

# SOFTWARE DEVELOPMENT AGREEMENT

This Software Development Agreement (the "Agreement") is entered into and made effective this 22nd day of September, 2021 (the "Effective Date"), by and between **CIROCCO CORP.**, a WASHINGTON corporation, with a mailing address of 18717 ne 24<sup>TH</sup> St, Redmond, WA (the "Buyer") and **JACON GORDON**, a software developer with a mailing address of 4025 E. Playa de Coronado Tucson, AZ 85718 (the "Developer"). The Buyer and the Developer shall collectively hereinafter be known as the "Parties" or "Party," as applicable.

**WHEREAS**, the Developer offers software development services with respect to software for the gaming industry and Unity game engine.

**WHEREAS**, the Buyer desires to retain the Developer to perform software development in connection with a novel esports enablement platform under development by the Buyer. Developer will be creating *a SDK for the Unity Game engine that when integrated into PC and Console games will enable them for online esports tournaments*.

**WHEREAS**, the Parties desire to enter into a business relationship pursuant to which, among other things, the Developer would develop such software with desired features and capabilities as specified by the Buyer; and

**WHEREAS**, this Agreement is intended to outline the terms and conditions applicable to the software development aspects of such business relationship between the Parties.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants contained herein, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto covenant and agree as follows:

**1. DESCRIPTION OF SERVICES.** The Developer shall serve as an independent contractor of Buyer to design, develop, and implement software directly related to *online esports tournament enablement platform /software and SDK for the Unity Game Engine* (the "Software").

The Parties shall work together to develop separate, more detailed documents to outline timelines (including, but not limited to, roll out deadlines and phases of completion) and set expectations as to delivery of such Software. Such development outline may also contemplate payment associated with certain phases of development if desired by the Parties. Final delivery of all phases of the Software, including all versions in source code and object code form, shall be no later than four (4) months from the signing of this Agreement unless mutually agreed to by the Parties.

The timelines and specifications addressed herein should be in a format that makes these enforceable, measurable, and accurate to assist both the Buyer and the Developer in planning and delivery stages. It is agreed by the Parties that the Developer will draft the initial timelines and specifications on the Software development. The Buyer shall then receive a copy of same and the Parties will work to negotiate a mutually-agreeable plan for the development of the Software. The Parties acknowledge and agree that this outline should be as detailed as possible as inadequate specifications could cause costs to be incurred by the Buyer for variations and extensions to ensure that the final version of Software is suitable and achieves the objectives for its development.

The Developer shall assist and consult with the Buyer concerning ancillary and related software and IT/infrastructure for the development and/or installation of the Software. However, it shall be Buyer's responsibility to purchase, install, and maintain any such products.

The Parties agree that time is of the essence and desire to timely identify any critical elements of the Software development and/or any specific deliverables. Once these timelines and deadlines are agreed upon, the Parties agree that processes will be disrupted should these deadlines pass without deliverable product. The Parties agree that liquidated damages would be appropriate if the developer does not deliver a working, stable and viable product to the buyer by the end of the (4) months from the signing of the agreement of this agreement. For any delay in the project beyond the expected deadlines (as adjusted from time to time). If one (1) month passes beyond the four (4) month timeframe and the Developer is unable to deliver the software then at the discretion of the Buyer a request can be made of the Developer to refund half the fees he has collected up until that point along with the Software developed up to that stage, including all versions in source code and object code form.

**2. CHANGE IN SPECIFICATIONS.** Buyer may, in its sole discretion, request that changes be made to the specifications or other aspects of this Agreement and tasks associated with the Agreement. If Buyer requests such a change, Developer will use its best efforts to implement the requested change without delaying delivery of the Software. In the event that the proposed change will, in the reasonable opinion of Developer, require a delay in delivery of the Software then Buyer and Developer shall confer and Buyer shall, in its discretion, elect either to withdraw its proposed change or require Developer to deliver the Software with the proposed change subject to the delay and the change to the four (4) month timeline.

