

# **SOFTWARE DEVELOPMENT AGREEMENT**

This Software Development Agreement ("Agreement") is entered into on \_\_\_\_\_ by and between \_\_\_\_\_ ("Developer"), and \_\_\_\_\_ ("Client").

## **1 Scope of Services.**

**1.1 Project.** The Client will issue "Project Assignment(s)" to the Developer. Each Project Assignment will be composed of tasks assigned to the Developer by the Client. Services will be rendered using best commercial efforts. The Client shall be responsible for final testing and verification. Project Assignment(s) are an integral and inseparable part of this agreement, and any changes by the Client to any Project Assignment(s) may, based upon the judgment of the Developer, incur a change in the fixed-rate quote, the hourly rate, and/or the schedule and/or delivery date, as appropriate.

**1.2 Schedule.** The Developer will continue to work until the project is completed while providing at least \_\_\_ hours of work per \_\_\_\_\_. This project can be ended by either the Client or the Developer at any time, in accordance with the terms in Section 6.

**1.3 Support.** The Developer will not provide support for any deliverable once the Client accepts it, unless otherwise agreed in writing.

## **2 Compensation.**

**2.1 Payment.** The Client will pay the Developer a rate of €\_\_\_ per \_\_\_\_\_.

**2.2 Expenses.** The Client will reimburse the Developer's expenses which have been pre-approved by the Client.

**2.3 Invoices.** The Developer will invoice the Client monthly and upon termination of the Agreement. The Client agrees to pay the amount owed within 30 days of receiving the invoice. Payment after that date will incur a late fee of 6.0% per month on the outstanding amount.

## **3 Ownership and Licensing.**

**3.1 Work Product.** While fulfilling the Project Assignment, the Developer will create a "Work Product". The Work Product is the finished product, as well as code, algorithms, designs, and anything else that the Developer works on as part of this project. The Developer will assign to the Client the copyright on the Work Product upon full payment of the compensation. The Client can use the Work Product however it wants or it can decide not to use the Work Product at all. The Client can, for example, modify, destroy, or sell it, as it sees fit.

**3.2 Developer Library.** While fulfilling the Project Assignment, the Developer may use code, libraries, or other materials that the Developer has previously created ("Developer Library"). In the course of fulfilling the Project Assignment, the Developer may also enhance and expand the Developer Library with additional materials. The Developer will provide to the Client a perpetual, royalty-free, worldwide, non-exclusive license to copy, perform, display, use, sell, reproduce, modify and distribute those portions of the Developer Library used in the Project Assignment upon full payment of the compensation. The Developer retains the right to reuse the Developer Library in other products and for any and all other purposes.

**3.3 Third Party Software.** While fulfilling the Project Assignment, and with the Client's prior agreement, the Developer may use computer source code, object code, routines, algorithms, libraries, installers, operating systems, application frameworks, compiler glue, language libraries, platform API libraries, or other third party software ("Third Party Software"). The Client shall be responsible for securing licenses to all Third Party Software; Developer may secure licenses on behalf of the Client for Third Party Software at the direction, and expense, of the Client as specified in a Project Assignment.

**3.4 Developer's Use of Work Product.** The Client gives permission to use the work product as part of portfolios and websites, in galleries, and in other media, so long as it is to showcase the work and not for any other purpose. The Client does not give permission to sell or otherwise use the work product to make money or for any other commercial use.

#### **4 Intellectual Property Rights.**

**4.1 Use of Client IP.** The Developer may need to use the Client's intellectual property to do its job. For example, if the Client is hiring the Developer to build a website, the Developer may have to use the Client's logo. The Client agrees to let the Developer use the Client's intellectual property and other intellectual property that the Client controls to the extent reasonably necessary to do the Developer's job. Beyond that, the Client is not giving the Developer any intellectual property rights, unless specifically stated otherwise in this Agreement.

**4.2 Confidential Information.** Each party agrees during the term of this Agreement and thereafter to take all steps reasonably necessary to hold in trust and confidence information which it knows or has reason to know is considered confidential or a trade secret by the other party ("Confidential Information"). Each party agrees to use the Confidential Information solely to perform the project(s) hereunder. Confidential Information includes, but is not limited to, technical and business information relating to either parties, computer programs, source code, designs and techniques, inventions or products, research and development, costs, financial and legal information, and present and future business plans. Each party's obligations with respect to the Confidential Information also extend to any third party's proprietary or confidential information disclosed in the course of providing services. This obligation shall not extend to any information which becomes generally known to the public without breach of this Agreement. This obligation shall survive the termination of this Agreement.

**4.3 Third Party IP.** The Developer promises that its work product does not and will not infringe on someone else's intellectual property rights, that the Developer has the right to let the Client use the third party's licensed IP, and that this Agreement does not and will not violate any contract that the Developer has entered into or will enter into with someone else. Likewise, if the Client provides the Developer with material to incorporate into the Work Product, the Client promises that this material does not infringe on someone else's intellectual property rights.

