Work for Hire Agreement

OR

Employment Agreement

OR

Software Development Agreement

AGREEMENT (this "Agreement"), dated as of _____ ("Execution Date"), is made by and between _____ having its principal place of business at _____ ("Company"), and _____, an individual residing in Russia ("Developer").

Definitions in The Context of This Agreement

- "Services" are services in technical consulting and software development provided by Developer.

- "Work" is the result of Services provided by Developer.

- "Official E-mail Addresses" are the following e-mail addresses used by the parties _____

- "Correspondence" refers to remote communication between Company and Developer expressed in the form of paper letters or e-mail letters sent to Official E-mail Addresses. Correspondence does not include logs of network messengers, messages on internal Company's message boards, video or audio records of online conferences, records of phone talks and any record of any other way of remote communication. All facts and intentions expressed in a form other than paper letters or e-mail letters sent to Official E-mail Addresses must be duplicated in paper letters or e-mail letters sent to Official E-mail Addresses to be considered as a part of Correspondence.

- "Specifications" are documents attached to this Agreement and describing technical parameters of Services and Work. Specifications may include and may be modified by parts of Correspondence if facts discussed in these parts were agreed in a written form by both parties after Execution Date.

- "Software" is the part of Work including only computer software developed by Developer.

- "Acceptance Criteria" are the criteria of Software listed in the part of Specifications having the title "Acceptance Criteria".

- "Delivery" refers to the fact of passing the Work from Developer to Company clearly mentioned in the Correspondence. In the event of a long-term project several Deliveries may occur until the termination of the Agreement, and each of them must be separately mentioned in the Correspondence. In the event if Software obviously conforms to Acceptance Criteria, Delivery shall not require written confirmation from Company, and

occurs immediately upon sending a notification from Developer to Company. The obvious conformity with Acceptance Criteria includes situations when a delivered part of the Software consists of user interface described in the Specifications, or functionality that can be checked and was checked by Developer solely in according with Specifications.

- "Development Documentation" is a documentation including description of non-obvious parts of Software architecture, hardware and software configuration, and comments inside core functions and classes of Software source code.

- "Common Code Concept" is a concept of team software development making the role of each team member insignificant, and giving to Company such results as interchangeability of team members, mixed authorship of code (up to single line level), and avoidance of situations when single person may be a single author of a separate module.

- "Micromanagement Concept" is a management concept consisting of giving day-level or hour-level tasks to workers and avoiding week-level planning made by workers.

Explanation

Company desires to retain Services provided by Developer to develop the Company's products, and Developer desires to provide such Services to Company.

NOW THEREFORE, the parties agree as follows:

1. Scope of Services

Developer will perform the Services in according to the Specifications. Company will cooperate with Developer's requests for information and data necessary for the completion of the Work.

Developer provides *services* for development of products, but not *products*. That's why the quality, usability, and market value of products developed in the process of providing Services to the Company do not relate to the quality of Services and cannot be used as a reason for refund.

All Services are provided only after detailed consultations with Company, and only after receiving an approval from Company. All general concepts of UI/UX implemented in Software are provided by Company.

2. Payment

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Standard rate.

Overtime rate.

Paid vacation.

Paid sickness days.

Period of payment.

Advance payments.

…..

All payments made by Company to Developer are nonrefundable.

3. Acceptance

Company may perform acceptance tests on the Work provided by Developer. Developer will provide Company with all reasonable assistance and information which Company may require. Providing of this assistance and information is considered as Services and paid as described in **Section 2 (Payment)**.

Within 10 working days of Delivery Company shall inform Developer in writing whether the Work is accepted. If Company does not inform Developer whether the Work is accepted, the Work is accepted automatically.

Should the Work not be accepted, Developer agrees to correct the deficiencies and deliver the correct Work to Company.

In case if Developer does not agree to correct the deficiencies this Agreement is automatically terminated in according with the **Section 5 (Termination)** as set forth hereto.

All Services required for correcting the deficiencies shall be paid as described in **Section 2 (Payment)**.

4. Indemnification

Company agrees to indemnify and hold Developer harmless against any loss, damage, expense or cost, fee, including reasonable attorney fees, reasonable interpreter fees, reasonable travel expenses, and expenses for obtaining visas, arising from

a) the acts or omissions of Developer and Developer's agents;

b) a lawsuit or proceeding brought by a third party against Company or Developer and based upon a claim that the Work breaches the third party's patent, copyright or trade secrets rights;

c) a lawsuit or proceeding brought by a third party against Company or Developer and based upon any other claim.

The provisions of this section shall survive the termination or expiration of this Agreement.

5. Termination

Unless terminated as provided herein, this Agreement will extend to and terminate upon completion of the Work as provided herein. Either party may terminate this Agreement without cause at any time. In the event of termination, Company agrees to pay Developer for all Services performed up to the date of termination, and Developer agrees to return advance payments for non-completed Services.

