**SOFTWARE DEVELOPMENT AGREEMENT**

This Software Development Agreement (referred to as the “**Agreement**”) is made as of [INSERT DATE] (the “**Effective Date**”), by and between [CLIENT COMPANY NAME], a [JURISDICTION OF INCORPORATION/FORMATION] [corporation/LLC/other entity type] with its principal place of business at [CLIENT ADDRESS] (the “**Client**”), and [DEVELOPER COMPANY NAME], a [JURISDICTION OF INCORPORATION/FORMATION] [corporation/LLC/other entity type] with its principal place of business at [DEVELOPER ADDRESS] (the “**Developer**”). The Client and the Developer are individually referred to as a “**Party**” and collectively as the “**Parties**”.

The Client desires to engage the Developer to design, develop, test, and implement certain software solutions (the “**Software**”) as further described in Schedule 1 attached hereto (the "**Scope of Work**").

The Developer represents that it has the necessary expertise, personnel, and resources to develop the Software in accordance with the Client’s specifications and requirements.

The Parties wish to set forth their respective rights and obligations in connection with the development, delivery, and maintenance of the Software.

In consideration of the mutual covenants, representations, and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

1. **PROVISION OF THE SERVICES**
   1. The purpose of this Agreement is to define the terms and conditions under which the Developer agrees to provide the Client the Services during the term, in consideration of the fees. For the purposes of this Agreement, “**Services**” means the software development services, as outlined in the Scope of Work.
   2. The Services will be provided to the Client on a non-exclusive basis. Accordingly, the Client will be entitled to obtain services in the nature of the Services from persons other than the Developer, and the Developer will be entitled to provide similar services on behalf of and/or to other companies.
2. **PREREQUISITES**
   1. The Parties shall co-operate in good faith and shall exchange any documents or information that may be useful for the proper performance of this Agreement.
   2. In particular, the Client shall, on request, promptly provide the Developer with all information, assistance, materials and resources that the Developer may reasonably require from time to time in connection with the supply of Services and the performance of the Developer’s obligations under this Agreement.
3. **SCOPE OF WORK**
   1. The Developer agrees to design, develop, test, and deliver the Software in accordance with the specifications, requirements, and timelines set forth in the Scope of Work. Any material changes to the Scope of Work must be documented in writing and signed by both Parties.
   2. The Developer shall use commercially reasonable efforts to meet the milestones and deadlines specified in the Scope of Work. Delays caused by unforeseen circumstances will be communicated promptly, and the Parties will agree on revised deadlines as needed.
   3. The Developer shall deliver to the Client the Software and any associated materials, including but not limited to source code, object code, documentation, and design files, as outlined in the Scope of Work.
4. **DEVELOPER OBLIGATIONS**
   1. The Developer shall:
      1. perform all Services in a professional and workmanlike manner, following industry best practices and ensuring that the Software meets the quality standards specified in this Agreement;
      2. designate a project manager responsible for overseeing development, coordinating with the Client, and ensuring adherence to the project timeline;
      3. provide regular updates to the Client on the status of the project, including progress reports, milestone achievements, and any risks or issues that may impact timelines or Deliverables;
      4. comply with all applicable laws, regulations, and standards in the development of the Software;
      5. support the Client during the Acceptance Testing process as outlined in Schedule 2. The Developer agrees to address and resolve any issues identified during Acceptance Testing to ensure the Software meets the agreed-upon specifications. For the purposes of this Agreement, “**Acceptance Testing**” means the acceptance testing process outlined and agreed between the Parties in Schedule 2;
      6. provide comprehensive documentation related to the Software, including user guides, system architecture documents, and any relevant technical specifications, upon completion of the project; and
      7. implement reasonable security measures in the Software to protect against unauthorized access, data breaches, and other potential vulnerabilities.
5. **CLIENT OBLIGATIONS**
   1. The Client shall:
      1. provide clear, complete, and accurate specifications, requirements, and objectives for the Software as outlined in the Scope of Work. Any changes to the Scope of Work must be documented and approved in writing by both Parties;
      2. provide the Developer with timely access to relevant personnel, systems, data, and other resources necessary for the Developer to perform its obligations under this Agreement;
      3. appoint a project manager or primary point of contact to coordinate with the Developer, review progress updates, and facilitate prompt communication throughout the project;
      4. conduct Acceptance Testing of the Software as outlined in Schedule 2. The Client agrees to test the Deliverables in a timely manner and provide the Developer with a list of any defects, issues, or deviations from the agreed specifications;
      5. supply all necessary materials, content, data, and assets required for the Software development and the Services. The Client represents and warrants that it has the rights to use all Client-provided materials and that such materials do not infringe on any third-party rights;
      6. make timely payments to the Developer; and
