

SOFTWARE DEVELOPMENT ENGINEER CONSULTANT

Web Applications, Software, Artificial Intelligence

Web: <https://hweng.acme-nyc.com>

This Agreement is with respect to building an application for the Client, hereinafter as the 'Work.' Whereas, Engineer is a professional of good standing and engaged in the business of developing applications and possesses expertise in designing, developing, engineering and testing applications and related materials used in applications; Whereas, Client wishes to engage Engineer to create certain Work described more fully herein; and Whereas, Engineer wishes to create such Work; Now, therefore, in consideration of the foregoing premises and the mutual covenants hereinafter set forth and other valuable considerations, the parties hereto agree as follows:

1 ENGAGEMENT OF ENGINEER

1.1 SCOPE OF ENGAGEMENT

Subject to the terms and conditions of this Agreement, Client hereby retains the services of Engineer to design, develop, and implement the Work in accordance with the specifications, requirements, and deliverables (hereinafter 'Specifications') and the time schedule described hereto and incorporated herein the Work. Engineer may use employees and/or contractors capable of designing and implementing the Work. Client will cooperate with Engineer's reasonable request for information necessary to accomplish the tasks and objectives for completion of the Work.

1.2 ENGINEER'S DUTIES AND RESPONSIBILITIES

Engineer and Client will jointly define the Specification and Engineer will: (a) Perform the Work in accordance with the Specification; (b) use reasonable efforts to deliver the Work to Client by the delivery deadline set out in the time schedule described or as soon as commercially practicable in accordance with the Specification; and (c) assign a Project Manager who is responsible for managing the day-to-day activities, reporting and resource allocation. Engineer shall be responsible for delivering and performing only those professional services specifically identified.

1.3 CHANGE TO SCOPE

In the event Client wishes to make any modifications to the Work, Client must provide a detailed proposal to Engineer in writing specifying the desired changes (hereinafter 'Change Request'). Engineer will evaluate each Change Request as its standard rate and charges. Engineer shall submit to Client a written response to each Change Request within 3 business days following receipt thereof (hereinafter 'Change Request Response'). Engineer's Change Request Response shall include a statement of the availability of Engineer's personnel and resources, as well as any impact the proposed changes will have on the price, delivery dates, deliverables, or warranty provisions of this Agreement. Client shall use its reasonable efforts to accept, reject, or propose modifications to each such Change Request Response within 3 business days following receipt thereof. Upon acceptance by Client of a Change Request Response and its corresponding Change Request, the Work shall be amended by means of a written, jointly executed addendum of this Agreement.

1.4 SUPPORT AND MAINTENANCE

Any support and maintenance services, updates, versions, or new releases shall be contracted under a separate agreement between the parties. Maintenance and support rights or obligations for any third party products or equipment that are used in the Work and are available through the respective vendors or manufacturers of such content and equipment shall be assigned by Engineer to Client. Engineer shall not use any intellectual property of any third party in the Work without Client's written consent.

1.5 MARKETING

Client grants Engineer the right to use Client's name, service marks, and a description of its services in Engineer's marketing materials or other written promotional campaigns. Either party may elect to issue a press release related to this Agreement with prior approval from the other party, which approval shall not be unreasonably withheld.

1.6 INDEPENDENT CONTRACTOR

Engineer is not an employee of Client. Engineer shall not be eligible for any benefits given by Client to its employees. The parties are and remain independent contractors. At its own expense, Engineer may use employees or subcontractors to develop the Work or otherwise complete the Work. Nothing in this Agreement will be deemed to create an agency, partnership, or joint venture between the Parties. Neither party has authority to bind the other or incur any liability or otherwise act on behalf of the other party.

2 CLIENT RESPONSIBILITIES

2.1 ASSIGNED TASKS

Client agrees to perform all of the tasks assigned to Client as set forth in this Agreement and to provide all assistance and cooperation to Engineer in order to complete timely and efficiently the Work and execute all Change Requests. Client shall be responsible for making, at its own expense, any changes or additions to Client's current system, software, and hardware that may be required to support operation of the Work.

2.2 ACCEPTANCE TESTING

Client shall make available such personnel as necessary for testing the Work and training users of the Work and prepare complete acceptance test data for testing the Work.

