# Software Development
Work for Hire Agreement

🔊 Use this agreement when contracting with an independent developer of software.

🔊 For example, you might assume (@#$%^) that your programmer(s) would adhere to certain coding standards… like what? Do they even know?

🔊 The "Work for Hire" aspect assures that you own all right, title and interest to a program's entire source and object code!

🔊 See also, "Custom Software Development" – better suited to the developer.

Date: **[Date]**

To: **[Developer]**

From: **[Owner/Founder]**
                                   [Company]

Subject: **Software Development Agreement**

_____

Attached is a "Software Development" Agreement to establish the arrangement as to how we will work together to develop the [Software Title] (current working name).

I believe that it embodies everything we discussed.

Please read the agreement carefully.

We recommend that you also have it reviewed by your own qualified legal counsel.

Time is of the essence.

Please sign and return it to me asap.

Thank you very much!

From JIAN

NOTICE:

We wish we could provide an agreement that was tailored *exactly* to your business. While this is not always possible, we feel that we've come very close and that this document provides you with the head-start that you need to get your deal moving. Nevertheless, we must make this disclaimer:

- ☯ **Do Not Use This Agreement 'As-Is.'**
- ☯ **This Agreement Is Not Legal Advice.**
- ☯ **Read it Thoroughly and Make All Appropriate Changes to Fit Your Requirements.**
- ☯ **You Should Have this Agreement Reviewed and Approved by a Qualified Attorney at Law Before Using It.**
- ☯ **JIAN Accepts No Liability for the Effectiveness of This Document For Your Purposes.**

Free Access to Attorneys, Accountants & Consultants in Your Area

We're building a network of business experts who are eager to help you when you need it. They can review your work, make suggestions, handle unique situations and introduce you to influential people. On our website you can search by expertise and location, then e-mail or jump straight to their website. Although they are professionals and charge for their services, most offer an initial consultation free of charge. They're in your area and you can contact them directly.

- ▪ Please visit our website under **Expert Referral Network**.

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Things change, laws change, the world changes... new ideas come along all the time. When you register, you can access our website to get updates and changes... like new and improved spreadsheets and documents. They can be downloaded directly to your computer.

- ▪ Please visit our website under **Updates**.
- ▪ Remember to bookmark our website: **www.JIAN.com**

Editing Your Sample Contract

Since this entire agreement is formatted in Word, you can edit it like any other Word document. You can jump from variable to variable by clicking the above ←→ green arrows (JIAN Menu) which will take you forward / backward and highlight the entire sample text identified within the "[ ]" brackets – simply edit / type-over with your information.

To make sure your have filled in all the variables, use Word's 'FIND' function to locate any "[ ]" which may contain an unedited variable.

- ▪ Click the icon in the JIAN menu above to turn the expert comments on/off.
- ▪ Upon completion, delete any unnecessary blank lines that remain.
- ▪ You may format this document any way you like.
- ▪ Delete this page.

Software Development Work for Hire Agreement

Effective Date	**[Date]**

BETWEEN	**[Company Legal Name]** ("[Company]" or "Client")
a	[State] Corporation
Located at	[Address]
	[City], [State] [Zip Code]
	[Telephone]

AND	**[Developer]** ("Developer")
a	[State] Corporation
Located at	[Address]
	[City, State Zip Code]
	[123-456-7890]

Summary

[Developer] desires to perform, and [Company] desires to have [Developer] perform, development consulting services as an independent Contractor to [Company]. [Developer], will assist in the development of the [Company] software title known as the [Software Title] (current working name) described in detail in Exhibit A attached to this Agreement (the "Project Description"). [Company] and [Developer] agree as follows:

Definitions

Confidential Information. Information and materials from [Company] and knowledge about the business, products, programming techniques, experimental work, customers, [Company]s and suppliers of [Company] and that all such knowledge, information and materials acquired, the existence, terms and conditions of this Agreement, and the Designs and Materials, are and will be the trade secrets and confidential and proprietary information of [Company]. Confidential Information will not include, however, any information which is or becomes part of the public domain through no fault of [Developer] or that [Company] regularly gives to third parties without restriction on use or disclosure.

Designs & Materials shall mean all designs, discoveries, inventions, products, computer programs, procedures, improvements, developments, drawings, notes, documents, information, correspondence and materials made, conceived or developed by [Developer] alone or with others which result from or relate to the Services.

Moral Rights means any right to claim authorship of a work, any right to object to any distortion or other modification of a work, and any similar right, existing under the law of any country in the world, or under any treaty.

