

SYSTEM SOFTWARE DEVELOPMENT AGREEMENT

This System Software Development Agreement (the "Agreement") is made and effective [DATE],

BETWEEN: **PHILIPPINE ASSOCIATION OF REAL ESTATE BROKER INC. (PAREB)**, an Organization duly registered and existing under the laws of Philippines, having its principal place of business at PAREB Center, P.E. Antonio Street , Ugong, Pasig City, hereinafter referred to as the "Customer".

THROUGH: **EMANUEL FLORENDO**, acting on behalf of the Organization, in his capacity as MLS Director, hereinafter referred to as the "Customer Representative,"

AND: **EMMANUEL P. OLIVAS** of legal age, Filipino with address at 55 Justice R. Jabson St. Bambang Pasig City and hereinafter referred to as the "Developer".

RECITALS

WHEREAS Customer wishes to Develop a Web-based Real Estate Multi-Listing System, and wants to hire Developer to develop this Web-based system, and;

WHEREAS Developer desires to develop this Web-based system for Customer:

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto, intending, to be legally bound, agree as follows:

1. PURPOSE OF AGREEMENT

Customer desires to retain Developer as an independent contractor to develop the Web-based system (the "Software") described in the Functional Specifications contained in Exhibit A attached to and made part of this Agreement. Developer is ready, willing and able to undertake the development of the Software and agrees to do so under the terms and conditions set forth in this Agreement.

2. PREPARATION OF DEVELOPMENT PLAN

Developer shall prepare a development plan ("Development Plan") for the Software, satisfying the requirements set forth in the Functional Specifications. The Development Plan shall include:

- A. Detailed Specifications for the Software;
- B. A listing of all items to be delivered to Customer under this Agreement ("Deliverables");
- C. A delivery schedule containing a delivery date for each Deliverable; and
- D. A payment schedule setting forth the amount and time of Developer's compensation.

3. ACCEPTANCE OF DEVELOPMENT PLAN

Developer shall deliver the Development Plan to Customer by 25 days after executing this Agreement. Customer shall have 5 days to review the Development Plan. Upon approval of the Development Plan by Customer, it will be marked as Exhibit B and will be deemed by both parties to have become a part of this Agreement and will be incorporated by reference. Developer shall then commence development of Software that will substantially conform to the requirements set forth in the Development Plan.

If the Development Plan is in Customer's reasonable judgment unsatisfactory in any material respect, Customer shall prepare a detailed written description of the objections. Customer shall deliver such objections to Developer within 5 days of receipt of the Development Plan. Developer shall then have 7 days to modify the Development Plan to respond to Customer's objections. Customer shall have 5 days to review the modified Development Plan. If Customer deems the modified Development Plan to be unacceptable, Customer has the option of terminating this Agreement upon written notice to Developer or permitting Developer to modify the Development Plan again under the procedure outlined in this paragraph. If this Agreement is terminated, the obligations of both parties under it shall end except for Customer's obligation to pay Developer all sums due for preparing the Development Plan and the ongoing obligations of confidentiality set forth in the provision of this Agreement entitled "Confidentiality."

4. PAYMENT FOR DEVELOPMENT PLAN

If the Development Plan is not accepted by Customer and Customer terminates this Agreement, Developer shall be entitled to compensation on a time and materials basis at an hourly rate of Php 250 plus expenses to the date of termination. Developer shall submit an invoice detailing its time and expenses preparing the Development Plan. If the invoice amount is less than the amounts paid to Developer prior to termination, Developer shall promptly return the excess to Customer. If the invoice amount exceeds the amounts paid to Developer prior to termination, Customer shall promptly pay Developer the difference. However, Developer's total compensation for preparing the Development Plan shall not exceed Php 30,000.

5. PAYMENT

The total contract price shall be set forth in the Development Plan. Customer shall pay the Developer the sum of **Php 300,000.00** upon execution of this Agreement. The remainder of the contract price shall be payable in installments according to the payment schedule to be included in the Development Plan.

Each installment shall be payable upon completion of each project phase by Developer and acceptance by Customer in accordance with the provision of this Agreement entitled "Acceptance Testing of Software."

6. CHANGES IN PROJECT SCOPE

If at any time following acceptance of the Development Plan by Customer, Customer should desire a change in Developer's performance under this Agreement that will alter or amend the Specifications or other elements of the Development Plan, Customer shall submit to Developer a written proposal specifying the desired changes.

