**Software Development Agreement**

This Software Development Agreement is made on\_\_\_\_\_\_\_\_\_\_ [AGREEMENT DATE] (the "Effective Date") **Between** \_\_\_\_\_\_\_\_\_\_ [PARTY A NAME], [whose principal place of residence is at / a \_\_\_\_\_\_\_\_\_\_ [CORPORATE JURISDICTION] corporation with its principal place of business at \_\_\_\_\_\_\_\_\_\_ [PARTY A ADDRESS]] **And** \_\_\_\_\_\_\_\_\_\_ [PARTY B NAME], [whose principal place of residence is at / a \_\_\_\_\_\_\_\_\_\_ [CORPORATE JURISDICTION] corporation with its principal place of business at] [PARTY B ADDRESS]].

(The capitalized terms used in this agreement, in addition to those above, are defined in section [DEFINITIONS].)

1. **Development Services**. PARTY A shall provide PARTY B with certain software according to PARTY B's Specifications (the \_\_\_\_\_\_\_\_\_\_ "[DELIVERABLE]") and maintenance, training, and support services in connection with the DELIVERABLE.
2. **Specifications**. Promptly after the Effective Date, PARTY B shall
   1. define the specifications of the DELIVERABLE and the schedule for its development and delivery (the "Specifications"), and
   2. deliver to PARTY A, a written copy of the Specifications.
3. **Development**. PARTY A shall use reasonable efforts to design, develop, and **implement** the DELIVERABLE according to the Specifications.
4. Make DELIVERABLE Available for Download. On the later of the Effective Date and PARTY B's first payment for the DELIVERABLE, PARTY A will make the DELIVERABLE available to in an PARTY B electronic, downloadable format on PARTY A 's website, at\_\_\_\_\_\_\_\_\_\_ [INSERT URL OF WEBSITE].
5. **Acceptance and Rejection**
   1. Inspection **Period**. PARTY B will have \_\_\_\_\_\_\_\_\_\_[INSPECTION PERIOD] Business Days after PARTY A delivers the DELIVERABLE to inspect and test the DELIVERABLE to ensure it meets the Acceptance Criteria (the "Inspection Period").
   2. **Acceptance**. If in PARTY B's opinion the DELIVERABLE meets the Acceptance Criteria, PARTY B will accept the DELIVERABLE and notify PARTY A that it is accepting the DELIVERABLE.
   3. **Deemed Acceptance**. PARTY B will be deemed to have accepted the DELIVERABLE if PARTY B fails to notify PARTY A on or before the expiration of the Inspection Period, or
   4. if during the Inspection Period, PARTY B sells or attempts to sell, runs, or otherwise uses the DELIVERABLE beyond what is necessary for inspection and testing and in a way a reasonable person would consider consistent with PARTY B having accepting ownership of the DELIVERABLE from PARTY A .
6. **Taxes**. Payment amounts under this agreement do not include Taxes. PARTY B will pay all Taxes applicable to payments between the parties under this agreement.
7. **Interest on Late Payments**. Any amount not paid when due will bear interest from the due date until paid at a rate equal to [1] % per month ([12% annually) or the maximum allowed by Law, whichever is less.
8. **Term.** This agreement begins on \_\_\_\_\_\_\_\_\_\_ [the Effective Date] and will continue until [CONDITION / EVENT / FULFILLMENT OF ORDER / COMPLETION OF SERVICES], unless terminated earlier (the "Term").
9. **Limited Warranty**
   1. **Limited Media Warranty**. The Developer warrants that, for a period of \_\_\_\_\_\_\_\_\_\_[MEDIA WARRANTY PERIOD] following delivery of the Software, the media upon which the Software is delivered will be free from defects in materials and workmanship under normal use.[ The Developer's sole obligation in this regard will be to provide the Customer with a performing copy of the Software within a reasonable time following the Customer's written notice to the Developer of the defect.]
   2. **Limited Support Warranty**. For a period of \_\_\_\_\_\_\_\_\_\_[SUPPORT WARRANTY PERIOD] following the\_\_\_\_\_\_\_\_\_\_ [delivery OR installation] of the Software, the Developer shall perform its maintenance and support services consistent with generally accepted industry standards, but only if the Software is installed and operated in accordance with the Developer's documentation and other instructions.
   3. **Limited Performance Warranty**. The Developer warrants that, for a period of \_\_\_\_\_\_\_\_\_\_[PERFORMANCE WARRANTY PERIOD] starting on the date of \_\_\_\_\_\_\_\_\_\_[delivery OR installation] of the Software, the Software will perform substantially in accordance with the functional specifications set forth in the documentation, but only if the Software is installed and operated in accordance with the Developer's documentation and other instructions.
   4. **Disclaimer**. [The Developer does not warrant that the functions contained in the Software will meet the Licensee's requirements or operate in the combination desired by the Licensee, or that the Software's operation will be uninterrupted or error-free.] The Developer does not make and will not be liable for any warranties other than those expressly included in this agreement.
10. **No Infringement**. PARTY A hereby warrants that nothing in the DELIVERABLE, nor PARTY B's use of the DELIVERABLE, will infringe or constitute a misappropriation of the Intellectual Property rights of a third party.
11. **No Open Source**.  PARTY A hereby warrants that the DELIVERABLE does not contain any software, hardware, or other materials, components, or parts licensed under an open-source license.