1. Services

1.1 **Performance**. [Developer] agrees to use its best efforts to perform the development consulting services (the "Services") described in detail in Exhibit A to this Agreement (the "Project Description") prior to the completion dates specified in Exhibit A (the "Milestone Dates").

1.2 **Payment.** As sole compensation for the performance of the Services, [Company] will pay [Developer] for development services work performed, at the hourly development rates as stated in Exhibit A, up to the maximum fee of $[000,000]. Any expenses incurred by [Developer] in performing the Services will be the sole responsibility of [Developer]. Software tools to be used during the development effort will be provided to [Developer] by [Company] (see Tools to be provided to [Developer] in Exhibit A). [Developer] will invoice [Company] upon performing the designated Services. [Company] will pay each such invoice **no later than thirty (30) days** after its receipt. [Developer] will receive no royalty or other remuneration on the production or distribution of any products developed by [Company] or by [Developer] in connection with or based upon the Services.

2. Relationship of Parties

2.1 **Independent Contractor**. [Developer] is an independent Contractor and is not an agent or employee of, and has no authority to bind, [Company] by contract or otherwise. [Developer] will perform the Services under the general direction of [Company], but [Developer] will determine, in [Developer]'s sole discretion, the manner and means by which the Services are accomplished, subject to the requirement that [Developer] shall at all times comply with applicable law. [Company] has no right or authority to control the manner or means by which the Services are accomplished.

2.2 **Employment Taxes & Benefits.** [Developer] will report as income all compensation received by [Developer] pursuant to this Agreement. [Developer] will indemnify [Company] and hold it harmless from and against all claims, damages, losses and expenses, including reasonable fees and expenses of attorneys and other professionals, relating to any obligation imposed by law on [Company] to pay any withholding taxes, social security, unemployment or disability insurance, or similar items in connection with compensation received by [Developer] pursuant to this Agreement. [Developer] will not be entitled to participate in any plans, arrangements, or distributions by [Company] pertaining to any bonus, stock option, profit sharing, insurance or similar benefits for [Company]'s employees.

2.3 **Liability Insurance.** [Developer] will maintain adequate insurance to protect [Company] from the following:

(a)   claims under worker's compensation and state disability acts;

(b)   claims for damages because of bodily injury, sickness, disease or death which arise out of any negligent act or omission of [Developer]; and

(c)   claims for damages because of injury to or destruction of tangible or intangible property, including loss of use resulting therefrom, which arise out of any negligent act or omission of [Developer].

3. Property of [Company]

3.1 **Assignment of Ownership.** [Developer] hereby irrevocably transfers and assigns any and all of its right, title, and interest in and to Designs and Materials including but not limited to all copyrights, patent rights, trade secrets and Trademarks to [Company]. Designs and Materials will be the sole property of [Company] and [Company] will have the sole right to determine the treatment of any Designs and Materials, including the right to keep them as trade secrets, to file and execute patent applications on them, to use and disclose them without prior patent application, to file registrations for copyright or trademark on them in its own name, or to follow any other procedure that [Company] deems appropriate. [Developer] agrees:

(a)   to disclose promptly in writing to [Company] all Designs and Materials;

(b)   to cooperate and assist [Company] to apply for, and to execute any applications and/or assignments reasonably necessary to obtain, any patent, copyright, trademark or other statutory protection for Designs and Materials in [Company]'s name as [Company] deems appropriate; and

(c)   to otherwise treat all Designs and Materials as "Confidential Information." These obligations to disclose and keep confidential will survive any expiration or termination of this Agreement.

🔊 In the United States, the term "moral rights" typically refers to the right of an author to prevent revision, alteration, or distortion of her work, regardless of who owns the work. Moral rights as outlined in Visual Artists Rights Act of 1990 (VARA) also allow an author of a visual work to avoid being associated with works that are not entirely her own, and to prevent the defacement of her works. You can learn more here.

3.2   **Moral Rights Waiver.** [Developer] hereby irrevocably transfers and assigns to [Company] any and all Moral Rights that [Developer] may have in any Services, Designs and Materials or Products. [Developer] also hereby forever waives and agrees never to assert against [Company], its successors or licensees any and all Moral Rights [Developer] may have in any Services, Designs and Materials or Products, even after expiration or termination of this Agreement.

4.   Protection of Confidential Information

[Developer] acknowledges that [Developer] will acquire Confidential Information. [Developer] agrees to hold all such Confidential Information in strict confidence, not to disclose it to others or use it in any way, commercially or otherwise, except in performing the Services, to disclose it to [Developer]' employees only on a need-to-know basis and only to employees who have signed the Confidentiality Agreement, and not to allow any unauthorized person access to it, either before or after expiration or termination of this Agreement. [Developer] further agrees to take all action reasonably necessary and satisfactory to protect the confidentiality of the Confidential Information including, without limitation, implementing and enforcing operating procedures to minimize the possibility of unauthorized use or copying of the Confidential Information.