      7. cooperate with the Developer in good faith throughout the development process and make reasonable efforts to avoid causing delays in the project timeline.
6. **REPRESENTATION AND WARRANTIES**
   1. Each Party represents and warrants to the other that:
      1. it has the full legal right, power, and authority to enter into this Agreement and perform its obligations hereunder;
      2. the execution and delivery of this Agreement have been duly authorized by all necessary corporate or organizational actions;
      3. this Agreement constitutes a valid and binding obligation, enforceable in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, or similar laws; and
      4. it has not relied on any representation or warranty not expressly set forth in this Agreement.
7. **COMPENSATION AND PAYMENT TERMS**
   1. The Client agrees to compensate the Developer for all work performed under this Agreement as outlined below (select one or both):
      1. Fixed-Price Model: The total fee for the development of the Software is $[INSERT AMOUNT], payable according to the milestones specified in Section 7.2; or
      2. Time and Materials Model: The Developer will bill the Client at a rate of $[INSERT HOURLY RATE] per hour for all work performed, with an estimated total project cost of $[INSERT ESTIMATED AMOUNT]. Time spent will be tracked and documented in detailed time logs, provided with each invoice.
   2. Payments will be made based on the following milestones:
      1. Initial Deposit: $[INSERT AMOUNT] – due upon signing this Agreement;
      2. Milestone 1: $[INSERT AMOUNT] – due upon completion and approval of [INSERT MILESTONE, e.g., wireframes, MVP];
      3. Milestone 2: $[INSERT AMOUNT] – due upon completion of [INSERT MILESTONE, e.g., beta version with core features]; and
      4. Final Payment: $[INSERT AMOUNT] – due upon final delivery and acceptance of the completed Software.
   3. The Developer will notify the Client upon completion of each milestone and submit an invoice accordingly. The Client agrees to review and approve or provide feedback within [INSERT NUMBER] Business Days. If no feedback is provided within that period, the milestone will be deemed accepted.
   4. All invoices will be submitted in accordance with the payment schedule above.
   5. The Client agrees to pay each invoice within [INSERT NUMBER, e.g., 15 or 30] days from the date of receipt.
   6. Payments will be made via [INSERT PAYMENT METHOD, e.g., bank transfer, PayPal, check] to the account specified by the Developer.
   7. If the Client disputes any portion of an invoice, the Client must notify the Developer in writing within [INSERT NUMBER] days of receiving the invoice, detailing the nature of the dispute. Both Parties will work in good faith to resolve the dispute promptly.
   8. Any payment not received within the agreed-upon timeframe will incur interest at a rate of [INSERT PERCENTAGE, e.g., 1.5%] per month (or the maximum rate allowed by law) from the due date until paid in full.
   9. If payment remains outstanding beyond [INSERT NUMBER] days, the Developer reserves the right to suspend work until all overdue amounts are paid.
   10. Additional work beyond the agreed Scope of Work, including new features, modifications, or consulting services, will be billed at the Developer’s standard hourly rate of $[INSERT RATE] or as otherwise agreed in writing.
   11. The Developer will provide an estimate for additional work, and the Client must approve in writing before work begins.
   12. The Client agrees to reimburse the Developer for all pre-approved, reasonable, out-of-pocket expenses incurred in connection with the project.
   13. Examples of reimbursable expenses include:
       1. travel and lodging (if on-site visits are required);
       2. licensing fees for third-party software or tools;
       3. hardware or equipment necessary for development; and
       4. other expenses pre-approved by the Client.
   14. The Developer will submit receipts or other documentation with the corresponding invoice for all reimbursable expenses.
   15. All fees outlined in this Agreement are [exclusive/inclusive] of applicable taxes, including but not limited to sales tax, VAT, and withholding taxes.
   16. The Client is responsible for paying any applicable taxes resulting from this Agreement, except for taxes based on the Developer’s income or employment obligations.
8. **INTELLECTUAL PROPERTY RIGHTS**
   1. Upon full and final payment of all fees due under this Agreement, the Developer hereby assigns to the Client all Intellectual Property Rights in and to the Software and all associated deliverables (collectively, the “**Deliverables**”), including but not limited to all source code, object code, documentation, user interfaces, graphics, and other materials developed specifically for the Client under this Agreement. To the fullest extent permitted by law, the Developer hereby waives any and all moral rights (including rights of attribution and integrity) in the Deliverables that may be claimed by the Developer or its personnel involved in the development of the Software. For the purposes of this Agreement, “**Intellectual Property Rights**” means any and all trade secrets, trademarks, copyrights, patents, industrial designs and any other intangible property in which any person holds proprietary rights, title, interests, or protections, however arising, pursuant to any jurisdiction throughout the world, including all applications, registrations, renewals, issues, reissues, extensions, divisions, and continuations in connection with any of the foregoing and the goodwill connected with the use of and symbolized by any of the foregoing.
   2. Notwithstanding Section 8.1, the Developer may incorporate proprietary tools, libraries, frameworks, or code components developed prior to or outside the scope of this Agreement (“**Pre-Existing Materials**”) into the Software.