12. **No Warranty**
    1. **"As-Is"**. Unless otherwise listed in this agreement, the DELIVERABLE is provided "as is," with all faults, defects, bugs, and errors.
    2. **No Warranty**. Unless otherwise listed in this agreement,
       1. PARTY A does not make any warranty regarding the DELIVERABLE, which includes that
       2. **PARTY A** **hereby disclaims to the [fullest] extent authorized by Law any and all [other] warranties, whether express or implied, including any implied warranties of [title, non-infringement, quiet enjoyment, integration,] merchantability or fitness for a particular purpose.**
13. **Exclusions from Warranty**. PARTY A's warranties under this agreement exclude any claims by PARTY B based on defects in the DELIVERABLE caused by PARTY B, or by third parties beyond PARTY A's control.
14. **Work Made for Hire**.  PARTY A hereby acknowledges the parties' mutual intent that the DELIVERABLE is a "work for hire" within the meaning of the Copyright Act of 1976, as amended, and be PARTY B's exclusive property.
15. **Assignment of Rights**. On PARTY B's acceptance of the DELIVERABLE and payment of all compensation due to PARTY A , PARTY A shall assign to PARTY B its entire interest in the DELIVERABLE (including all Intellectual Property and other property rights).
16. **Confidentiality Obligations**. The parties continue to be bound by the terms of the non-disclosure agreement between the parties, dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[DATE] and attached to this agreement on [ATTACHMENT].
17. ***Termination***
    1. **Termination on Notice**. Either party may terminate this agreement for any reason on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [TERMINATION NOTICE BUSINESS DAYS] Business Days’ notice to the other party.
    2. **Termination for Material Breach**. Each party may terminate this agreement with immediate effect by delivering notice of the termination to the other party, if
       1. the other party fails to perform, has made or makes any inaccuracy in, or otherwise materially breaches, any of its obligations, covenants, or representations, and
       2. the failure, inaccuracy, or breach continues for a period of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [BREACH CONTINUATION DAYS] Business Days' after the injured party delivers notice to the breaching party reasonably detailing the breach.
    3. **Termination for Insolvency**. If either party becomes insolvent, bankrupt, or enters receivership, dissolution, or liquidation, the other party may terminate this agreement with immediate effect.
18. ***Effect* of Termination**
    1. **Termination of Obligations**. Subject to paragraph [PAYMENT OBLIGATIONS], on termination or expiration of this agreement, each party's rights and obligations under this agreement will cease immediately.
    2. **Payment Obligations**. Even after termination or expiration of this agreement, each party will
       1. pay any amounts it owes to the other party, including payment obligations for services already rendered, work already performed, goods already delivered, or expenses already incurred, and
       2. refund any payments received but not yet earned, including payments for services not rendered, work not performed, or goods not delivered, expenses forwarded.
    3. **No Further Liability**.On termination or expiration of this agreement, neither party will be liable to the other party, except for liability
       1. that arose before the termination or expiration of this agreement, or
       2. arising after the termination or expiration of this agreement and in connection with sections [[CONFIDENTIALITY], [TAXES],or [TERMINATION]].
19. ***Return* of Property**. On termination or expiration of this agreement, or on PARTY A 's request, PARTY B will
    1. return to PARTY A  all originals of the information and other **property**, including Intellectual Property, it received from PARTY A ,
    2. destroy all copies of such information and other property it has in its possession or control, an
    3. on PARTY A 's request, certify to PARTY A  in writing that it destroyed all such copies.
20. ***Indemnification***
    1. **Indemnification by PARTY B**. PARTY A (as an indemnifying party) shall indemnify PARTY B (as an indemnified party) against all losses and expenses arising out of any proceeding
       1. brought by either a third party, and
       2. arising out of a claim that the DELIVERABLE infringes the third party's Intellectual Property rights.
    2. **Mutual Indemnification**. Each party (as an indemnifying party) shall indemnify the other (as an indemnified party) against all losses arising out of **any** proceeding
       1. brought by either a third party or an indemnified party, and
       2. arising out of the indemnifying party's willful misconduct or gross negligence.
    3. **Notice and Failure to Notify**
    4. **Notice Requirement**. Before bringing a claim for indemnification, the indemnified party shall
       1. notify the indemnifying party of the indemnifiable proceeding, and
       2. deliver to the indemnifying party all legal pleadings and other documents reasonably necessary to indemnify or defend the indemnifiable proceeding.