Developer will evaluate each such proposal at its standard rates and charges. Developer shall submit to Customer a written response to each such proposal within 7 working days following receipt thereof. Developer's written response shall include a statement of the availability of Developer's personnel and resources, as well as any impact the proposed changes will have on the contract price, delivery dates or warranty provisions of this Agreement.

Changes to the Development Plan shall be evidenced by a "Development Plan Modification Agreement." The Development Plan Modification Agreement shall amend the Development Plan

appropriately to incorporate the desired changes and acknowledge any effect of such changes on the provisions of this Agreement. The Development Plan Modification Agreement shall be signed by authorized representatives of Customer and Developer, whereupon Developer shall commence performance in accordance with it.

Should Developer not approve the Development Plan Modification Agreement as written, Developer will so notify Customer within 7 working days of Developer's receipt of the Development Plan Modification Agreement. Developer shall not be obligated to perform any services beyond those called for in the Development Plan prior to its approval of the Development Plan Modification Agreement.

For purposes of this Agreement, each Development Plan Modification Agreement duly authorized in writing by Customer and Developer shall be deemed incorporated into and made part of this Agreement. Each such Development Plan Modification Agreement shall constitute a formal change to this Agreement adjusting fees and completion dates as finally agreed upon.

7. DELAYS

Developer shall use all reasonable efforts to deliver the Software on schedule. However, at its option, Developer can extend the due date for any Deliverable by giving written notice to Customer. The total of all such extensions shall not exceed 60 of days.

Any delay or nonperformance of any provision of this Agreement caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, provided that the delayed party has taken reasonable measures to notify the other of the delay in writing. The delayed party's time for performance shall be deemed to be extended for a period equal to the duration of the conditions beyond its control.

Conditions beyond a party's reasonable control include, but are not limited to, natural disasters, acts of government after the date of the Agreement, power failure, fire, flood, acts of God, labor disputes, riots, acts of war and epidemics. Failure of subcontractors and inability to obtain materials shall not be considered a condition beyond a party's reasonable control.

8. ACCEPTANCE TESTING OF SOFTWARE

Immediately upon completion of each development phase set forth in the Development Plan's delivery schedule, Developer shall deliver and install the Software and shall deliver all documentation and other materials required to be provided in accordance with the delivery schedule. Customer shall have 20 days from the delivery of the Software to inspect, test and evaluate it to determine whether the Software satisfies the acceptance criteria in accordance with procedures set forth in the Development Plan, or as established by Developer and approved by Customer prior to testing.

If the Software does not satisfy the acceptance criteria, Customer shall give Developer written notice stating why the Software is unacceptable. Developer shall have 7 days from the receipt of such notice to correct the deficiencies. Customer shall then have 5 days to inspect, test and reevaluate the Software. If the Software still does not satisfy the acceptance criteria, Customer shall have the option of either: (1) repeating the procedure set forth above, or (2) terminating this Agreement pursuant to the section of this Agreement entitled "Termination." If Customer does not give written notice to Developer within the initial 5-days inspection, testing and evaluation period or any extension of that period, that the Software does not satisfy the acceptance criteria, Customer shall be deemed to have accepted the Software upon expiration of such period.

Upon completion of the final development phase set out in the Development Plan, acceptance testing shall be performed on the Software in its entirety to determine whether the Software satisfies the acceptance criteria and operates with internal consistency. Customer shall have 5 days to perform such tests. If the completed Software does not satisfy the acceptance criteria, the parties shall follow the acceptance procedures described in the preceding paragraph

If and when the acceptance tests establish the Software delivered upon completion of any phase of development complies with the acceptance criteria, Customer shall promptly notify Developer that it accepts the delivered Software.

9. TRAINING

Developer shall provide half day of training in the use of the Software. The training will be conducted on such dates and the location is in Customer address set forth first above.

10. MAINTENANCE OF SOFTWARE

Beginning on the first day of the first month after the acceptance of the software and lasting for a duration of 3 months, Developer shall provide the following error-correction and support services:

- A. Mobile phone hot-line support during Developer's normal days and hours of business operation. Such support shall include consultation on the operation and utilization of the Software; and
- B. Error correction services, consisting of Developer using all reasonable efforts to design, code and implement programming changes to the Software, and modifications to the documentation, to correct reproducible errors therein so that the Software is brought into substantial conformance with the Specifications.
- C. Updates do not include:
 - i. Features that are not included in the Software Specifications
 - ii. Platform extensions including software extensions to
 - 1. different hardware platforms;
 - 2. different windowing system platforms;
 - 3. different operating system platforms

11. OWNERSHIP OF SOFTWARE

Developer assigns to Customer its entire right, title and interest in anything created or developed by Developer for Customer under this Agreement ("Work Product") including all patents, copyrights, trade secrets and other proprietary rights. This assignment is conditioned upon full payment of the compensation due Developer under this Agreement.

