibit the CUSTOMER to use **new results of the corresponding yet not paid phase of the AUTHOR work**. Anyway, the CUSTOMER is still allowed to continue to use results of AUTHOR work from other earlier phases (if existed) paid by CUSTOMER to the LICENSOR according to the earlier signed **executed effective authentic licenses**. It is a good idea to use such rejecting opportunity at the very beginning of work of the AUTHOR if the CUSTOMER does not like AUTHOR work, it is the same as a test task or a test work or a probationary period at the beginning of the cooperation. Also, it is possible later at some point in time if the CUSTOMER starts feeling the quality of AUTHOR work becomes worse than acceptable or is too slow for the CUSTOMER.

The CUSTOMER shall not reject or delay (for example if the CUSTOMER has unexpected financial straits or dislikes the work of the AUTHOR) a payment to the LICENSOR for a phase of yet unsettled but completed phase of the AUTHOR work which is longer than REJECTABLE WORK EFFORTS. This AGREEMENT prohibits the CUSTOMER to reject more AUTHOR work hours than REJECTABLE WORK EFFORTS, doing the opposite breaks the terms of this AGREEMENT and also makes the AUTHOR waste his time on working for the CUSTOMER while the CUSTOMER is not going to or cannot recover the cost of the AUTHOR work efforts which is NOT allowed. The CUSTOMER shall pay to the AUTHOR no later than in four weeks (one month) since the AUTHOR notified the CUSTOMER about the phase is ready for a test or not later than in two weeks since results are already installed and tested. The CUSTOMER shall make his best efforts to promptly and in time (earlier than REJECTABLE WORK EFFORTS of the AUTHOR work hours spent) indicate if the CUSTOMER is not interested to pay for a current phase of AUTHOR work and/or would like to terminate this cooperation if the CUSTOMER does not like something uncorrectable in the AUTHOR work (from his point of view) and the CUSTOMER shall notify the AUTHOR in an examinable way about this at once ASAP to not exceed wasting REJECTABLE WORK EFFORTS of the AUTHOR work hours.

All work hours of the AUTHOR yet unsettled work above REJECTABLE WORK EFFORTS shall be paid anyway ASAP not later than in one month since his request to test a completed phase of his work despite the CUSTOMER opportunity to reject only REJECTABLE WORK EFFORTS.

A change of the AUTHOR pay rate is possible only just after a phase of his work is completed (not in a middle of a phase of work). The AUTHOR generally increases his rate only together with fiat currency inflation, significant changes of the GOLD exchange rate, and the cost of a consumer basket.

COPYRIGHT AND THE AUTHOR'S EXCLUSIVE RIGHTS

COMMON UTILITIES AND THE AUTHOR PERSONAL PROJECTS ARE © COPYRIGHT BY THE AUTHOR (ALEXANDER BORISOVICH PROKOPYEV), ALL RIGHTS RESERVED (EXCLUSIVE RIGHTS TOO), CUSTOMER NDA SHALL NOT RESTRICT THE AUTHOR TO USE HIS EXCLUSIVE RIGHTS IN THIS INTELLECTUAL PROPERTY FOR ANY OTHER FURTHER WORK OR ANY FUTURE PROJECT NOT RELATED TO THE CUSTOMER. IF SOME OF THE AUTHOR COMMON UTILITIES ARE USED IN THE CUSTOMER PROJECTS PROVIDED WITH THE AUTHOR AUTHENTIC HAND SIGNED PERMISSION THEY ARE LICENSED NON EXCLUSIVELY TO THE CUSTOMER ONLY UNDER A SIMPLE LICENSE AGREEMENT and sometimes if additionally agreed in advance may include rights for modifications and to make derivative works for the CUSTOMER still under a simple license agreement too where such rights



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for modifications shall be indicated explicitly.

All NON-COMMON custom scripts and configurations that are done specifically for the CUSTOMER are licensed exclusively to the CUSTOMER, also can be under the CUSTOMER NDA if needed and agreed in advance.