2.3 LAWFUL PURPOSE

Client will only use the Work for lawful purposes.

3 ACCEPTANCE OF THE WORK

3.1 ACCEPTANCE TEST PLAN

Client shall, in cooperation with Engineer, prepare and be responsible for a plan for the Client acceptance test ('Acceptance Test Plan'), with acceptance test procedures suitable for verifying that the Work meets the agreed requirements of the Specification. The Acceptance Test Plan shall describe how the Client acceptance test will be carried out, and shall contain a detailed description of the tests to be performed, as well as the acceptance criteria.

3.2 ACCEPTANCE PERIOD

Client will have the specified number of days following the date of delivery of the Work, as set forth in the Specification to inspect, test, and assess the Work and determine whether it satisfies the acceptance criteria in accordance with the procedures set forth in the Specification. Client acceptance test shall be performed in accordance with the Acceptance Test Plan.

3.3 APPROVAL

If Client approves the acceptance test, then Client shall give Engineer written notice to such effect without undue delay. The acceptance test is deemed to be approved unless Client has notified Engineer in writing, within 3 business days after the test was to be completed according to the Acceptance Test Plan, stating that it is not approved. The acceptance test is also deemed to have been approved if Client elects to put the Work into operation before the test has been approved by Client.

3.4 REJECTION

If Client refuses to approve the acceptance test, such rejection shall be explained in writing. If Engineer wishes to argue the rejection is unjustified, written notice shall be given to such effect, which notice shall be given within 5 business days. If Client still refuses to approve the acceptance test, the dispute shall be resolved pursuant to Section 11.1 of this Agreement. If Engineer does not dispute the rejection, then Engineer shall have 3 business days to send

Client a timetable for repairing the errors associated with the Work. Engineer shall give written notice to Client when the repairs have been completed and Client shall promptly resume its acceptance test. The approval period may only commence when the acceptance test has been approved by Client.

3.5 COMISSIONING

The Work shall be put into regular operation after Client acceptance test has been successfully completed and approved.

4 COMPENSATION AND PAYMENTS

4.1 FEES AND EXPENSES

Client will pay Engineer a fixed fee for the Work according to the payment schedule described. A deposit of half of the total amount is required to commence the Work. All payments made to Engineer under this Agreement must be in United States currency. When travel is necessary to perform the Work, compensation will include reimbursement of all reasonable and necessary travel, living, and out-of-pocket expenses incurred by Engineer in performing the Work. Engineer will obtain Client's approval for billable travel prior to incurring any expense for such travel. Client will reimburse Engineer for the cost of any development software or commercial software libraries that Engineer deems necessary to complete the Work, subject to approval by Client.

4.2 OVERDUE INVOICES

Engineer's invoices for fees and expenses, if any, shall be due and payable in full immediately upon receipt by Client. All such fees shall be fully earned when due and non-refundable when paid. Invoices not paid within 5 business days from the invoice date shall bear interest from the invoice date until paid at a rate of 3 percent per day on the maximum rate written notice until the amounts outstanding are paid in full. Time is of the essence for all payments under this Agreement, and in the event any payment due to Engineer is collected at law or through an attorney-at-law, or under advice therefrom, or through a collection agency. Client agrees to pay all costs of collection, including without limitation, all court costs and reasonable attorney's fees.

5 TERM AND TERMINATION

5.1 TERM

This agreement is effective as of the Effective Date and will continue in full force and effect until complete payment for the Work is received by Engineer, unless earlier terminated as provided in this Agreement.

5.2 TERMINATION

Each party may terminate this Agreement upon material breach by the other party of one or more of the terms and conditions of this Agreement, provided that the breaching party is notified in writing of the material breach and such breach is not cured within 5 business days after receipt of such written notice. Client's termination of this Agreement will not relieve Client of its obligation to pay for any Work performed. If Engineer terminates this Agreement due to Client's default: (a) Client shall within 9 business days of such termination, deliver to Engineer any copies and portions of the Software and related materials and documentation in its possession furnished by Engineer under this Agreement; and (b) all amounts payable or accrued to Engineer under this Agreement shall become immediately due and payable. Termination for breach will not alter or affect the terminating party's right to exercise any other remedy for breach. Client may terminate this Agreement without cause upon 5 business days advance written notice. In the event of termination without cause, Client agrees to pay Engineer for all work performed up to the date of termination.