12. WARRANTIES

THE SOFTWARE FURNISHED UNDER THIS AGREEMENT IS PROVIDED ON AN AS "AS IS" BASIS, WITHOUT ANY WARRANTIES OR REPRESENTATIONS EXPRESS, IMPLIED OR STATUTORY; INCLUDING, WITHOUT LIMITATION, WARRANTIES OF QUALITY, PERFORMANCE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NOR ARE THERE ANY WARRANTIES CREATED BY A COURSE OF DEALING, COURSE OF PERFORMANCE OR TRADE USAGE. DEVELOPER DOES NOT WARRANT THAT THE SOFTWARE WILL MEET CUSTOMER'S NEEDS OR BE FREE FROM ERRORS, OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED. THE FOREGOING EXCLUSIONS AND DISCLAIMERS ARE AN ESSENTIAL PART OF THIS AGREEMENT AND FORMED THE BASIS FOR DETERMINING THE PRICE CHARGED FOR THE SOFTWARE.

13. INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS

Developer warrants that Developer will not knowingly infringe on the copyright or trade secrets of any third party in performing services under this Agreement. To the extent any material used by Developer contains matter proprietary to a third party, Developer shall obtain a license from the owner permitting the use of such matter and granting Developer the right to sub-license its use. Developer will not knowingly infringe upon any existing patents of third parties in the performance of services required by this Agreement, but Developer MAKES NO WARRANTY OF NON-INFRINGEMENT of any COUNTRY.

If any third party brings a lawsuit or proceeding against Customer based upon a claim that the Software breaches the third party's patent, copyright or trade secrets rights, and it is determined that such infringement has occurred, Developer shall hold Customer harmless against any loss, damage, expense or cost, including reasonable attorney fees, arising from the claim.

This indemnification obligation shall be effective only if:

- A. The third party intellectual property rights involved were known to Developer prior to delivery of the Software
- B. Customer has made all payments required by this Agreement
- C. Customer has given prompt notice of the claim and permitted Developer to defend, and
- D. The claim does not result from Customer's modification of the Software.

To reduce or mitigate damages, Developer may at its own expense replace the Software with a non-infringing product.

14. LIMITATION OF DEVELOPER'S LIABILITY TO CUSTOMER

- A. In no event shall Developer be liable to Customer for lost profits of Customer, or special or consequential damages, even if Developer has been advised of the possibility of such damages.
- B. Developer's total liability under this Agreement for damages, costs and expenses, regardless of cause, shall not exceed the total amount of fees paid to Developer by Customer under this Agreement or Php 20,000, whichever is greater.
- C. Developer shall not be liable for any claim or demand made against Customer by any third party except to the extent such claim or demand relates to copyright, trade secret or other proprietary rights, and then only as provided in the section of this Agreement entitled Intellectual Property Infringement Claims.
- D. Customer shall indemnify Developer against all claims, liabilities and costs, including reasonable attorney fees, of defending any third party claim or suit arising out of the use of the Software provided under this Agreement, other than for infringement of intellectual property rights. Developer shall promptly notify Customer in writing of any third party claim or suit and Customer shall have the right to fully control the defense and any settlement of such claim or suit.

15. CONFIDENTIALITY

During the term of this Agreement and for 2 years afterward, Developer will use reasonable care to prevent the unauthorized use or dissemination of Customer's confidential information. Reasonable care means at least the same degree of care Developer uses to protect its own confidential information from unauthorized disclosure.

Confidential information is limited to information clearly marked as confidential, or disclosed orally that is treated as confidential when disclosed and summarized and identified as confidential in a writing delivered to Developer within 30 days of disclosure. Confidential information does not include information that:

- A. The Developer knew before Customer disclosed it
- B. Is or becomes public knowledge through no fault of Developer
- C. Developer obtains from sources other than Customer who owe no duty of confidentiality to Customer, or
- D. Developer independently develops.

16. TERM OF AGREEMENT

This Agreement commences on the date it is executed and shall continue until full performance by both parties, or until earlier terminated by one party under the terms of this Agreement.

17. TERMINATION OF AGREEMENT

Each party shall have the right to terminate this Agreement by written notice to the other if a party has materially breached any obligation herein and such breach remains uncured for a period of 7 days after written notice of such breach is sent to the other party.