4.1   **Employees' Confidentiality Agreement** [Developer] will ensure that each of its employees who will have access to the Designs and Materials or Confidential Information of [Company] executes an agreement, the form of which has been approved by [Company] (the "Confidentiality Agreement"), acknowledging [Company]'s exclusive ownership and control of the Designs and Materials, obligating the employee to keep all Confidential Information confidential and not to use the Designs and Materials or Confidential Information in any way, commercially or otherwise, except in performing the Services, and transferring to [Company], and waiving any and all Moral Rights in the Services, Designs and Materials.

4.2   **Non-Circumvention.** In consideration of [Company]'s disclosure of Confidential Information, I shall not at any time, attempt in any manner to commercially exploit the proposed business concepts and plans of [Company] or any of the Confidential Information without [Company]'s prior written consent, that may be given or withheld by [Company] at it's sole discretion.

5.   Indemnification by Developer

[Developer] will indemnify [Company] and hold it harmless from and against all claims, damages, losses and expenses, including court costs and reasonable fees and expenses of attorneys, expert witnesses and other professionals, arising out of or resulting from, and, at [Company]'s option, [Developer] will defend [Company] against:

5.1   Any action by a third party against [Company] that is based on any claim that any Services

performed under this Agreement, or their results, infringe a patent, copyright or other proprietary right or violate a trade secret; and

5.2   Any action by a third party against [Company] that is based on any negligent act or omission or willful conduct of [Developer] or employees of [Developer] and which results in:

(i)   any bodily injury, sickness, disease or death;

(ii)   any injury or destruction to tangible or intangible property (including computer programs and data) or any loss of use resulting therefrom; or

(iii)   any violation of any statute, ordinance, or regulation.

6.   Expiration & Termination

6.1   **Breach.** Either party may terminate this Agreement in the event of a breach by the other party of this Agreement if such breach continues uncured for a period of ten (10) days after written notice.

6.2   **Expiration.** Unless terminated earlier, this Agreement will expire on the Completion Date**.**

7.   Effect of Expiration or Termination

Upon the expiration or termination of this Agreement for any reason:

7.1   Each party will be released from all obligations to the other arising after the date of expiration or termination, except that expiration or termination of this Agreement will not relieve [Developer] of its obligations under Sections 2, 3, 4, 5, 8, 9 and 10, nor will expiration or termination relieve [Developer] or [Company] from any liability arising from any breach of this Agreement; and

7.2   [Developer] will promptly notify [Company] of all Confidential Information, including but not limited to the Designs and Materials, in [Developer]' possession and, in accordance with [Company]'s instructions, will promptly deliver to [Company] all such Confidential Information.

7.3   In the event [Developer] is unable to complete initiated work as described in the milestone schedule, all completed milestones will be the property of [Company].

8.   Limitation of Liability

If you are the developer, you would want this clause included (change 'developer' to 'company'; however, if you are the entity hiring the developer, keep

IN NO EVENT SHALL [Company] BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE COMPANY HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

9.   Covenants

9.1   **Pre-existing Obligations.** [Developer] represents and warrants that [Developer] is not under any pre-existing obligation inconsistent with the provisions of this Agreement.

8.   General Provisions

◀⋙ The General Provisions that follow are fairly standard. These provisions enhance the balance of the Agreement by defining certain common issues such as notice, assignment, legal remedies, waiver, and attorney fees, etc..

8.1   **Independent Contractors.** The relationship between both parties established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to give either

party the power to direct and control the day-to-day activities of the other. Neither party is an agent, representative or partner of the other party. Neither party shall have any right, power or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture or partnership between the parties or to impose any liability attributable to such relationship upon either party.

📢 You may or may not want to make this deal public – at least limit that event by this agreement and work out if/how/when you want to do that later.

8.2 **Publicity**. Neither party will make any public announcement or issue any press release concerning the terms of this Agreement without the prior approval of both parties.

📢 Make it clear that you will not try to hire away each others employees. If you do or it happens then there is compensation built-in and you can avoid further legal proceedings.

8.3 **Non-Solicitation.** Neither party shall solicit for employment or hire the other's current or future employees, either directly or indirectly, during the Term of this Agreement, without obtaining the other's prior written approval. Should an employee change employment from one party to the other, the new employer shall pay the old employer a fee equivalent to Twenty Percent (20%) of the employee's new compensation, annualized for ☰ first year.