6 CONFIDENTIALITY

6.1 CLIENT'S CONFIDENTIAL INFORMATION

All information relating to Client that is known to be confidential or proprietary, or which is clearly marked as such, will be held in confidence by Engineer and will not be disclosed or used by Engineer except to the extent that such disclosure or use is reasonably necessary to the performance of the Work.

6.2 ENGINEER'S CONFIDENTIAL INFORMATION

All information relating to Engineer that is known to be confidential or proprietary, or which is clearly marked as such, will be held in confidence by Client and will not be disclosed or used by Client except to the extent that such disclosure or use is reasonably necessary to the performance of Client's duties and obligations under this Agreement.

6.3 SURVIVAL

These obligations of confidentiality will extend for a period of 12 months after the termination of this Agreement, but will not apply with respect to information that is independently developed by the parties, lawfully becomes part of the public domain, or of which the parties gain knowledge or possession free of any confidentiality obligation.

7 INTELLECTUAL PROPERTY RIGHTS

7.1 WORK MADE FOR HIRE

Engineer agrees that the development of Work (but excluding Developer Tools) is 'work made for hire' within the meaning of the Copyright Act of 1976, as amended from time to time, and that the Work shall be the sole property of Client. 'Developer Tools' means that materials, information, trade secrets, generic programming codes and segments, algorithms, methodologies, processes, tools, data, documents, notes, programming techniques, reusable objects, routines, formulae and templates that: (a) are developed prior to the Work and utilized by Engineer in connection with the Work; (b) are designed to perform generalized functions not specified to the particular requirements of Client or the Work; (c) do not contain any of Client's Confidential Information or other information or items provided by Client; and (d) cannot reasonably be expected to provide Client an advantage over its competitors.

7.2 ASSIGNMENT

To the extent any Work performed by Engineer does not qualify as a 'work made for hire' under applicable law. Engineer hereby irrevocably and unconditionally assigns to Client without further compensation, all of its right, title and interest in and to the Work and any and all related patents, copyrights, trademarks, and trade names in the United States and elsewhere. This assignment is conditioned upon full payment of the compensation due to Engineer under this Agreement. To the extent any of Engineer's rights in the Work, including without limitation any moral rights, are not capable of assignment under applicable law, Engineer hereby irrevocably and unconditionally waives all enforcement of such rights to the maximum extent permitted under applicable law. Engineer will assist Client in obtaining and enforcing patent, copyright and other forms of legal protection for the Software in any country. Upon request, Engineer will sign all applications, assignments, instruments and papers and perform all acts necessary or desired by Client to assign the Work fully and completely to Client and to enable Client, its successors, assigns and nominees, to secure and enjoy the full and exclusive benefits and advantages of the Work at no charge to Client; however, Client shall reimburse Engineer for reasonable out-of-pocket expenses.

8 WARRANTIES AND DISCLAIMERS

8.1 WORK

The Work furnished under this Agreement is provided on an 'as is' basis, without any warranties or representations express, implied or statutory, including without limitation, warranties of quality, merchant-ability or fitness for a particular purpose. Nor are there any warranties created by a course of dealing, course of performance or trade usage. Engineer does not warrant that the software will meet Client's needs or be free from errors or that operation of the

software will be uninterrupted. The foregoing exclusions and disclaimers are an essential part of the Agreement and formed the basis for determining the price charged for the Work.

8.2 PERFORMANCE STANDARD

Engineer warrants the Work will be performed in a workmanlike manner, and in conformity with generally prevailing industry standards. Client must report any material deficiencies in the Work to Engineer in writing within 10 business days after Client receives the Work. Client's exclusive remedy for the breach of this warranty will be the re-performance of the Work within a commercially reasonable time. This Warranty is Exclusive and is in Lieu of All Other Warranties, or any proposals made prior to the Effective Date of This Agreement.

8.3 NO INFRINGEMENTS

Engineer warrants the Work will not infringe on any copyright, patent, trade secret or other intellectual property interest of any third party. Engineer will indemnify and hold Client harmless from and against all such infringement claims, losses, suits and damages including, but not limited to attorney's fees and costs. Following any bona-fide claim of infringement, Engineer shall promptly correct the Work so as not to be infringing, or secure the right of Client to use the Work without infringement.