#### **5 Independent Contractor.**

**5.1 Nature of Work.** The Developer will use their own equipment, tools, and material to do the work. The Client will not control how the job is performed on a day-to-day basis. Rather, the Developer is responsible for determining when, where, and how the work will be carried out. The Client will not provide the Developer with any training. The Developer is responsible for their own taxes. The Client will not withhold taxes or make payments for

disability insurance, unemployment insurance, or workers compensation for the Developer or any of the Developer's employees or subcontractors.

**5.2 Nature of Relationship.** The Client and the Developer understand, acknowledge and agree that their relationship will be that of independent companies and nothing in this Agreement is intended to or should be construed to create a partnership, joint venture, or employment relationship. The Developer is not an agent of the Client as a result of or in the course of performing services pursuant to this Agreement and the Developer is not authorized to make any representation, contract or commitment on behalf of the Client unless specifically requested or authorized in writing to do so by the Client.

**5.3 Review of Work.** The Client promises to review the Work Product in a timely manner, to be reasonably available to the Developer if the Developer has questions regarding this project, and to provide timely feedback and decisions.

**6 Termination.** This Agreement is ongoing until the work is completed. Either party may terminate this Agreement at any time with 15 days of written notice. "Full payment" shall then be the original full payment previously agreed upon, either (1) prorated to the date of effective termination of this agreement (if Project Assignment(s) specify a fixed rate) or (2) prorated to the total hours of completed work (if Project Assignment(s) specified an hourly rate).

**7 Testing and Quality Assurance.** The Developer will follow reasonable and customary industry standards when completing Project Assignment(s), to attempt to make the Work Product and Developer Library as bug-free and conform to Project Assignment(s) as closely as possible. However, the Client is responsible for final testing and quality assurance to ensure that the deliverable conforms to the original specification, unless otherwise specified in a Project Assignment.

## **8 Indemnity.**

**8.1 Client Indemnity.** In this Agreement, the Developer agrees to indemnify the Client (and its affiliates) from and against all liabilities, losses, damages, and expenses (including reasonable attorneys' fees) related to a third-party claim or proceeding arising out of: (i) the work the Developer has done under this Agreement; or (ii) a breach by the Developer of its obligations under this Agreement.

**8.2 Developer Indemnity.** In this Agreement, the Client agrees to indemnify the Developer (and its affiliates and their directors, officers, employees, and agents) from and against liabilities, losses, damages, and expenses (including reasonable attorneys' fees) related to a third-party claim or proceeding arising out of a breach by the Client of its obligations under this Agreement.

## **9 Non-Interference.**

**9.1 Competitive Engagements.** The Developer won't work for a competitor of the Client until this Contract ends. A competitor is any third party that develops, manufactures, promotes, sells, licenses, distributes, or provides products or services that are substantially similar to the Client's products or services, or plans to do any of those things. The one exception to this restriction is if the Developer asks for permission beforehand and the Client agrees to it in writing. If the Developer uses employees or subcontractors, the Developer must make sure they follow the obligations in this paragraph, as well.

**9.2 Solicitation.** Until this Contract ends, the Developer won't: (a) encourage Client employees or service providers to stop working for the Client; (b) encourage Client customers or clients to stop doing business with the Client; or (c) hire anyone who worked for the Client over the 12-month period before the Contract ended. The one exception is if the Developer puts out a general ad and someone who happened to work for the Client responds. In that case, the Developer may hire that candidate. The Developer promises that it won't do anything in this paragraph on behalf of itself or a third party.

## **10 General.**

**10.1 Governing Law.** The laws of Ireland govern the rights and obligations of the Client and the Developer under this Agreement, without regard to conflict of law principles of that country.

**10.2 Agreement.** This Agreement constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral. The terms of this Agreement will govern all Project Assignments and services.

**10.3 Modification and Waiver.** To change anything in this Agreement, the Client and the Developer must agree to that change in writing and sign a document showing their contract. Neither party can waive its rights under this Agreement or release the other party from its obligations under this Agreement, unless the waiving party acknowledges it is doing so in writing and signs a document that says so.

**10.4 Notices.** All notices, requests and other communications required to be given under this Agreement must be in writing, and must be either an electronic file that is securely digitally signed or a paper copy that is mailed by registered or certified mail, postage prepaid and return receipt requested, or delivered by hand to the party to whom such notice is required or permitted to be given. Any such notice will be considered to have been given when received, or if mailed, 5 business days after it was mailed, as evidenced by the postmark. Either party may change its mailing address by notice as provided by this Section.

**10.5 Arbitration.** As the exclusive means of initiating adversarial proceedings to resolve any dispute arising under this Agreement, a party may demand that the dispute be resolved by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules.

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Developer Name

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Client Name

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Developer Signature

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Client Signature

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Date

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Date