📢 You must decide which state governs this Agreement and where any legal action would be taken. Generally, it is your (company's) state of residence.

8.4 **Governing Law & Jurisdiction**. This agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of [State], without reference to conflict of law principles. The parties hereby expressly consent to the jurisdiction and venue of the federal and state courts within the state of [State]. Each party hereby irrevocably consents to the service of process in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to such party at its address set forth in the preamble of this Agreement, such service to become effective thirty (30) days after such mailing.

📢 This Agreement is intended to be the only Agreement and that no other documents or communications are binding. Therefore, it is very important to make sure that everything [Company] and [Company] have agreed to be included in this Agreement. Otherwise, it is as if it were not agreed to.

8.5 **Entire Agreement.** This Agreement, including the attached exhibits, constitutes the entire Agreement between both parties concerning this transaction, and replaces all previous communications, representations, understandings, and Agreements, whether verbal or written between the parties to this Agreement or their representatives. No representations or statements of any kind made by either party, which are not expressly stated in this Agreement, shall be binding on such parties.

📢 Any changes to this Agreement must be in writing and signed by the party against whom that writing is to be used.

8.6 **All Amendments in Writing.** No waiver, amendment or modification of any provisions of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom such waiver, amendment or modification is sought to be enforced. Furthermore, no provisions in either party's purchase orders or in any other business forms employed by either party will supersede the terms and conditions of this Agreement.

📢 All notices between the parties must be in writing and either delivered in person or by certified or registered mail, return receipt requested.

8.7 **Notices.** Any notice required or permitted by this Agreement shall be deemed given if sent by registered mail, postage prepaid with return receipt requested, addressed to the other party at the address

set forth in the preamble of this Agreement or at such other address for which such party gives notice hereunder. Delivery shall be deemed effective three (3) days after deposit with postal authorities.

🔊 In the event of a lawsuit or any legal proceeding involving this Agreement, the losing party will have to pay the winning party his or her costs and expenses, including reasonable attorney fees.

8.8 **Costs of Legal Action.** In the event any action is brought to enforce this Agreement, the prevailing party shall be entitled to recover its costs of enforcement including, without limitation, attorneys' fees and court costs.

🔊 Legal remedies, i.e., money damages, may not be sufficient; therefore, both parties agree to equitable remedies such as an injunction where the breaching party would be required to do or not to do something.

8.9 **Inadequate Legal Remedy.** Both parties understand and acknowledge that violation of their respective covenants and Agreements may cause the other irreparable harm and damage, that may not be recovered at law, and each agrees that the other's remedies for breach may be in equity by way of injunctive relief, as well as for damages and any other relief available to the non-breaching party, whether in law or in equity.

🔊 Assuming the parties wish to use Arbitration in the event of a dispute, the following section should be included. You take your chances with an arbitrator, but it keeps legal costs down and keeps you out of a drawn out legal process.

8.10 **Arbitration.** Any dispute relating to the interpretation or performance of this Agreement shall be resolved at the request of either party through binding arbitration. Arbitration shall be conducted in [County], [State] in accordance with the then-existing rules of the American Arbitration Association. Judgment upon any award by the arbitrators may be entered by any state or federal court having jurisdiction. Both parties intend that this Agreement to arbitrate be irrevocable.

🔊 Merely delaying to bring an action that one party has a right to bring does not cause that party to lose or waive his right to pursue that action.

8.11 **Delay is Not a Waiver.** No failure or delay by either party in exercising any right, power or remedy under this Agreement, except as specifically provided in this Agreement, shall operate as a waiver of any such right, power or remedy.

🔊 Neither party will be blamed if there is a problem resulting from something beyond its control, such as an earthquake, flood, war.

8.12 **Force Majeure.** In the event that either party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of any Act of God, strike, fire, flood, governmental acts, orders or restrictions, Internet system unavailability, system malfunctions or any other reason where failure to perform is beyond the reasonable control and not caused by the negligence of the non-performing party (a "Force Majeure Event"), the party who has been so affected shall give notice immediately to the other party and shall use its reasonable best efforts to resume performance. Failure to meet due dates resulting from a Force Majeure Event shall extend such due dates for a reasonable period. However, if the period of nonperformance exceeds sixty (60) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been affected may, by giving written notice, terminate this Agreement effective immediately upon such notice or at such later date as is therein specified.

🔊 This section limits the ability of either party to transfer any of its rights or delegate any of its duties to third parties.