**3. FURTHER DEVELOPMENT.** Further development of Software may be contemplated by the Parties. For any upgrades, modifications, or projects beyond maintenance of the current Software, the Parties shall execute a new agreement and services shall be contingent upon negotiation of a mutually-agreeable fee and the availability of the Developer to complete such work.

**4. COMPENSATION.** Buyer shall pay Developer at a rate of \$ 30 P/H ("Compensation") and the Developer is expecting to spend up to 20 hours a working on software development and maintenance of same during the term of this Agreement. The Parties agree that Buyer shall pay the Developer in installments based on phase completion as outlined in the mutually agreed development plan drafted by the Developer. Payments shall be made to the Developer via Paypal within 2 business days after delivery of that specific phase of development.

a. **Expenses.** Buyer shall reimburse Developer for reasonable out-of-pocket expenses, during the development of Software on behalf of Buyer and expenses incurred as a direct result of a request for travel from the Buyer. Developer shall complete paperwork as reasonably requested by the Buyer and provide supporting documentation of all expenses incurred. Travel expenses shall be reimbursed for Developer's personnel essential to the Software development project with Buyer.

b. **Maintenance.** "Maintenance" shall be limited to services necessary to keep the current Software functioning properly (based upon the Software's agree-upon scope of work), including bug fixes, but shall not include any new features and/or upgrades.

5. **TERM.** This Agreement shall commence as of the Effective Date written above and shall continue until one (1) year beyond the final delivery date of the Software, including all versions in either source code or object code form, to allow for the maintenance of same (the “Term”).

6. **TERMINATION.** This Agreement shall terminate upon the occurrence of any of the following: (i) in the event either Party defaults in any material obligation owed to the other Party pursuant to this Agreement, then this Agreement may be terminated if the default is not cured following at least thirty (30) days’ written notice to the defaulting party or (ii) either party is bankrupt or insolvent, or bankruptcy or insolvency proceedings are instituted against a Party and the proceeding is not dismissed within sixty (60) days of commencement. The terms under Ownership of Software and Confidentiality in this Agreement shall survive the expiration or termination of this Agreement. In the event of early termination due to Developer’s default, Developer agrees to deliver the Software then completed within fifteen (15) business days from the date of default.

7. **PERFORMANCE AND ACCEPTANCE TESTING.** Acceptance testing will follow each key stage of Software development and delivery to the Buyer. The Buyer shall test the Software according to the specifications outlined for the services. The Buyer shall perform such acceptance testing within seven (7) business days from receipt of that phase of Software development. At such time (or earlier if applicable), the Buyer shall communicate to the Developer any issues that arise during the acceptance testing. The Developer will then review any deviations, correct them, and re-submit in a timely and reasonable manner to the Buyer for additional acceptance testing.

8. **OWNERSHIP OF SOFTWARE.** Developer agrees that the development of the Software is “work made for hire” and that the Software shall be the sole property of Buyer. Developer hereby assigns to Buyer, without further compensation, all of its rights, title, and interest in and to the Software and any and all related patents, patent applications, copyrights, copyright applications, trademarks, trademark applications, and trade names in the United States and elsewhere. Developer will keep and maintain adequate and current written records with respect to the Software (in the form of notes, sketches, drawings, and as may otherwise be specified by Buyer), which records shall be available to and remain the sole property of Buyer at all times. All versions of the Software shall contain Buyer’s conspicuous notice of copyright. Developer will assist Buyer in obtaining and enforcing patent, copyright, and other forms of legal protection for the Software in any country. Upon request, Developer will sign all applications, assignments, instruments, and papers and perform all acts necessary or desired by Buyer to assign the Software fully and completely to Buyer and to enable Buyer, its successors, assigns, and nominees, to secure and enjoy the full and exclusive benefits and advantages thereof.