8.4 NO THIRD PARTIES

Engineer makes no warranty of any kind, whether express or implied, with regard to any products, software, content, equipment, or hardware obtained from third parties.

8.5 NO OTHER WARRANTIES

The warranties set forth in this Agreement are the only warranties granted by Engineer and Engineer disclaims all other warranties, express or implied, including but not limited to, any implied warranties of merchant-ability or fitness for a particular purpose.

9 LIMITATION OF LIABILITY

Neither party will be liable to the other party for any indirect, incidental, consequential, special, punitive or exemplary damages arising as a result of or related to performance of the Work. Regardless of the type of claim and even if that party has been advised of the possibility of such damages, such as, but not limited to, lost profits, loss of revenue or anticipated profits or lost business, to the extent allowed by law. Client will indemnify and hold Engineer harmless against any claims incurred by Engineer arising out of or in conjunction with Client's breach of this Agreement, as well as reasonable costs, expenses, and attorney's fees incurred therein.

10 NON-SOLICITATION

Non-Solicitation during the period of this Agreement and for 12 months thereafter, regardless of the reason or cause for termination, neither party will directly or indirectly engage in any conduct that will substantially diminish the value of the other party's business including, without limitation: (a) solicit or attempt to solicit any business from any of the other party's customers, clients, or prospects; or (b) offer employment to or hire any employee or subcontractor of the other party.

11 GENERAL CONDITIONS

11.1 GOVERNING LAW

This Agreement is governed by the law as of the United States and the state of New York, without reference to rules governing choice of laws. If any dispute arises concerning this Agreement, venue shall be laid exclusively in the state and federal courts of Queens County, New York which shall have exclusive jurisdiction over such dispute and the Parties consent to the personal jurisdiction of such courts. If legal action or other proceedings of any nature

whatsoever is brought in connection with any dispute arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all attorney's fees and cost incurred by the prevailing party in connection with such dispute.

11.2 EXCUSABLE DELAYS

Engineer shall not be responsible for delays or failures in performance resulting from acts beyond the control of Engineer, including, without limitation, acts of God, strikes, riots, acts of war, epidemics, fire, communication and power line failures, earthquakes, and hurricanes.

11.3 ASSIGNMENT

The rights, duties, and privileges of a party to this Agreement shall not be transferred or assigned by it, in whole or in part, without the prior written consent of the other party. If Client sells its business to a third party, such consent by Engineer will not be unreasonably withheld.

11.4 AMENDMENT

This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all written or oral prior agreements or understandings with respect thereto. This Agreement may not be amended except by a writing signed by an authorized representative of both parties.

11.5 SEVERABILITY

In case of one or more of the provisions of this Agreement should be held invalid, illegal or unenforceable, each such provision shall be modified, if possible, to the minimum extent necessary to make it valid and enforceable, or if it cannot be so modified, then severed, and the remaining provisions contained in this Agreement shall not in any way be affected or impaired.

11.6 NO WAIVER

Neither party's failure to enforce strict performance of any provision of this Agreement will constitute a waiver of a right to subsequently enforce such a provision. No modification, extension or waiver of this Agreement shall be valid unless made in writing and signed by an authorized representative of the party to be charged. No written waiver shall constitute, or be construed as, a waiver of any other obligation or condition of this Agreement.

11.7 NOTICES

All notices, demands or other communications required or permitted to be given under this Agreement by either party to the other may be effected either by the personal delivery in writing or by electronic mail, U.S. mail, registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed to the other party at the address appearing in the introductory paragraph of this Agreement, but each party may change such address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt. Electronic mail and mailed notices will be deemed communicated as of two (2) days after mailing.

11.8 COUNTERPARTS

This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all written or oral prior agreements or understandings with respect thereto. This Agreement may not be amended except by a writing signed by an authorized representative of both parties.

The parties may execute this Agreement in multiple counterparts, each of which constitutes an original as against the party that signed it, and all of which together constitute one agreement. The signatures of all parties need not appear on the same counterpart. The delivery of signed counterparts by facsimile, email or other electronic transmission that includes a copy of the sending party's signature is as effective as signing and delivering the counterpart in person.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, as of the Effective Date. The undersigned agrees to the terms of this Agreement.