

DATED _____

(1) <<Developer>>

(2) <<Client>>

FREELANCE SOFTWARE DEVELOPER'S AGREEMENT

THIS AGREEMENT is made the day of

BETWEEN:

- (1) <<Name of Developer>> [a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at] **OR** [of] <<insert Address>> ("the Developer") and
- (2) <<Name of Client>> [a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at] **OR** [of] <<insert Address>> ("the Client")

WHEREAS:

- (1) At all material times the Developer is engaged in the business of providing software development services to business clients.
- (2) At all material times the Client is engaged in the business of <<insert description>> and wishes to acquire the services of the Developer.
- (3) The Developer hereby agrees to provide his services to the Client subject to the terms and conditions of this Agreement.

IT IS AGREED as follows:

1. Definitions and Interpretation

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

"Business Day"	means any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in <<insert location>>;
["Client's Materials"]	[means the materials set out in Schedule 2 which the Client shall provide to the Developer for use in the development of the Software;]
"Confidential Information"	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to, or in connection with, this Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
["Fee"]	[means the consideration payable to the Developer for the Software as defined in Clause 5;]
["Initial Fee"]	[means the first sum payable to the Developer under Clause 5 prior to the payment of the Milestone Payments;]

“Intellectual Property Rights”

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[“Milestone Payment(s)”]

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1.2 Unless the context otherwise

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cludes a reference to any
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1.2.3 “this Agreement” is
Schedules as amend

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ne relevant time;

1.2.4 a Schedule is a sche

1.2.5 a Clause or paragra
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and

Clause of this Agreement
of the relevant Schedule;

1.2.6 a "Party" or the "Part

o this Agreement.

1.3 The headings used in this A
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1.4 Words imparting the singular

the plural and vice versa.

1.5 References to any gender s

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2. Engagement of the Developer

2.1 The Client hereby engages t

the Software.

2.2 [The Client shall provide th
date>> (“the Delivery Date”
Client’s Materials on the
milestone dates set out in

ne Developer by <<insert
Client fails to deliver the
ompletion Date and the
crement by one Business

- Day for each day that the de... materials is delayed.]
- 2.3 The Developer shall complete the Software by <<insert date>> ("the Completion Date").
- 2.4 Prior to the Completion Date, the Developer shall use reasonable endeavours to] comply with the following:
- 2.4.1 Initial planning shall be submitted to the Client for discussion and/or approval by <<insert date>>;
- 2.4.2 Design ideas shall be submitted to the Client for selection and/or approval by <<insert date>>;
- 2.4.3 Development reports shall be submitted to the Client on the following dates: <<insert date>>;
- 2.4.4 Alpha testing of the Software shall be completed by <<insert date>>;
- 2.4.5 Beta testing of the Software shall be completed by <<insert date>>;
- 2.4.6 The Software shall be submitted to the Client for acceptance testing by <<insert date>>;
- 2.4.7 <<insert additional milestones>>
- 2.5 The Developer acknowledges that the Client has a legitimate commercial interest in the Software being completed by the Completion Date and that the Client should have an alternative if it is not so completed. Accordingly, in the event that the Software is not completed by the Completion Date, [the Client shall be entitled to deduct a sum of <<insert percentage>>% of the total Fee as liquidated damages from the total Fee] OR [a sum of <<insert sum>> shall be deducted as liquidated damages from the total Fee] for each Business Day after the Completion Date, without prejudice to any right to claim further remedy for any further delay.
- 2.6 The Developer shall be responsible for ensuring that all work is performed in a timely manner and is wholly responsible for ensuring the quality of any part of the Software developed with reasonable care.
- 2.7 The Developer shall be responsible for the rectification of any unsatisfactory work at his own expense.

3. Nature of Engagement

- 3.1 The Developer shall at all times be an independent contractor and the Developer's activities and those of any subcontractors or employees are at all times under the Developer's control.
- 3.2 Subject to the provisions of this Agreement, the Developer shall at all times be responsible for organising the Software development work is done and shall liaise with the Client's representative) to ensure that due account is taken of the timing of the Software development work to be performed in conjunction with any other contractors, consultants or subcontractors engaged by the Client.
- 3.3 The engagement under this Agreement shall be non-exclusive and the

SAMPLE

Developer shall be entitled to substitute or to employ another worker with the same or greater experience to develop the Software. The Developer shall not be entitled to use such a substitute where the provision of the Software is unduly delayed by absence of the Developer or by the Client's representative) that

to substitute or to employ another worker with the same or greater experience to develop the Software. The Developer shall not be entitled to use such a substitute where the provision of the Software is unduly delayed by absence of the Developer or by the Client's representative) that

- 3.4 Whenever possible and practicable, the Developer shall use his own equipment, materials and resources to develop the Software.
- 3.5 The engagement and appointment of the Developer under this Agreement does not create any mutual obligation on the part of the Client or the Developer to offer or accept further work or to continue the relationship shall hereby be

Developer shall use his own equipment, materials and resources to develop the Software.