   3. The Developer retains ownership of all Pre-Existing Materials but grants the Client a perpetual, non-exclusive, worldwide, royalty-free license to use, modify, and distribute the Pre-Existing Materials solely as integrated into the Deliverables.
   4. A list of all Pre-Existing Materials used in the project, including their specific use and any applicable licensing terms, will be provided to the Client upon delivery.
   5. The Software may include third-party components, such as open-source libraries or commercial software (“**Third-Party Components**”). The Developer will identify all Third-Party Components used in the Software and provide relevant license terms in writing. The Client acknowledges and agrees to comply with any license terms associated with such Third-Party Components.
   6. The Developer makes no warranties regarding Third-Party Components beyond those provided by the original licensors.
   7. If the Client provides any feedback, suggestions, or ideas regarding improvements to the Developer’s tools, frameworks, or methodologies used in the project, the Developer may use such feedback without any obligation to the Client.
9. **LIMITATION OF LIABILITY**
   1. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
   2. SUBJECT TO SECTION 9.1 AND SAVE FOR THE INDEMNITIES OUTLINED IN THIS AGREEMENT, THE TOTAL LIABILITY OF EITHER PARTY UNDER THIS AGREEMENT SHALL NOT EXCEED THE TOTAL FEES PAID BY THE CLIENT TO THE DEVELOPER UNDER THIS AGREEMENT.
10. **INDEMNITY**
    1. The Developer shall indemnify, defend, and hold harmless the Client, its affiliates, officers, directors, employees, agents, and representatives (collectively, the “**Indemnified Parties**”) from and against any and all claims, demands, actions, suits, losses, damages, liabilities, costs, and expenses (including reasonable attorneys’ fees and court costs) (collectively, “**Claims**”) arising out of or relating to any allegation that the Software or any deliverables provided under this Agreement infringe upon, misappropriate, or otherwise violate any Intellectual Property Rights (including but not limited to copyrights, patents, trademarks, or trade secrets) of any third party.
    2. In the event that any part of the Software or deliverables is found or, in the Developer’s reasonable opinion, is likely to be found to infringe upon a third party’s Intellectual Property Rights, the Developer shall, at its sole option and expense:
       1. secure for the Client the right to continue using the infringing material without interruption;
       2. modify the infringing material to make it non-infringing while retaining substantially equivalent functionality; and
       3. replace the infringing material with non-infringing material that has substantially equivalent functionality.
    3. The Developer shall have no obligation under this Section for Claims that arise from:
       1. modifications to the Software or Deliverables made by the Client or any third party without the Developer’s prior written consent;
       2. the Client’s use of the Software in combination with other software, hardware, or systems not authorized or approved by the Developer, where the alleged infringement would not have occurred but for such combination; or
       3. the Client’s use of the Software in violation of this Agreement or outside the scope of the license granted.
11. **CONFIDENTIALITY**
    1. From time to time during the duration of this Agreement, either Party (as the "**Discloser**") may disclose or make available to the other Party (as the "**Recipient**"), non-public, proprietary, and confidential information of the Discloser [whether or not marked or labeled as "confidential"/that, if disclosed in writing or other tangible form is clearly labeled as "confidential," or if disclosed orally, is identified as confidential when disclosed and within [NUMBER] days thereafter, is summarized in writing and confirmed as confidential] ("**Confidential Information**"); provided, however, that Confidential Information does not include any information that: (i) is or becomes generally available to the public other than as a result of the Recipient's breach of this Section 11; (ii) is or becomes available to the Recipient on a non-confidential basis from a third party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information after due inquiry; (iii) was in the Recipient's possession prior to the Discloser's disclosure hereunder; or (iv) was or is independently developed by the Recipient without using any Confidential Information.
    2. The Recipient shall: (i) protect and safeguard the confidentiality of the Discloser's Confidential Information with at least the same degree of care as the Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (ii) not use the Discloser's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (iii) not disclose any such Confidential Information to any person or entity, except to members of the Recipient's Group who need to know the Confidential Information to assist the Recipient, or act on its behalf, to exercise its rights or perform its obligations under this Agreement. For purposes of this Section 11, "**Recipient's Group**" means the Recipient's affiliates and its or their employees, officers, directors, shareholders, partners, members, managers, agents, independent contractors, consultants, sublicensees, subcontractors, attorneys, accountants, and financial advisors.
    3. If the Recipient is required by applicable law or legal process to disclose any Confidential Information, it shall, prior to making such disclosure, use commercially reasonable efforts to notify the Discloser of such requirements to afford the Discloser the opportunity to seek, at the Discloser's sole cost and expense, a protective order or other remedy.
    4. The Recipient shall be responsible for any breach of the foregoing obligations by any member of the Recipient’s Group.
12. **TERM**