9. **WARRANTIES.**

a. **Warranty.** Developer hereby warrants to Buyer that any software developed, and Buyer’s use of it, does not infringe on any third-party copyright.

b. **Indemnity.** Additionally, Developer hereby agrees to indemnify and hold harmless the Buyer (and its respective directors, officers, manager, partners, members, shareholders, affiliates, agents, attorneys, successors, and assigns) from and against any and all losses, liabilities, deficiencies, costs, damages, and expenses (including, but not limited to, reasonable attorneys’ fees, charges, and disbursements) incurred by the Developer as a result of any third-party copyright infringement claim arising out of any software developed under this Agreement.

**10. INDEPENDENT CONTRACTOR.** Developer is acting as an independent contractor with respect to the services provided to Buyer. Neither Developer nor the employees of Developer performing services for the Buyer will be considered employees or agents of the Buyer. Buyer will not be responsible for Developer's acts or the acts of Developer's employees while performing services under this Agreement. Nothing contained in this Agreement shall be construed to imply a joint venture, partnership, or principal-agent relationship between the Parties, and that neither Party by virtue of this Agreement shall have any right, power, or authority to act or create any obligation, express or implied, on behalf of the other Party.

a. **Development Staff.** Developer may utilize employees and/or contractors capable of designing and implementing the Software to be developed hereunder. All work shall be performed in a professional and competent manner. Developer shall arrange for such employees and/or contractors, if any, to execute and deliver any document or instrument reasonably requested by Buyer to reflect Buyer's ownership of the Software or in connection with any application for patent or copyright. Buyer shall also have the right to request that Developer's employees and/or contractors sign a confidentiality agreement concerning the Software development for Buyer.

b. **Monitoring.** Buyer shall have the right to reasonably observe and monitor all aspects of the performance by Developer of its obligations hereunder and Developer shall use reasonable efforts to facilitate such observation and monitoring. Information, functions, and operations of Developer not directly related to its obligations hereunder shall not be subject to observation and monitoring by Buyer.

**11. CONFIDENTIALITY.** Developer acknowledges that all material and information supplied by Buyer which has or will come into Developer's possession or knowledge of Developer in connection with its performance hereunder is to be considered Buyer's confidential and proprietary information (the "Confidential Information"). By way of example, but not as a limitation, Confidential Information includes the Software, trade secrets, processes, data, knowhow, program codes, documentation, flowcharts, algorithms, marketing plans, forecasts, unpublished financial statements, budgets, licenses, prices, costs, and employee and customer lists. Developer's undertakings and obligations under this section will not apply, however, to any Confidential Information which: (i) is or becomes generally known to the public through no action on Developer's part, (ii) is generally disclosed to third parties by Buyer without restriction to such third parties, or (iii) is approved for release by written authorization of Buyer. Upon termination of this Agreement or any other time upon request, Developer will promptly deliver to Buyer all notes, memoranda, notebooks, drawings, records, reports, files, documented source codes and other documents (and all copies or reproductions of such materials) in its possession or under its control, whether prepared by Developer or others, which contain Confidential Information. Developer acknowledges that Confidential Information is the sole property of Buyer. Developer agrees that disclosure of such information to, or use by, third parties, either during or after this Agreement, will cause Buyer irreparable damage. Developer agrees to use best efforts to hold Confidential Information in the strictest confidence, not to make use of it other than for the performance of its obligations hereunder, to release it only to the Developer's employees or contractors with a need to know such information and not to release or disclose it to any other party. Developer further agrees not to release such information to any employee or contractor who has not signed a written agreement between the Developer and the employee or contractor expressly binding the employee or contractor not to disclose the Confidential Information, except as expressly permitted herein. Buyer shall be listed as a third-party beneficiary of any such agreement. Developer will notify Buyer in writing of any circumstances within its knowledge relating to any unauthorized possession, use, or knowledge of such Confidential Information. At any time, upon request, the Developer will return any such information within its possession to Buyer.

Developer acknowledges that Buyer's purpose in pursuing the development of the Software is to gain a significant competitive advantage over competitors operating without such Software and that such advantage will be jeopardized if such competitors learn of Buyer's negotiations with Developer or the performance by Developer of its obligations hereunder. Accordingly, Developer agrees to keep such negotiations and performance of its obligations hereunder strictly confidential and not to disclose any information to any third party or entity without the prior written permission of Buyer. In no event shall Developer or any of its employees or contractors use Buyer as a reference in marketing Developer's services to any third party or entity without Buyer's prior written permission.