INDEMNIFICATION

The CUSTOMER agrees that the LICENSORS are not responsible and the LICENSORS will not be charged penalties, indemnities, compensations by the CUSTOMER, his party, or any 3-rd party (including but not limited to parties affiliated by CUSTOMER) under any conditions including (but NOT limited to) the following cases in their any combinations:

- 1) AUTHOR results are late or even are lacking at all by the expected date.
- 2) The unexpectedly large amount of the AUTHOR work efforts needed.
- 3) The CUSTOMER does not like the AUTHOR results, or the results do not suit the CUSTOMER for some reasons like his expectations, his time spent, his expenses to purchase any related to the AUTHOR work or suggested by the AUTHOR software licenses.

Actually, the AUTHOR generally suggests using FREE open-source software unless the CUSTOMER insists on using the opposite (proprietary software).

- 4) The CUSTOMER has already lost his interest.

THE SOFTWARE (THE AUTHOR RESULTS AS DELIVERABLES) IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. IN NO EVENT SHALL THE AUTHORS OR COPYRIGHT HOLDERS BE LIABLE FOR ANY CLAIM, DAMAGES OR OTHER LIABILITY, WHETHER IN AN ACTION OF CONTRACT, TORT OR OTHERWISE, ARISING FROM, OUT OF OR IN CONNECTION WITH THE SOFTWARE OR THE USE OR OTHER DEALINGS IN THE SOFTWARE.

The CUSTOMER agrees to hold harmless and indemnify the LICENSORS and their affiliates, agents, other licensors, and licensees from and against any claim, suit, or action arising from or in any way related to the CUSTOMER use of the SOFTWARE or CUSTOMER violation of the AGREEMENT, including any liability or expense arising from all and any claims, losses, damages, suits, judgments, litigation costs and attorneys' fees, of every kind and nature.

The AUTHOR does NOT sell any of his consulting services. The LICENSOR sells only licenses for resulting custom scripts of the AUTHOR to the CUSTOMER.

The CUSTOMER only must pay the LICENSOR AFTER the CUSTOMER was allowed by the AUTHOR to test the binary deliverables and BEFORE the CUSTOMER receives the source codes. The CUSTOMER payments to the LICENSOR are not reversible or returnable for any reason after the CUSTOMER has received the corresponding source code for binary deliverables from the AUTHOR after the payment.

MODIFICATION AND TERMINATION

The parties are allowed to modify or terminate this AGREEMENT only if such modification or termination of the AGREEMENT is mutually agreed in writing and hand signed by both parties of this AGREEMENT.



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UNDERSTANDING

The parties of this AGREEMENT understand the terms of this AGREEMENT precisely in the context of common sense. In a case of a discrepancy between a heading of a section of the AGREEMENT with a sense of terms contained in such section, the parties consider the sense of terms inside the section prevailing over the sense of the section heading.

Headings of sections used in this AGREEMENT are provided only for convenience and reference purposes and in no way define, limit, construe or describe the scope or extent of such section. Such headings shall not be used to construe meaning or intent. The section headings are for convenience only and have no legal or contractual effect.

This AGREEMENT is the entire agreement between the parties relating to its subject matter. This AGREEMENT supersedes all prior or contemporaneous oral, electronic, or written communications, proposals, representations, and warranties and prevails over any conflicting or additional terms of any quote, order, acknowledgment, or other communication between the parties relating to the subject matter of this AGREEMENT during the term of the AGREEMENT.

The parties warrant that identifying particulars relating to name, location, address, email, phone, bank accounts, and contact information are true and correct and that each party may be contacted by another party at the address given for such purpose. The Parties shall keep such information updated during the execution of this AGREEMENT.

STRONGLY UNACCEPTABLE

1) Relocation, on-site work, debts.