This Agreement shall commence on the Effective Date and continue until completion of the Scope of Work, unless terminated earlier as provided herein.

1. **TERMINATION**
   1. Termination of an individual Scope of Work in accordance with the terms of this Agreement by either Party will not serve to terminate this Agreement as a whole or any other Scope of Work which may exist at that time between the Parties under this Agreement, which will continue in full force and effect unless and until otherwise terminated.
   2. Either Party may terminate this Agreement or any Scope of Work immediately (or subject to such period of notice as the terminating Party may elect) by written notice to the other Party, if the other Party:
      1. is in material or persistent breach of any of its obligations under this Agreement or a Scope of Work and has failed to remedy that breach within thirty (30) calendar days (or such longer period as the Parties may agree in writing) of being notified of the same in writing by the terminating Party;
      2. is unable to pay its debts as they become due within the meaning of applicable U.S. bankruptcy laws;
      3. becomes insolvent or an order is made, or a resolution passed, for the administration, winding-up, or dissolution of the other Party (otherwise than for the purposes of a solvent amalgamation or reconstruction); or
      4. has an administrative or other receiver, manager, liquidator, administrator, trustee, or other similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally.
   3. Either Party may terminate this Agreement upon [INSERT NUMBER] days’ written notice to the other Party. The Client agrees to pay the Developer for all work completed up to the termination date.
   4. Upon the date of termination or expiry of this Agreement for whatever reason:
      1. all Services shall terminate;
      2. all fees owed by the Customer to the Developer shall become due and payable;
      3. any provision that expressly or impliedly continues beyond termination shall remain in effect; and
      4. all other rights and obligations shall immediately cease, without prejudice to any rights, obligations, claims (including claims for damages for breach), or liabilities that have accrued prior to the date of termination or expiry.
   5. Within twenty (20) calendar days after the date of termination or expiry, and except as required by applicable law:
      1. the Recipient shall cease all use of the Discloser’s Confidential Information;
      2. all Confidential Information (including copies and extracts), along with any property, documents, materials, and tools provided by the Discloser, shall either be returned to the Discloser or, upon written request, destroyed and rendered unreadable; and
      3. the Recipient shall destroy or permanently erase (if technically feasible without incurring excessive expense or undue effort) all documents and records (in any format) created by or on behalf of the Recipient that use, concern, or are based on the Discloser’s Confidential Information (“**Records**”).
   6. Notwithstanding the above provision, the Discloser acknowledges and agrees that the Recipient may retain the Discloser’s Confidential Information and/or Records which it has to ensure compliance with any applicable law, or to satisfy the requirements of any regulatory authority or body of competent jurisdiction or which it is required to retain for insurance, accounting or taxation purposes, provided any Confidential Information and/or records which is kept after the date of termination or expiry for any of the aforementioned reasons shall not be used in the ordinary course of business or any other commercial purposes, and must be stored in an encrypted, non-production environment and shall continue to be subject to the confidentiality requirements contained herein for as long as such information is retained by the Recipient. Section 11 will continue to apply to retained Confidential Information and Records, which may only be used for such purposes.
2. **GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the internal laws of the State of Vermont, without regard to any conflict of laws principles. Any legal action, suit, or proceeding arising out of or relating to this Agreement shall be brought exclusively in the state or federal courts located in the State of Vermont, and each Party irrevocably consents to the exclusive jurisdiction of such courts. The Parties waive any objections related to improper venue or the doctrine of forum non conveniens.

