

# SOFTWARE DEVELOPMENT CONSULTANT AGREEMENT

This Software Development Consultant Agreement ("Agreement") is made between \_\_\_\_\_ with a mailing address of \_\_\_\_\_, City of \_\_\_\_\_, State of \_\_\_\_\_ ("Client")

AND

\_\_\_\_\_ with a principal place of business at \_\_\_\_\_, City of \_\_\_\_\_, State of \_\_\_\_\_ ("Consultant"). The Client and Consultant shall be known collectively as the "Parties".

WHEREAS this Agreement shall be made effective on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

THE PARTIES AGREE AS FOLLOWS:

## 1. Services to Be Performed

Consultant agrees to perform the following services: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ ("Services")

## 2. Payment

In consideration for the Services to be performed by Consultant, Client agrees to pay Consultant in the following manner: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Consultant shall be paid within a reasonable time after Consultant submits an invoice to Client. The invoice should include the following: an invoice number, the dates covered by the invoice, a summary of the work performed, and any other information or details in accordance with this Agreement.

## 3. Expenses (check one)

- Consultant shall be responsible for all expenses incurred while performing Services under this Agreement. This includes automobile, truck, and other travel expenses; vehicle maintenance and repair costs; vehicle and other license fees and permits; insurance premiums; road, fuel, and other taxes; fines; radio, pager, and cell phone expenses; meals; and all salary, expenses, and other compensation paid to employees or contract personnel the Consultant hires to complete the work under this Agreement.

Client's Initials - \_\_\_\_\_ Consultant's Initials - \_\_\_\_\_

- Client shall reimburse Consultant within thirty (30) days after receipt of an itemized statement for the following expenses that are attributable directly to the Services performed under this Agreement: \_\_\_\_\_

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#### **4. Vehicles and Equipment**

Consultant will furnish all vehicles, equipment, tools, and materials used to provide the Services required by this Agreement. Client will not require Consultant to rent or purchase any equipment, product, or service as a condition of entering into this Agreement.

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

Consultant is an independent contractor, and neither Consultant nor Consultant's employees or contract personnel are, or shall be deemed, Client's employees. In its capacity as an independent contractor, Consultant agrees and represents, and Client agrees, as follows:

(check all that apply)

- Consultant has the right to perform Services for others during the term of this Agreement.

- Consultant has the sole right to control and direct the means, manner, and method by which the Services required by this Agreement will be performed. Consultant shall select the routes taken, starting and quitting times, days of work, and order the work is performed.

- Consultant has the right to hire assistants as subcontractors or to use employees to provide the Services required by this Agreement.

- Neither Consultant nor Consultant's employees or contract personnel shall be required to wear any uniforms provided by Client.

- The Services required by this Agreement shall be performed by Consultant, Consultant's employees, or contract personnel, and Client shall not hire, supervise, or pay any assistants to help Consultant.

- Neither Consultant nor Consultant's employees or contract personnel shall receive any training from Client in the professional skills necessary to perform the Services required by this Agreement.

Client's Initials - \_\_\_\_\_ Consultant's Initials - \_\_\_\_\_

- Neither Consultant nor Consultant's employees or contract personnel shall be required by Client to devote full time to the performance of the Services required by this Agreement.

## **6. Business Licenses, Permits, and Certificates**

Consultant represents and warrants that Consultant and Consultant's employees and contract personnel will comply with all federal, state, and local laws requiring drivers and other licenses, business permits, and certificates required to carry out the Services to be performed under this Agreement.

## **7. State and Federal Taxes**

Client shall not: Withhold FICA (Social Security and Medicare taxes) from Consultant's payments or make FICA payments on Consultant's behalf; Make state or federal unemployment compensation contributions on Consultant's behalf; or Withhold state or federal income tax from Consultant's payments.

Consultant shall pay all taxes incurred while performing Services under this Agreement—including all applicable income taxes and, if Consultant is not a corporation, self-employment (Social Security) taxes. Upon demand, Consultant shall provide Client with proof that such payments have been made.

## **8. Fringe Benefits**

Consultant understands that neither Consultant nor Consultant's employees or contract personnel are eligible to participate in any employee pension, health benefits, vacation pay, sick pay, or other fringe benefit plan of Client.

## **9. Unemployment Compensation**

Client shall make no state or federal unemployment compensation payments on behalf of Consultant or Consultant's employees or contract personnel. Consultant will not be entitled to these benefits in connection with work or Services performed under this Agreement.

## **10. Workers' Compensation**

Client shall not obtain workers' compensation insurance on behalf of Consultant or Consultant's employees. If Consultant hires employees to perform any work under this Agreement, Consultant will cover them with workers' compensation insurance to the extent required by law and provide Client with a certificate of workers' compensation insurance before the employees begin work.

## **11. Insurance**

Client's Initials - \_\_\_\_\_ Consultant's Initials - \_\_\_\_\_

Client shall not provide insurance coverage of any kind for Consultant or Consultant's employees or contract personnel. Consultant shall obtain the following insurance coverage and maintain it during the entire term of this Agreement:

(check all that apply)

- Automobile liability insurance for each vehicle used in the performance of this Agreement -- including owned, non-owned (for example, owned by Consultant's employees), leased, or hired vehicles -- in the minimum amount of \$\_\_\_\_\_ combined single limit per occurrence for bodily injury and property damage.

- Comprehensive or commercial general liability insurance coverage in the minimum amount of \$\_\_\_\_\_ combined single limit, including coverage for bodily injury, personal injury, broad form property damage, contractual liability, and cross-liability.