2) Fixed-priced large tasks, exact estimates, strict deadlines and prepay are unacceptable. Only per hour and very approximated non-obligatory estimates acceptable for such tasks.

It is also known as the “Time and Materials” approach that is ACCEPTABLE.

3) Administration of proprietary like:

3.1) Blades, mainframes, etc.;

3.2) Windows, UNIXes (like AIX, HP-UX), AS/400, InterSystems Cache, Oracle Database, etc.

except for IBM Db2 on Linux and ZFS on Solaris that is ACCEPTABLE.

4) MySQL for high-loaded projects.

5) Military and body shop companies like Luxoft are unacceptable.

Companies looking only for soft skills are unacceptable.

On the other hand, the following are ACCEPTABLE: direct civilian companies that need help in script programming (e.g. IaC and partially DevOps) to automate their server administration tasks and only with serialized long-term projects WITHOUT simultaneous switching between tasks of different concurrent customers. Companies producing products (e.g. software) or services with long-term projects are preferred.

6) Regular paperwork, project & staff management as a lead, non-technical activity, legacy technologies.
ACCEPTABLE: working in small groups is preferred.



ARBITRATION CLAUSE

The governing language of this AGREEMENT is English. Any translation of the AGREEMENT is provided only as a convenience to the LICENSORS' native government institutions who are allowed to examine the AGREEMENT. The LICENSORS do not guarantee the accuracy of such translations.

In the event of any discrepancy between the English version and any translation, the English version shall govern. In the event of a dispute, the parties shall make a good faith effort to settle it amicably. All disputes in connection with this AGREEMENT shall be settled by negotiations. If the parties are unable to settle a dispute by negotiations and an amicable settlement cannot be reached, such dispute arising out of or relating to this AGREEMENT shall be settled by the trial court of general jurisdiction in the city of KURGAN, RUSSIA in full-time presence of the LICENSORS or the LICENSORS' agent assigned by the LICENSOR in writing. The filing party shall notify another party of the AGREEMENT about such settlement in 60 (sixty) days before filing in writing by REGMAIL and ALSO by e-mail.

A course of dealing and other standard business conditions of the parties or the industry shall NOT apply to this AGREEMENT. The duration of this ARBITRATION CLAUSE shall NOT be less than the duration of this AGREEMENT. Any disputes concerning this AGREEMENT shall be resolved shall be governed and construed by the substantive and procedural laws of the Russian Federation.

SEVERABILITY

If any term of this AGREEMENT is held by a court of a competent jurisdiction specified in the Section "ARBITRATION CLAUSE" to be invalid or unenforceable then such term shall be construed to give it the maximum effect possible, the court should endeavor to give effect to the parties intentions as reflected in the invalid or unenforceable provision and the remainder of this AGREEMENT shall remain and continue in full force and effect.

All valid and enforceable terms of this AGREEMENT are inalienable parts of this AGREEMENT. If a section is referred to in a text of any term of this AGREEMENT and such section contains subsections it means that all subsections are referred by such term too.

AGREEMENT EXECUTION

This AGREEMENT comes into lawful force and becomes obligatory for both parties on the EFFECTIVE DATE. Both the CUSTOMER and the LICENSORS have their copy of this AGREEMENT. Both parties acknowledge that the party has read this AGREEMENT, understands it, and agrees to be bound by its terms and conditions. The undersigned, duly authorized to that effect, have signed this AGREEMENT in 2 (two) copies having equal juridical and legal force.

The LICENSORS thank the CUSTOMER for using the SOFTWARE. THE CUSTOMER SHALL READ THE AGREEMENT CAREFULLY. BY USING THE SOFTWARE OR ANY PORTION OF IT THEREOF THE CUSTOMER ACCEPTS THE FULL TERMS OF THIS AGREEMENT.

For the CUSTOMER signed by: _____ _____ Signing date: _____	For the LICENSOR signed by: _____ _____ Signing date: _____	For the AUTHOR signed by: _____ _____ Signing date: _____
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