1. **NOTICES**
   1. Any notice or other communication given under or in connection with this Agreement will be in writing, in the English language (or any other language expressly agreed between the Parties), marked for the attention of the specified representative of the Party to be given notice, and must be: (i) sent to that Party’s address by pre-paid mail delivery service providing guaranteed next Business Day delivery and proof of delivery; or (ii) sent by email to that Party’s email address. For the purposes of this Agreement, “**Business Day**” means a day that is not a Saturday, Sunday or public holiday in Vermont.
   2. The address, email address and representative for each Party are set out below and may be changed by that Party giving at least thirty (30) calendar days’ notice in accordance with this Section 15:

|  |  |
| --- | --- |
| **For [INSERT PARTY]:** |  |
| Address: | [INSERT] |
| Email addresses: | [INSERT] |
| For the attention of: | [INSERT] |
|  |  |
| **For [INSERT PARTY]:** |  |
| Address: | [INSERT] |
| Email address: | [INSERT] |
| For the attention of: | [INSERT] |

* 1. Any notice given in accordance with Section 15.1 will be deemed to have been served: (i) if given as set out in Section 15.1(i), at 9.00am on the second Business Day after the date of posting; and (ii) if given as set out in Section 15.1(ii), at the time of sending the email (except that if an automatic electronic notification is received by the sender within four (4) hours after sending the email informing the sender that the email has not been delivered to the recipient or that the recipient is out of the office, the email will be deemed not to have been served), provided that if notice is served before 9.00am on a Business Day, it will be deemed to be served at 9.00am on that Business Day and if it is served on a day which is not a Business Day or after 5.00pm on a Business Day, it will be deemed to be served at 9.00am on the immediately following Business Day.
  2. For the purposes of this Section 15, references to time of day are to the time of day at the address of the recipient Party as referred to in Section 15.2 and references to Business Days are to normal working days in the territory in which such address is situated.
  3. To prove service of a notice it will be sufficient to prove that the provisions of this Section 15 were complied with.

1. **AMENDMENTS**

Any modifications or amendments to this Agreement must be in writing and signed by both Parties.

1. **ENTIRE AGREEMENT**

This Agreement constitutes the entire understanding between the Parties regarding the subject matter herein and supersedes all prior agreements, negotiations, and communications, whether written or oral.

1. **SEVERABILITY**

If any provision of this Agreement is deemed invalid, illegal, or unenforceable, such provision shall be modified or severed to the minimum extent necessary, and the remaining provisions shall continue in full force and effect.

1. **ASSIGNMENT**

Neither Party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other Party, except that either Party may assign this Agreement to an affiliate or in connection with a merger, acquisition, or sale of substantially all of its assets.

1. **NO WAIVER**

No waiver of any breach of this Agreement shall be deemed a waiver of any subsequent breach. A waiver must be in writing and signed by the waiving Party.

1. **COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures delivered electronically or by facsimile shall be deemed valid and binding. ￼

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

[CLIENT NAME]   
By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[DEVELOPER NAME]   
By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SCHEDULE 1**

**SCOPE OF WORK**

[INSERT SCOPE OF WORK DETAILS AS PER AGREEMENT]

**SCHEDULE 2**

**ACCEPTANCE TESTING PROCEDURE**

[INSERT ACCEPTANCE TESTING PROCEDURE]