

THIS IS JUST A FORMAT.

Kindly take proper Legal Advise for Drafting Document as per your requirements.

Software Development Agreement¹

This Agreement made at _____ this _____ day of _____
BETWEEN

M/S A.B.C. & Co. Ltd. a Public Company limited by shares registered under the Companies Act, 1956 and having its registered office at hereinafter referred to as 'the Customer' of the One Part;

AND

M/S XYZ & Co. Ltd. a Public Company limited by shares registered under the Companies Act 1956, and having its registered office at hereinafter referred to as 'The Contractor' of the Other Part;

WHEREAS

(a) the Contractor has agreed to write certain Computer program for the customer and to provide other services hereinafter mentioned upon the terms and conditions hereinafter mentioned.

NOW IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

(1) The Contractor agrees to design and write the software in the programming language as per the specifications given in the Schedule hereunder written and to deliver and install the software on the computer hardware equipment of the Customer and which is installed at the office viz. _____ (hereinafter referred to as the Computer equipment). The Contractor shall also supply the Documentation alongwith the software and to render such other services as hereinafter mentioned.

(2) The Contractor admits that it has received all information about the specifications above referred to and the said Computer Equipment and the Contractor will not be entitled to raising any objection on the ground of misinterpretation of any fact relating to the functions, facilities and capabilities of the equipment or any part thereof.

(3) The Contractor agrees and undertakes to carry out the project that is the Deliverables² to be supplied and all services to be provided by the Contractor under this Agreement with reasonable care and skill with the help of qualified and experienced personnel.

(4) Similarly the Customer will provide the Contractor with accurate and complete information as will be necessary concerning the customers operation and shall answer to queries, decisions and approvals reasonably necessary for the Contractor to undertake the project.

(5) The Customer shall provide the Contractor and its personnel free access to and the use of the said computer equipment, offer full help of the Customer's employees and shall provide electric power, lights, heating and air conditioning facility at the site of the Computer Equipment and

1 Software means computer programme in object form only as described, including any copies but excluding source code material and preparatory design material.

2 Deliverables means the software and documentation.

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all other necessary facilities reasonably required for the working of the Project.

(6) The Customer guarantees that the computer equipment and all the software and other the deliverables, used in the said computer equipment is the property of the Customer and the Contractor is permitted to use the same.

(7) Each party hereto will appoint its qualified representatives who will hold meetings between them from time to time to provide progress reports and to discuss the same and other issues.

(8) The bespoke³ software will be written with the use of the said Computer equipment which will be maintained by the Customer and at its own costs but solely for the purpose of the Project.

(9) The Customer will keep the said computer equipment validly insured against all risks of loss or damage from any cause whatsoever for the full replacement value thereof and will pay the premium thereof from time to time regularly. The Customer shall not agree to sell, or mortgage the said computer equipment during the subsistence of this agreement.

(10) The Contractor will be responsible for providing and installing the software on the said computer equipment at the said site thereof. The software so installed will consist of one copy of each class of software in machine readable object code on the storage media specified in the specification and the Contractor will deliver the documentation in accordance with the project specification. If the Customer desires the Contractor to provide or procure the provision of software maintenance the same will be done under a separate agreement to be entered into between the parties hereto.

(11) At any time prior to the acceptance date hereinafter mentioned, the Contractor may in writing recommend and the Customer may in writing from time to time request change to any part of the project. The Contractor shall investigate such change, with the consent of the Customer and if recommended it will be effected accordingly provided that the costs incurred due to such change will be payable by the Customer.

(12) After the software is installed on the Computer equipment the Customer will submit to the Contractor by the date specified in the Project plan, for approval of the Contractor a test specification setting out the criteria and procedures for the acceptance of the software which is suitable to demonstrate that the software complies with and performs in accordance with the specifications and the Contractor will be bound by the acceptance specifications unless they are not in accordance with the specifications. The Customer will undertake the acceptance test at the site where the computer equipment is installed. The Customer will undertake the acceptance test in accordance with the acceptance specifications during the testing period using test data and expected results prepared by the Customer and accepted by the Contractor. The testing will commence within eight days after installation of the software.

(13) If any part of the software fails to pass the acceptance test, the Contractor will be allowed to rectify such part of software until the same complies with the tests.

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(14) If the software or any part thereof fails to pass the acceptance test two times, then the Customer may give notice to the Contractor giving him option either to provide at no extra charge such additional service and replacement items as will enable the software or the part thereof to pass the acceptance test within a period of ___ days after service of the notice, or to accept the software or part with an abatement of the contract price as reasonably suffered by the Customer after taking into account the circumstances.

(15) If even after the procedure stated above the software fails to pass the acceptance test or if the amount of abatement of price is not agreed upon, then the Customer will be entitled to reject the software and terminate this agreement giving written notice to the Contractor in that behalf.