If Developer terminates this Agreement because of Customer's default, all of the following shall apply:

- A. Customer shall immediately cease use of the Software.
- B. Customer shall, within 7 days of such termination, deliver to Developer all copies and portions of the Software and related materials and documentation in its possession furnished by Developer under this Agreement.
- C. All amounts payable or accrued to Developer under this Agreement shall become immediately due and payable.
- D. All rights and licenses granted to Customer under this Agreement shall immediately terminate.

This Agreement may be terminated by Customer for its convenience upon 7 days' prior written notice to Developer. Upon such termination, all amounts owed to Developer under this Agreement for accepted work shall immediately become due and payable and all rights and licenses granted by Developer to Customer under this Agreement shall immediately terminate.

18. TAXES

The charges included here do not include taxes. If Developer is required to pay any federal, state or local sales, use, property or value added taxes based on the services provided under this Agreement, the taxes shall be separately billed to Customer. Developer shall not pay any interest or penalties incurred due to late payment or nonpayment of such taxes by Customer.

19. RELATIONSHIP OF THE PARTIES

Nothing contained herein will be construed as creating any agency, partnership, joint venture or other form of joint enterprise between the parties.

Developer is an independent contractor, and a project based on Customer's Company. In its capacity as an independent contractor, Developer agrees and represents, and Customer agrees, as follows:

- A. Developer has the sole right to control and direct the means, manner and method by which the services required by this Agreement will be performed.
- B. Developer has the right to perform the services required by this Agreement at any place or location and at such times as Developer may determine.
- C. Developer will furnish all equipment and materials used to provide the services required by this Agreement, except to the extent that Developer's work must be performed on or with Customer's computer or existing software.
- D. The services required by this Agreement shall be performed by Developer and Customer shall not be required to hire, supervise or pay any assistants to help Developer.
- E. This Agreement is apart and distinct from being a project base employee of the Developer from Customer's Company.

20. MEDIATION AND ARBITRATION

If a dispute arises under this Agreement, the parties agree to first try to resolve the dispute with the help of a mutually agreed-upon mediator in the location PASIG CITY. Any costs and fees other than attorney fees associated with the mediation shall be shared equally by the parties.

If it proves impossible to arrive at a mutually satisfactory solution through mediation, the parties agree to submit the dispute to binding arbitration in the location PASIG CITY under the rules of the [ASSOCIATION/ORGANIZATION].

21. ATTORNEY FEES

If any legal action is necessary to enforce this Agreement, the prevailing party shall be entitled to reasonable attorney fees, costs and expenses.

22. COMPLETE AGREEMENT

This Agreement together with all exhibits, appendices or other attachments, which are incorporated herein by reference, is the sole and entire Agreement between the parties. This Agreement supersedes all prior understandings, agreements and documentation relating to such subject matter. In the event of a conflict between the provisions of the main body of the Agreement and any attached exhibits, appendices or other materials, the Agreement shall take precedence.

23. MODIFICATIONS TO AGREEMENT

Modifications and amendments to this Agreement, including any exhibit or appendix hereto, shall be enforceable only if they are in writing and are signed by authorized representatives of both parties.

24. GOVERNING LAW

This Agreement shall be interpreted under the laws of PHILIPPINES. Any and all legal actions relative hereto shall be in the courts of METRO MANILA.

25. NOTICES

All notices and other communications given in connection with this Agreement shall be in writing and shall be deemed given as follows:

- A. When delivered personally to the recipient's address as appearing in the introductory paragraph to this Agreement;
- B. Three days after being deposited in the PHILIPPINES mails, postage prepaid to the recipient's address as appearing in the introductory paragraph to this Agreement, or
- C. When sent by email of the recipient known to the party giving notice. Notice is effective upon receipt provided that a duplicate copy of the notice is promptly given by first-class or certified mail, or the recipient delivers a written confirmation of receipt.

Any party may change its address appearing in the introductory paragraph to this Agreement by giving notice of the change in accordance with this paragraph.

26. ASSIGNMENT

The rights and obligations under this Agreement are freely assignable by either party. Customer shall retain the obligation to pay if the assignee fails to pay as required by this Agreement.

27. SIGNATURES

Each party represents and warrants that on this date they are duly authorized to bind their respective principals by their signatures below.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth first above, with full knowledge of its content and significance and intending to be legally bound by the terms hereof.

CUSTOMER

DEVELOPER

Emanuel Florendo
PAREB MLS Director

Emmanuel Olivas
System Engineer

EXHIBIT A
FUNCTIONAL SPECIFICATIONS OF THE SOFTWARE

DRAFT

EXHIBIT B
DEVELOPMENT PLAN

DRAFT