       3. **Failure to Notify**. If the indemnified party fails to notify the indemnifying party of the indemnifiable proceeding, the indemnifying will be relieved of its indemnification obligations to the extent it was prejudiced by the indemnified party's failure.
    5. **Exclusive Remedy**. The parties' right to indemnification is the exclusive remedy available **in** connection with the indemnifiable proceedings described in this section [INDEMNIFICATION].
    6. **Limitation on Liability**. Neither party will be liable for breach-of-contract damages that are remote or speculative, or that the breaching party could not reasonably have foreseen on entry into this agreement.
21. **General Provisions: -**
    1. **Entire Agreement**. The parties intend that this agreement, together with all attachments, schedules, exhibits, and other documents that both are referenced in this agreement and refer to this agreement,
       1. represent the final expression of the parties' intent relating to the subject matter of this agreement,
       2. contain all the terms the parties agreed to relating to the subject matter, and
       3. replace all of the parties' previous discussions, understandings, and agreements relating to the subject matter of this agreement.
    2. **Counterparts**
       1. **Signed in Counterparts**. This agreement may be signed in any number of counterparts.
       2. **All Counterparts Original**. Each counterpart is an original.
       3. **Counterparts Form One Document**. Together, all counterparts form one single document.
    3. **Amendment**.This agreement can be amended only by a writing signed by both parties.
    4. **Assignment**. Neither party may assign this agreement or any of their rights or obligations under this agreement without the other party's written consent.
    5. **Binding Effect**. This [agreement /plan] will benefit and bind the parties and their respective heirs, successors, and permitted assigns.
    6. **Notices**
       1. **Method of Notice**. The parties will give all notices and communications between the parties in writing by (i) personal delivery, (ii) a nationally-recognized, next-day courier service, (iii) first-class registered or certified mail, postage prepaid to the address that a party has notified to be that party's address for the purposes of this section.
       2. **Receipt of Notice**. A notice given under this agreement will be effective on
          1. the other party's receipt of it, or
          2. if mailed, the earlier of the other party's receipt of it and the fifth business day after mailing it.
    7. **Dispute Resolution**
       1. **Arbitration**. Any dispute or controversy arising out of this agreement and [SUBJECT MATTER OF THE AGREEMENT] will be settled by arbitration in \_\_\_\_\_\_\_\_\_\_\_\_\_\_[STATE], according to the provisions of Arbitration & Conciliation Act, 1996 then in effect, and by\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [NUMBER OF ARBITRATORS] arbitrators[s].
       2. **Judgment**. Judgment may be entered on the arbitrator's award in any court having jurisdiction.
       3. **Arbitrator's Authority**. The arbitrator will not have the power to award any punitive or consequential damages.
    8. **Governing Law and Consent to Jurisdiction and Venue**
       1. **Governing Law**. This agreement, and any dispute arising out of the [SUBJECT MATTER OF THE AGREEMENT], shall be governed by the laws of India. [GOVERNING LAW STATE].
       2. **Consent to Service**. Each party hereby irrevocably
          1. agrees that process may be served on it in any manner authorized by the Laws of the India, and
          2. waives any objection which it might otherwise have to service of process under the Laws of India [GOVERNING LAW STATE].
    9. **Force Majeure**. A party shall not be liable for any failure of or delay in the performance of this agreement for the period that such failure or delay is
       1. beyond the reasonable control of a party,
       2. materially affects the performance of any of its obligations under this agreement, and
       3. could not reasonably have been foreseen or provided against, but

will not be excused for failure or delay resulting from only general economic conditions or other general market effects.

* 1. **Waiver**
     1. **Affirmative Waivers**. Neither party's failure or neglect to enforce any rights under this agreement will be deemed to be a waiver of that party's rights.
     2. **Written Waivers**. A waiver or extension is only effective if it is in writing and signed by the party granting it.
     3. **No General Waivers**. A party's failure or neglect to enforce any of its rights under this agreement will not be deemed to be a waiver of that or any other of its rights.
     4. **No Course of Dealing**. No single or partial exercise of any right or remedy will preclude any other or further exercise of any right or remedy.
  2. **Severability**. If any part of this agreement is declared unenforceable or invalid, the remainder will continue to be valid and enforceable.

**IN WITNESS WHEREOF**, each party to this agreement has caused it to be executed at\_\_\_\_\_\_\_\_\_\_ [[Place of Execution]] on the date indicated above.

By First Party: \_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_

By Second Party: \_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_