Developer under this Agreement does not create any mutual obligation on the part of the Client or the Developer to offer or accept further work or to continue the relationship shall hereby be

4. Self-Employment Status of the Developer

- 4.1 The Developer shall at all times be a self-employed contractor and shall have the status of a self-employed contractor and shall be responsible for all income tax and national insurance contributions in respect of the consideration payable to him.
- 4.2 The Developer hereby agrees that he shall be responsible for all income tax and national insurance contributions in respect of any claims that may be made by the revenue in respect of similar taxes or contributions, including interest and penalties, in connection with software development work undertaken by the Developer.
- 4.3 The Developer shall be responsible for paying any and value added tax.
- 4.4 Nothing in this Agreement shall constitute any partnership, joint venture or employment relationship.

contractor and shall have the status of a self-employed contractor and shall be responsible for all income tax and national insurance contributions in respect of the consideration payable to him.

The Developer hereby agrees that he shall be responsible for all income tax and national insurance contributions in respect of any claims that may be made by the revenue in respect of similar taxes or contributions, including interest and penalties, in connection with software development work undertaken by the Developer.

The Developer shall be responsible for paying any and value added tax.

Nothing in this Agreement shall constitute any partnership, joint venture or employment relationship.

5. Fee

- 5.1 [In consideration of the Software and the Software itself the Client shall pay to the Developer the sum of £<<insert sum>> [as set out in the Developer's quotation].]

and the Software itself the Client shall pay to the Developer the sum of £<<insert sum>> [as set out in the Developer's quotation].]

AND/OR

[In consideration of the Software and the Software itself the Client shall make the following payments to the Developer:

and the Software itself the Client shall make the following payments to the Developer:

- 5.1.1 The sum of £<<insert sum>> for the initial planning;
- 5.1.2 The sum of £<<insert sum>> for the design ideas;
- 5.1.3 The sum of £<<insert sum>> for each development report;
- 5.1.4 The sum of £<<insert sum>> for alpha testing;
- 5.1.5 The sum of £<<insert sum>> for beta testing;
- 5.1.6 The sum of £<<insert sum>> for the delivery of the Software for acceptance testing;
- 5.1.7 The sum of £<<insert sum>> for the installation and delivery of the Software;

for the initial planning;

for the design ideas;

for each development report;

for alpha testing;

for beta testing;

for the delivery of the Software for acceptance testing;

for the installation and delivery of the Software;

- 5.1.8 <<insert additional m
- 5.2 Payment of the [Initial] Fee following completion of the shall be made within <<i Developer's invoice for the s
- 5.3 All payments made under th value added tax chargeable
- 5.4 No further payment shall be above the entitlement set payment shall be made to t by the Developer in complet

6. Intellectual Property

- 6.1 Upon receipt in full by the copyright and any and all o Software shall be deemed to be deemed to have waived out of Chapter IV of the Cop
- 6.2 Following the assignment Property Rights under sub Software for any purposes i the Software was originally o
- 6.3 [The copyright and any and the Client's Materials is, and at all times (subject to any a the Client may make to an warranty under sub-Clause bestow upon the Developer right to use the same for the

7. Warranties and Indemnity

- 7.1 The Developer represents, as follows:
- 7.1.1 the Software [(save Developer and sha Property Rights, mor other rights whatsoev
- 7.1.2 copyright in the Soft protection be valid a Kingdom [and the Universal Copyright o
- 7.1.3 no part of the Softw [<<insert jurisdiction blasphemous, offens shall not contain any the Data Protection the Regulation of I

ment] shall be made only software development and pt by the Client of the

expressly exclusive of any

for the Software over and nd, without limitation, no of any expenses incurred

due under Clause 5, the y Rights subsisting in the nt and the Developer shall ect of the Software arising ts Act 1988.

and all other Intellectual shall be free to use the to, the purpose for which

property rights subsisting in , the property of the Client the Client's Materials that e, subject to the Client's greement shall operate to t's Materials save for the this Agreement.]

nd agrees with the Client

s)] shall be original to the yright, other Intellectual , rights of publicity, or any

the full period of copyright to the laws of the United e Convention and/or the

s of [any jurisdiction] OR Wales>>] be obscene, natory of any person and en obtained in violation of of Information Act 2000, t 2000, the Privacy and