If the termination of Agreement was initiated by Developer before completion of Services, Developer agrees to provide Development Documentation for the completed part of Services, and assist in passing the Work to other developers. This assistance shall be performed in the amount of 1 hour per each 6 hours worked earlier by Developer, but no more than 64 hours in total. All time spent for writing Development Documentation and assistance shall be paid in according with a rate defined in the **Section 2 (Payment)**.

6. Ownership of Intellectual Property

> 6.1 Company will retain ownership of all proprietary rights to the Software, including certain rights, if any, that Developer has pursuant to a license from another party.

6.2 Developer acknowledges and agrees that all Services performed and all results thereof, including all Work, Specifications, and other materials created in the course of Developer's engagement, are *works made for hire* (as such term is defined in the United States Copyright Law) and all rights therein are the sole and exclusive property of Company, including the worldwide right to own and register all copyrights therein in Company's name. In the event that any part of Work is determined not to be a *work made for hire* for any reason, Developer hereby irrevocably assigns all rights therein to Company and agrees to execute such additional documents as may be requested by Company to evidence Company's ownership thereof. In the event that any Work is not copyrightable, Developer hereby irrevocably assigns any and all ownership rights therein to Company. Developer also hereby assigns to Company and/or waives any and all claims that Developer may now or hereafter have in any jurisdiction to so-called *"moral rights"* or rights of *"droit moral"* in connection with the Work.

6.3 Notwithstanding the foregoing, if and to the extent that Services are being rendered by Developer for or on behalf of the Company in a jurisdiction where applicable law does not recognize the *work for hire* doctrine, Developer hereby grants and assigns to Company the broadest possible ownership, results and proceeds of such Services permitted under applicable law in said jurisdiction.

6.4 Developer hereby agrees to further assist the Company, at Company's expense, to further evidence, record and perfect such assignments, and to perfect, obtain, maintain and enforce and defend any rights assigned.

7. Confidential Information

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

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

7.3 These obligations of confidentiality will extend for a period of one (1) year after the termination of this Agreement, but will not apply with respect to information that is independently developed by the parties, lawfully becomes a part of the public domain, or of which the parties gained knowledge or possession free of any confidentiality obligation.

7.4 Notwithstanding the foregoing, Company allows Developer to keep reasonable number of copies of all Correspondence, Specifications and Software after termination of this Agreement, because all these materials may be required for Developer in the event of a lawsuit or any other legal action which may occur between Company, Developer and any third party in many years after termination of this Agreement. The reasonable number of copies includes

a) one copy on each desktop computer, laptop and netbook owned by Developer;

b) one copy in version control system hosting owned by Developer (and all backup copies of Developer's folder made by version control system technical support as a

part of typical server maintenance process);

c) one copy in an internal folder non-accessible from web located on the web-hosting owned by developer (and all backup copies of Developer's folder made by hosting technical support as a part of typical server maintenance process);

d) one copy on a backup DVD disk (or another similar storage) stored in a bank safe.

7.5 In the event if Software will be distributed publicly with open source code, its code can be presented by Developer to his future potential employers and clients with a purpose to estimate a level of Developer's professional skills.

7.6 Notwithstanding the foregoing, Company allows Developer to include into his professional resume, curriculum vitae and publish on his personal website the following information concerning Services and Work:

a) general descriptions of the Work, including a purpose of the Software, type of its architecture, approximate supported parameters of data processed by the Software, types of businesses of companies or people who use and will use the Software;

b) names of technologies, libraries, frameworks, programming languages, operating systems and software products used for performing Services;

c) names of companies which use or will use the developed software in case if these companies are well-known international companies (for example, Microsoft, Oracle etc.);

d) trademarks of the Software if this Software will have trademarks;

e) URLs of created websites and web-applications in case if these websites and web-applications are opened for public access;

f) URLs where developed Software is published for distribution in case if this Software is distributed publicly.

The professional resume and curriculum vitae of Developer with this allowed information can be sent by Developer to any third party and published in Internet on job-sites at any time during Developer's engagement and after termination of this Agreement. This allowed information may be published on the personal website of Developer at any time during Developer's engagement and after termination of this Agreement.

8. Miscellaneous

8.1 If Common Code Concept or Micromanagement Concept are used in the Company, Company agrees that Developer is not responsible for the quality of Services.

8.2 If full automated test coverage of the Software is not included in the Specifications and budget of the Company, Company agrees that Software may contain material deficiencies.

8.3 Company understands importance of regular on-site and off-site backup of data processed by Software, and agrees that Developer is not responsible for loss of data and subsequent damages of Company and its clients, in the event of impossibility to restore lost full data or its part due to absence of regular backup.