(16) However, the Customer shall be deemed to have accepted the software if the Customer signs an acceptance certificate after successful completion of all stages of the acceptance tests or if the customer fails to demonstrate to the Contractor within a period of ___ days that the software has materially failed to pass the acceptance test in accordance with the acceptance specifications or if the software or a substantial part thereof is first put into operational use.

(17) The contract price for the Project payable by the Customer to the Contractor and the mode of payment thereof will be as stated in the schedule hereto. The said price will not include the charges for the additional services rendered by the Contractor and which are not provided in this agreement as well as the charges for the computer facilities provided, including storage media, data preparation, photocopying documentation, printing and other material provided by the Contractor itself or through a third party.

(18) If any instalment of the contract price or any other amount payable by the Customer to the Contractor is not paid on the due date the same will carry interest at the rate of ___ p.c. p.a. from the due date till payment. This is without prejudice to the other rights of the Contractor under this Agreement or in law.

(19) Until the acceptance of the software programme by the Customer as aforesaid and the payment of the contract price agreed to be paid by the Customer to the Contractor the copyright in the Computer programme, documentation and other material developed by the Contractor under this agreement will belong to the Contractor. On the acceptance of the programme by the Customer and payment of the Contract price by the Customer to the Contractor the copyright in the said program and the documentation and all other rights will vest in and belong to the Customer.

(20) The Contractor warrants that it has ability to perform its obligations under this agreement, that the design of the software will be suitable to fulfil the specifications and the software will perform and in accordance with the specifications and that the installation of the software will be free from defects in workmanship.

(21) The Contractor further warrants and agrees that it will be responsible to rectify within a reasonable time any defect which under proper use, care, and maintenance appears in the software, provided the defect is properly reported to the Contractor in writing within ___ weeks of the Acceptance of the Software without any additional charge provided the defect is not found cured due to any negligence on the part of the Customer

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or due to any modifications made by the Customer or any other person without the consent of the Contractor.

(22) The Contractor agrees to indemnify and keep indemnified the Customer against any loss or damages suffered or incurred by the Customer on account of breach of any copyright or rights relating to any patent, trade mark or design of any other person committed by a Contractor in supplying the software program under this Agreement.

(23) The Customer assures the Contractor that any specifications, decision or instruction given by it to the Contractor do not infringe any intellectual property or other rights of any other person and the Customer agrees to indemnify the Contractor against any loss or damage suffered by the Contractor on account of such breach.

(24) All information, knowledge, whether commercial, financial, technical or otherwise received by one party from the other party hereto in connection with the project and this agreement will be kept confidential including the employees, or agent of the party and the auditors, professional advisers, and others having legal right or duty to have access to or knowledge of the confidential information in connection with the business of the party.

(25) Either party to this agreement may terminate this agreement by giving to the other one month's prior notice, in the event of breach of any term or condition of this Agreement by the other or if the other party is ordered to be wound up or goes into voluntary liquidation or if the party closes its business.

(26) The purpose of this Agreement shall be carried out within a period of ___ months from the date hereof failing which the agreement shall stand terminated on the expiration of the said period unless the parties agree to extend the term in writing in which case the clause will apply to the extended period.

(27) On the termination of the agreement by efflux of time or otherwise as aforesaid, the Contractor will be paid all moneys due to the Contractor after taking into account the amounts previously paid together with the total value of the project completed upto the date of termination, and the cost of materials and goods ordered for the Project for which the Contractor has paid or is legally bound to pay. If the Contractor is paid till the termination any amount in excess of what is due to it as aforesaid, the excess will be refundable by the Contractor to the Customer.

(28) Termination of the agreement will not prejudice the rights of any party accrued to it till the date of termination.

(29) Any notice required to be given by the party hereto to the other under this agreement shall be given in writing and shall be served either through post registered A.D. or by Fax or by personal delivery at the address of the party hereinabove mentioned.

(30) This Agreement is the sole repository of the agreements and understandings arrived at between the parties and it supersedes all previous correspondence, representations, communications or memorandum of understanding.

(31) Any dispute or difference arising out of or in respect of this agreement or any provision thereof will be referred to arbitration of one or two arbitrators conversant with the subject matter of this Agreement and the arbitration will be governed by the Arbitration and Conciliation Act, 1996.

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(32) This agreement will be governed by the Indian law and any competent Indian Court alone will have jurisdiction to entertain any legal action taken by one party against the other.

THE SCHEDULE ABOVE REFERRED TO
CONSISTING OF

- (1) Specifications (2) Documentation
- (3) Computer equipment (4) Installation date
- (5) Project Plan or program (6) Contract price and mode of payment .
- (7) Project plan Training plan and personal.

IN WITNESS WHEREOF the parties have put their seals hereunder the day and year first hereinabove written.

Common seal of the ABC & Co.)
the withinnamed 'Customer')
is affixed as per the Resolution)
of the Board of Directors in the)
presence of)

Common seal of the XYZ & Co.)
the withinnamed 'Contractor')
is affixed as per the Resolution)
of the Board of Directors in the)
presence of)

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