SAMPLE

- Electronic Communications Act 2002, the Official Secrets Act 1989 and any other legislation and nothing published, constitute a contempt of court.
- 7.1.4 the Developer shall not assign, transfer, encumber or otherwise dispose of any rights in or to the Software except pursuant to this Agreement and shall not enter into any agreement or arrangement which might conflict with the Client's rights under this Agreement or might interfere with the Developer's performance of his obligations under this Agreement;
- 7.1.5 [subject to sub-Clause 7.3.5] the Developer hereby undertakes to indemnify the Client from and against all claims, demands, costs (including without prejudice the legal costs of the Client on a client basis), awards, or damages howsoever arising directly or indirectly – as a result of any breach or non-performance of any of the Developer's obligations under this Agreement.
- 7.2 [The total liability of the Developer under this Agreement shall be limited to £<<insert sum>>].
- 7.3 The Client represents, warrants and agrees with the Client as follows:
- 7.3.1 [the Client's Materials shall not infringe any copyright, patent, trade mark, rights of privacy, rights of confidentiality or any other rights whatsoever of any person;
- 7.3.2 copyright in the Client's Materials shall subsist throughout the full period of copyright protection pursuant to the laws of the United Kingdom [and/or the laws of the Berne Convention and/or the laws of [any jurisdiction] OR [Wales]] be obscene, defamatory of any person and shall not contain any information obtained in violation of the Data Protection Act 1998, the Freedom of Information Act 2000, the Regulation of Investigatory Powers Act 2000, the Privacy and Electronic Communications Regulations 2003, the Official Secrets Act 1989 and any other legislation and nothing published, constitute a contempt of court;
- 7.3.3 the Client's Materials shall not be obscene, defamatory of any person and shall not contain any information obtained in violation of the Data Protection Act 1998, the Freedom of Information Act 2000, the Regulation of Investigatory Powers Act 2000, the Privacy and Electronic Communications Regulations 2003, the Official Secrets Act 1989 and any other legislation and nothing published, constitute a contempt of court;
- 7.3.4 the Client shall not assign, transfer, encumber or otherwise dispose of any rights in or to the Client's Materials during the term of this Agreement except pursuant to this Agreement or arrangement which might conflict with the Client's rights under this Agreement or might interfere with the Developer's performance of his obligations under this Agreement;
- 7.3.5 [subject to sub-Clause 7.3.5] the Developer hereby undertakes to indemnify the Developer and the Client from and against all claims, demands, costs (including without prejudice the legal costs of the Client on a client basis), awards, or damages howsoever arising directly or indirectly – as a result of any breach or non-performance of any of the Developer's obligations under this Agreement.

costs of the Development, and any damages howsoever caused, directly or indirectly, as a result of any breach or non-performance of any of the Client's undertakings, warranties or obligations under this Agreement.

- 7.4 [The total liability of the Client under this Agreement shall be limited to £<<insert sum>>.]

8. Confidentiality

- 8.1 Both Parties undertake that they will not disclose any Confidential Information by sub-Clause 8.2 or as authorised in writing by the disclosing Party at all times during the continuance of this Agreement and for a period of <<insert period>>] after its termination:
- 8.1.1 keep confidential all Confidential Information;
 - 8.1.2 not disclose any Confidential Information to any other party;
 - 8.1.3 not use any Confidential Information for any purpose other than as contemplated by this Agreement;
 - 8.1.4 not make any copies of Confidential Information or part with possession of Confidential Information;
 - 8.1.5 ensure that (as applicable) its directors, officers, employees, agents or advisers do not disclose Confidential Information by that Party, would be liable for a breach of the provisions of this Clause 8.
- 8.2 Subject to sub-Clause 8.3, the disclosing Party shall not disclose any Confidential Information to:
- 8.2.1 any of their sub-contractors or suppliers;
 - 8.2.2 any governmental or regulatory body; or
 - 8.2.3 any of their employees or subcontractors, or any party described in sub-Clauses 8.2.1 or 8.2.2.
- 8.3 Disclosure under sub-Clause 8.2 shall be limited only to the extent that is necessary for the purposes of the Agreement, or as required by law. In each case the disclosing Party shall inform the recipient that the Confidential Information is being disclosed and that the recipient is a body described in sub-Clause 8.2. If the recipient is an employee or officer of such a body, the disclosing Party shall also require the recipient to commit to the other Party a written undertaking from the recipient to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made.
- 8.4 Either Party may use any Confidential Information for any purpose, or disclose it to any other party, where the disclosure is or becomes public knowledge through no fault of the disclosing Party.
- 8.5 When using or disclosing Confidential Information under sub-Clause 8.4, the disclosing Party must ensure that it does not disclose any part of that Confidential Information which is not necessary for the purpose.
- 8.6 The provisions of this Clause shall not apply in accordance with their terms, notwithstanding the terms of any other agreement for any reason.