🔊 You want to make sure that you can sell your business along with all of the relationships you have developed along the way. (Often these relationships can add tremendous value to your business

8.13 **Assignability & Binding Effect**. Except as expressly set forth within this Agreement, neither party may transfer or assign, directly or indirectly, this Agreement or its rights and obligations hereunder without the express written permission of the other party, not to be unreasonably withheld; <u>provided</u>, <u>however</u>, that both parties shall have the right to assign or otherwise transfer this Agreement to any parent, subsidiary, affiliated entity or pursuant to any merger, consolidation or reorganization, provided that all such assignees and transferees agree in writing to be bound by the terms of this Agreement prior to such assignment or transfer. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

8.13 **Non-Assignability & Binding Effect**. Except as otherwise provided for within this Agreement, neither party may assign any of its rights or delegate any of its obligations under this Agreement to any third party without the express written permission of the other. Any such assignment is deemed null and void.

8.14 **Severability.** If any provisions of this Agreement are held by a court of competent jurisdiction to be invalid under any applicable statute or rule of law, they are to that extent to be deemed omitted and the remaining provisions of this Agreement shall remain in full force and effect.

8.15 **Cumulative Rights.** Any specific right or remedy provided in this Agreement will not be exclusive but will be cumulative upon all other rights and remedies described in this section and allowed under applicable law.

8.16 **Headings.** The titles and headings of the various sections and sections in this Agreement are intended solely for convenience of reference and are not intended for any other purpose whatsoever, or to explain, modify or place any construction upon or on any of the provisions of this Agreement.

8.17 **Counterparts.** This Agreement may be executed in multiple counterparts, any one of which will be considered an original, but all of which will constitute one and the same instrument.

8.18 **Survival of Certain Provisions.** The warranties and the indemnification and confidentiality

obligations set forth in the Agreement shall survive the termination of the Agreement by either party for any reason.

Understood, Agreed & Approved

We have carefully reviewed this contract and agree to and accept all of its terms and conditions. We are executing this Agreement as of the Effective Date above.

[Company]:   [Developer]

_____   _____
[Owner/Founder], [Title]   [Developer]

_____   _____
Title   Title

_____   _____
Date   Date

Exhibit A

Project Description

This project description is issued under and subject to all of the terms and conditions of the Software Development Work for Hire Agreement by and between [Company] and [Developer].

The development work will be performed on a time and material basis, not a fixed cost basis. [Company] will invoice [Company] for periodically for actual applied hours related to the project. In the event that the development work is performed in less time than in the initial estimates, [Company] will be invoiced for applied hours.

Services to be performed and results to be achieved.
[Developer] will provide the following services to [Company] in support of the development of [Software Title] (working name):

🔊 God is in the details…

1) [Developer] will write and test installer programs for [Software Title].

2) [Developer] will write and test six installer programs as described in the Requirements for Installers for [Software Title] (Exhibit B).

🔊 You want your developer(s) to adhere to certain software coding standards – click here to learn more about them and get the coding standards applicable to the code your developer(s) will be using for this project. Make sure they write clean documented code that can be understood and further developed in the future by other programmers.

3) Software must adhere to the "GNU Coding Standards" as written and revised from time to time by Richard Stallman and other GNU Project volunteers.

4) Deliver a "beta test" version suitable for select [Company] customers for testing & evaluation

5) xxx

Start Date

[Xxx, xx 20xx]

Estimated Completion Date
[Xxx, xx 20xx]

Primary Contact
For questions of clarity and continuity throughout the project, [Developer]' primary point of contact at [Company] will be [Product Manager], Product Manager available at 123-456-7890 / xxx@xxx.com.

Tools to be provided to [Developer]
- Licensed copy of .Net
- Xxx
- Xxx
-

Milestone Schedule

[Developer] will provide the installers to [Company] in a timely manner as defined in the milestone schedule below.

Deliverables   **Date Due**
- Requirements Delivered to [Developer] by [Company]   Xxx, xx 20xx
- Tools delivered to [Developer] by [Company]   Xxx, xx 20xx
- Prototype Installers delivered to [Company] by [Developer]   Xxx, xx 20xx
- Alpha versions of Installers to [Company] by [Developer]   Xxx, xx 20xx
- Beta version of Installers to [Company] by [Developer]   Xxx, xx 20xx
- Final versions of Installers to [Company]   Xxx, xx 20xx

Fee Schedule

Fees are based on the following [Developer] rate schedule:

- Project Management $150/hr
- Project Leader $60/hr
- Team member $40/hr
- QA $40/hr
- Support Cost $40/hr
- [Developer] to invoice [Company] [periodically/monthly] for work performed.

Understood & Agreed

[Company]:   [Developer]

_____   _____
[Owner/Founder], [Title]   [Developer]

_____   _____
Title   Title

_____   _____
Date   Date