**12. TRAINING.** Developer shall provide Buyer and its employees with training consultations with respect to the use of the Software as may reasonably be requested by Buyer from time to time for three (3) months after final delivery and acceptance at no additional costs to Buyer ("Training Period"). Developer shall deliver a detailed user's manual to Buyer on or before completion of acceptance that will enable Buyer's employees who are otherwise unfamiliar with the Software to become adequately informed about using the Software. All training that Developer is required to provide hereunder shall be performed at such locations and at such times as are mutually agreed to by the Parties. Upon the expiration of the Training Period and following Buyer's request, Developer will provide any support services necessary to insure Buyer's continued use of the Software. Such services will be performed on a time and material basis at Developer's then current hourly rates for such services.

**13. ONGOING MAINTENANCE & INTEGRATION SERVICES.** Developer will provide the Buyer on as needed basis maintenance and integration services at an hourly rate of \$30 P/H for one (1) year beyond the final delivery date of the Software.

**14. Documentation.** In addition to providing a user's manual Developer will also provide a manual explaining how to maintain the proper function of the software.

**15. NO WAIVER.** The failure of a Party to require strict performance of any provision of this Agreement by the other, or the forbearance to exercise any right or remedy, shall not be construed as a waiver by such Party of any such right or remedy or preclude any other or further exercise thereof or the exercise of any other right or remedy.

**16. SEVERABILITY.** The invalidity or unenforceability of any provision of this Agreement does not affect the validity or enforceability of any other provision of this Agreement.

**17. ENTIRE AGREEMENT; AMENDMENTS.** This Agreement has been freely negotiated and contains the entire understanding between the Parties for the software development outlined herein. The Parties acknowledge that they have read and understand the terms contained herein and agree to same. This Agreement supersedes all prior agreements, representations, or understanding (whether written, oral, implied, or otherwise) between the Parties. These terms may not be amended or modified, in whole or in part, except by an express written agreement between the Parties.

**18. APPLICABLE LAW.** This Agreement shall be construed and governed by the law of the state of *[insert state of Buyer]* without regard to principles of conflicts of law. Any court action to enforce this Agreement, or relating to or arising out of this Agreement or the Software as developed by Developer, shall be brought in a court of competent jurisdiction in the County of *King County*, state of *Washington*. The prevailing party shall be entitled to collect any reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which the prevailing party may be entitled.

19. **HEADINGS.** The headings in this Agreement are for purposes of reference only and shall not limit or otherwise affect the meaning of any provision of this Agreement.

20. **COUNTERPARTS; FACSIMILE AND ELECTRONIC SIGNATURES.** This Agreement may be executed in counterparts, all of which together shall constitute one and the same agreement. Any electronic signature shall have the full weight and authority as an original signature on this Agreement. Additionally, any signature page delivered electronically or by facsimile shall be binding to the same extent as an original signature page with regards to any agreement subject to the terms hereof or any amendment hereto.

21. **NOTICES.** All notices or other communications required or permitted hereunder or necessary or convenient in connection herewith shall be in writing and shall be deemed to have been given when mailed by certified or registered mail, postage prepaid, or by commercial overnight delivery services addressed to the specific Party at the address provided herein. Should any communication be sent via electronic mail, it shall be deemed received upon the sender's receipt of an acknowledgement from the intended receipt (such as by "return receipt requested" function as available, return email, or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

**IN WITNESS WHEREOF, the Parties have executed this Agreement by the duly authorized representatives identified below and as of the Effective Date of this Agreement.**

**"BUYER"**

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Signature of Authorized Company Representative

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Printed Name of Authorized Company Representative

**"DEVELOPER"**

*Jacob Gordon*

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Signature of Authorized Company Representative

Jacob P. Gordon

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Printed Name of Authorized Company Representative