9. Termination

- 9.1 Either Party may terminate this Agreement at any time without notice and without giving any reason for termination.
- 9.2 Without prejudice to the general right of termination under 9.1, this Agreement shall terminate, notwithstanding any other provision to the contrary, if any of the remedies the Parties may have, in the following circumstances, occurs:
- 9.2.1 either Party fails to perform its obligations under this Agreement and such failure, after written notice, is not remedied within <<insert period>> days of the date of such failure from the other Party; or
- 9.2.2 either Party goes into liquidation or administration – either voluntary or compulsory – save for the purpose of bona fide corporate reconstruction or arrangement, or a receiver or administrator is appointed over the whole or any part of its assets;
- 9.3 The termination of this Agreement shall be without prejudice to any rights which have already accrued under this Agreement.

10. Nature of the Agreement

- 10.1 This Agreement is personal to the Parties and neither Party may assign, mortgage, or charge (other than by way of a security charge) [or sub-license] any of its rights hereunder, or its obligations hereunder, except with the prior written consent of the other Party, such consent not to be unreasonably withheld.
- 10.2 This Agreement contains the entire agreement between the Parties with respect to its subject matter and shall be binding on the Parties and except by an instrument in writing signed by the duly authorised signatories of the Parties.
- 10.3 Each Party acknowledges that it enters into this Agreement, it does not rely on any representation, warranty or statement made by the other Party except as expressly provided in this Agreement and shall not be bound by any warranties or other terms implied by statute or common law, or by any custom or practice, to the fullest extent permitted by law.
- 10.4 No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of any subsequent right, and no waiver by either Party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of any other provision.

11. Severance

The Parties agree that, in the event any provision of the provisions of this Agreement is found to be unlawful or unenforceable, that / those provisions shall be deemed severed and the remainder of this Agreement shall be enforceable.

12. Notices

- 12.1 All notices under this Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, the authorised signatory of the Party giving the notice.

notice.

12.2 Notices shall be deemed to

12.2.1 when delivered, if delivered by hand or by registered mail) during

12.2.2 when sent, if transmitted by e-mail and a successful transmission report is received; or

12.2.3 on the fifth business day after the date of posting, if mailed by national ordinary mail, postage paid; or

12.2.4 on the tenth business day after the date of posting, if mailed by airmail, postage prepaid.

In each case notices shall be sent to the last recent address, e-mail address, or facsimile number of the Party.

other messenger (including registered mail) during the business hours of the recipient; or

transmitted by e-mail and a successful transmission report is received; or

on the fifth business day after the date of posting, if mailed by national

on the tenth business day after the date of posting, if mailed by airmail,

most recent address, e-mail address, or facsimile number of the Party.

13. **Alternative Dispute Resolution**

13.1 Any dispute or difference arising out of or in connection with this Agreement or its subject matter shall be referred to and decided by a single arbitrator to be appointed by the Parties. If the Parties cannot agree on the appointment of the arbitrator, then the President of the Law Society of Wales shall have all of the powers conferred upon arbitrators by the Arbitration Act 1996.

Parties relating to this Agreement shall be referred to a single arbitrator to be appointed by the Parties. If the Parties cannot agree on the appointment of the arbitrator, then the President of the Law Society of Wales shall have all of the powers conferred upon arbitrators by the Arbitration Act 1996.

13.2 The Parties hereby agree that the arbitration shall be final and binding on both Parties.

The arbitration shall [not] be final and binding on both Parties.

14. **Law and Jurisdiction**

14.1 This Agreement (including any amendments and variations) shall be governed by, and construed in accordance with, the laws of England and Wales.

Parties and obligations arising out of or in connection with this Agreement shall be governed by, and construed in accordance with, the laws of England and Wales.

14.2 Subject to the provisions of this Agreement, any controversy, proceedings or claim between the Parties arising out of or in connection with this Agreement (including any non-contractual matters and obligations) shall fall within the jurisdiction of the courts of England and Wales.

any controversy, proceedings or claim between the Parties arising out of or in connection with this Agreement (including any non-contractual matters and obligations) shall fall within the jurisdiction of the courts of England and Wales.

IN WITNESS WHEREOF this Agreement

ed the day and year first

SIGNED by

<<Name and Title of person signing for the
for and on behalf of <<Developer's Name>

In the presence of
<<Name & Address of Witness>>

SIGNED by

<<Name and Title of person signing for the
for and on behalf of <<Client's Name>>

In the presence of
<<Name & Address of Witness>>

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The Software

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