8.4 Company understands importance of 24x365 technical support (especially in providing online services for Company's clients) and having in the team a qualified system

administrator or network administrator. Company understands that Developer has only basic and mid-level qualification in system administration, and not responsible for incorrect server and hardware configuration performed by request from the Company.

8.5 No failure or delay by either party in enforcing or exercising against the other any provision of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach.

8.6 This Agreement constitutes the entire Agreement between the parties relating to the Services and supersedes all prior written or oral representations, proposals or communications. No modification to this Agreement will be effective unless in writing and signed by authorized signatories of both parties. If any provision of this Agreement is determined invalid, unlawful or unenforceable then the remaining provisions shall continue in full force and effect.

8.7 Nothing herein contained shall be construed to place Company and Developer in a relationship as partners or joint ventures, and neither Company nor Developer shall have the power to bind or obligate the other party in any of such manners.

8.8 In all situations related to performance of Services and implementation of requests received by Developer from the Company, the relationship between Company and Developer shall be considered as principal and agent relationship, where the Company plays a role of principal and Developer plays a role of an agent.

9. Warranties

9.1 Warranty of Function

Developer warrants that, Software will perform substantial conformance to the Specifications.

Developer warrants that, during the 60 days period following Delivery, the Software will perform materially as described in the Specifications;

9.2 Infringement Warranty

Developer warrants that Developer will not knowingly infringe on the copyright or trade secrets of any third party in performing services under this Agreement.

Developer will not knowingly infringe upon any existing patents of third parties in the performance of services required by this Agreement, but Developer MAKES NO WARRANTY OF NON-INFRINGEMENT.

To the extent any material used or planned to be used by Developer contains matter proprietary to a third party, Developer and Company shall perform one of the following mutually agreed actions:

a) Developer shall obtain a license from the owner permitting the use of such matter and granting Developer the right to sub-license its use;

b) Developer shall inform Company about this fact and Company shall obtain a license from the owner permitting the use of such matter and granting Developer the right to use the material on behalf of Company.

THESE WARRANTIES ARE EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF

MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY ORAL OR WRITTEN REPRESENTATIONS, PROPOSALS OR STATEMENTS MADE ON OR PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT.

DEVELOPER DOES NOT WARRANT THAT THE SOFTWARE WILL PERFORM WITHOUT ERROR OR THAT IT WILL RUN WITHOUT IMMATERIAL INTERRUPTION.

DEVELOPER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES TO THE MAXIMUM EXTENT PERMITTED BY LAW.

10. Limitation of Liability

EACH PARTY'S TOTAL LIABILITY UNDER THIS AGREEMENT IS LIMITED TO THE VALUE OF SERVICES RENDERED.

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER, WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL OR EQUITABLE THEORY (INCLUDING STRICT LIABILITY) FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE, DATA OR USE OR FOR INTERRUPTED COMMUNICATIONS, INCURRED BY EITHER PARTY IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE OTHER PARTY OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. Force Majeure

A party is not liable for failure to perform the party's obligations if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), sickness, war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalisation, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service. No party is entitled to terminate this Agreement under **Section 5 (Termination)** in such circumstances.

If a party asserts Force Majeure as an excuse for failure to perform the party's obligation, then the nonperforming party must prove that the party took reasonable steps to minimize delay or damages caused by foreseeable events, that the party substantially fulfilled all non-excused obligations, and that the other party was timely notified of the likelihood or actual occurrence of an event described in **Section 12 (Force Majeure)**.

12. Arbitration

12.1 Place of Arbitration

Any dispute as to any claim under this Agreement shall be settled by such arbitration which makes the result of the arbitration final and binding on the parties.

Arbitration can be arranged only in one of the following countries:

a) country of citizenship of Developer (by the date of arbitration);

b) country of permanent or temporary residence of Developer (by the date of arbitration);

c) country of legal registration of the head office of the company.

12.2 Travel Expenses Related to Arbitration

If Developer shall be required to travel from one country to another for visiting the place of arbitration, the Company agrees to compensate the following travel expenses of Developer in the reasonable amount:

a) airplane tickets, train tickets, bus tickets, ship tickets, taxi payments;

b) accommodation expenses for the whole period of travel, including either private room in a top-rated hostel by www.hostelworld.com rating, or a private room in a 3-star hotel;

c) expenses for obtaining a visa (including similar expenses for traveling to another country or city, if a visa cannot be obtained in the city of residence of Developer);

d) travel insurance expenses;

e) paid interpreter to assist Developer in arbitration.

These expenses are not refundable even if the arbitration will be won by the Company.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Execution Date.

[COMPANY]

By: _____
Name: _____
Title: CEO

[DEVELOPER]

_____
Name:

Date: ___current_date____