Before commencing any Services, Consultant shall provide Client with proof of this insurance and with proof that Client has been made an additional insured under the policies.

## **12. Indemnification**

Consultant shall indemnify and hold Client harmless from any loss or liability arising from performing Services under this Agreement.

## **13. Term of Agreement**

This agreement will become effective on the Effective Date after being signed by both parties and will terminate on the earlier of the date Consultant completes the Services required by this Agreement or the Client or Consultant terminates this Agreement in accordance with Section 14.

## **14. Terminating the Agreement**

With reasonable cause, either Client or Consultant may terminate this Agreement, effective immediately upon giving written notice. Reasonable cause includes: A material violation of this Agreement; Any act exposing the other party to liability to others for personal injury or property damage; or Either party terminating this Agreement at any time by giving \_\_\_\_ days' written notice to the other party of the intent to terminate.

## **15. Exclusive Agreement**

This is the entire Agreement between Consultant and Client.

Client's Initials - \_\_\_\_\_ Consultant's Initials - \_\_\_\_\_

## 16. Modifying the Agreement

This Agreement may be modified only in writing and signed by both parties.

## 17. Resolving Disputes (check one)

- If a dispute arises under this Agreement, any party may take the matter to \_\_\_\_\_ state court, jurisdiction of the county of \_\_\_\_\_; or

- If a dispute arises under this Agreement, the parties agree to first try to resolve the dispute with the help of a mutually agreed-upon mediator in \_\_\_\_\_ County, State of \_\_\_\_\_. Any costs and fees other than attorney fees associated with the mediation shall be shared equally by the parties. If it proves impossible to arrive at a mutually satisfactory solution through mediation, the parties agree to submit the dispute to a mutually agreed-upon arbitrator in \_\_\_\_\_ County, State of \_\_\_\_\_. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction to do so. Costs of arbitration, including attorney fees, will be allocated by the arbitrator.

## 18. Confidentiality

Consultant acknowledges that it will be necessary for Client to disclose certain confidential and proprietary information to Consultant in order for Consultant to perform duties under this Agreement. Consultant acknowledges that disclosure to a third party or misuse of this proprietary or confidential information would irreparably harm Client. Accordingly, Consultant will not disclose or use, either during or after the term of this Agreement, any proprietary or confidential information of Client without Client's prior written permission except to the extent necessary to perform Services on Client's behalf.

Proprietary or confidential information includes:

The written, printed, graphic, or electronically recorded materials furnished by Client for Consultant to use; Any written or tangible information stamped "confidential," "proprietary," or with a similar legend, or any information that Client makes reasonable efforts to maintain the secrecy of; Business or marketing plans or strategies, customer lists, operating procedures, trade secrets, design formulas, know-how and processes, computer programs and inventories, discoveries and improvements of any kind, sales projections, and pricing information; Information belonging to customers and suppliers of Client about whom Consultant gained knowledge as a result of Consultant's Services to Client; and Other (if any): \_\_\_\_\_

Client's Initials - \_\_\_\_\_ Consultant's Initials - \_\_\_\_\_

Upon termination of Consultant's Services to Client, or at Client's request, Consultant shall deliver to Client all materials in Consultant's possession relating to Client's business.

Consultant acknowledges that any breach or threatened breach of Section 18 of this Agreement will result in irreparable harm to Client for which damages would be an inadequate remedy. Therefore, Client shall be entitled to equitable relief, including an injunction, in the event of such breach or threatened breach of Section 18 of this Agreement. Such equitable relief shall be in addition to Client's rights and remedies otherwise available at law.

### **19. Proprietary Information.**

The product of all work performed under this Agreement ("Work Product"), including without limitation all notes, reports, documentation, drawings, computer programs, inventions, creations, works, devices, models, works-in-progress, and deliverables will be the sole property of the Client, and Consultant hereby assigns to the Client all right, title, and interest therein, including, but not limited to, all audiovisual, literary, moral rights and other copyrights, patent rights, trade secret rights, and other proprietary rights therein. Consultant retains no right to use the Work Product and agrees not to challenge the validity of the Client's ownership in the Work Product.

Consultant hereby assigns to the Client all right, title, and interest in any and all photographic images and videos or audio recordings made by the Client during Consultant's work for them, including, but not limited to, any royalties, proceeds, or other benefits derived from such photographs or recordings.

The Client will be entitled to use Consultant's name and/or likeness use in advertising and other materials.

### **20. No Partnership**

This Agreement does not create a partnership relationship. Consultant does not have authority to enter into contracts on Client's behalf.

### **21. Assignment and Delegation (check one)**

- Either Consultant or Client may assign rights and may delegate duties under this Agreement.

- Consultant may not assign or subcontract any rights or delegate any of its duties under this Agreement without Client's prior written approval.

### **22. Applicable Law**

Client's Initials - \_\_\_\_\_ Consultant's Initials - \_\_\_\_\_

This Agreement shall be governed under the laws in the State of \_\_\_\_\_, without giving effect to conflict of laws principles.

**23. Attachments.** (check one)

- There are no additional attachments or addendums to this Agreement.

- There are additional attachments or addendums to this Agreement described as:

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**24. Signature Area**

Client's Signature \_\_\_\_\_ Date \_\_\_\_\_

Print Name \_\_\_\_\_

Consultant's Signature \_\_\_\_\_ Date \_\_\_\_\_

Print Name \_\_\_\_\_

Name of Company \_\_\_\_\_ Title of Signer \_\_\_\_\_

Taxpayer ID Number (EIN) \_\_\_\_\_

Client's Initials - \_\_\_\_\_ Consultant's Initials - \_\_\_\_\_