**AGREEMENT TO RETAIN DEVELOPER\_PUBLISHER**

This Agreement to Retain Developer\_Publisher (the “Agreement”) is effective [DATE],

**BETWEEN: [YOUR COMPANY NAME]** (the "Publisher"), a company organised and existing under the laws of the [COUNTRY], with its head office located at:

 [YOUR COMPLETE ADDRESS]

**AND: [DEVELOPER NAME]** (the "Developer"), a company organised and existing under the laws of the [COUNTRY], with its head office located at:

 [COMPLETE ADDRESS]

**RECITALS:**

PUBLISHER wishes to retain the Developer to perform the services described in this Agreement, relating to the development of the title known by the working name ("the Title"); and

Developer wishes to perform these services in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises, conditions, covenants and warranties herein contained, the parties agree as follows:

# DEVELOPMENT FEE

## 1.1 PUBLISHER agrees to pay Developer a total fee of [AMOUNT] [COUNTRY] to perform the work described herein and, in the delivery, and payment schedule attached hereto as Annexure A (hereafter the "Delivery Schedule").

## 1.2 This fee shall be paid to Developer in the form of separate payments made within [NUMBER] business days of PUBLISHER's acceptance of the deliverable items identified in the Delivery Schedule (hereafter the "Deliverable Items") according to the process set forth in section 2 below.

# DEVELOPMENT AND APPROVAL PROCESS

## 2.1 In consideration of the fee set forth above, Developer agrees to provide the services described in this Agreement and Annexure A and to deliver the Deliverable Items described in Annexure A. Developer shall perform such services subject to the direction of PUBLISHER and shall meet with PUBLISHER's representatives to discuss progress on the Deliverable Items as per the PUBLISHER’S request.

## 2.2 Developer shall deliver the Deliverable Items identified in Annexure A to PUBLISHER for approval, in PUBLISHER's sole discretion, in the manner and on the dates specified in the Delivery Schedule. Upon receipt of each Deliverable Item, PUBLISHER shall, within [NUMBER] business days, provide Developer with either:

## 2.3 written acceptance of the Deliverable Item, which will trigger PUBLISHER's payment obligation related to the Deliverable Item (or combination of Deliverable Items where more than one Deliverable Item's acceptance is required to trigger a payment, and all such deliverable Items have been accepted); or

## 2.4 a written list of changes that must be made before PUBLISHER will accept the Deliverable Item; or

### 2.4.1 notice that this Agreement is terminated as further provided below.

## 2.5 If PUBLISHER fails to provide any of the notices provided for in [SPECIFY] above within [NUMBER] business days, then Developer shall contact PUBLISHER by fax or telephone to indicate the failure to provide any action on the Deliverable Item, and PUBLISHER shall have one business day to provide Developer with the notice contemplated under either [SPECIFY]. If PUBLISHER fails to provide such notice within this final one business day period, the Deliverable Item shall be considered acceptable as if PUBLISHER had provided written approval under (a) above.

## 2.6 If changes are required by PUBLISHER before PUBLISHER will accept the Deliverable Item, then PUBLISHER shall notify Developer in writing of the required changes, and Developer shall resubmit the Deliverable Item within [NUMBER] days of the date of such notification. The step: set forth above shall be repeated until such Deliverable Item is accepted or until PUBLISHER terminates the agreement. PUBLISHER shall be entitled to terminate this Agreement if Developer has not provided an acceptable Deliverable Item within [NUMBER] days of the date the Deliverable Item was originally due to be delivered according to the Delivery Schedule. If PUBLISHER terminates, for this reason, PUBLISHER shall be entitled to reimbursement from Developer for any fees paid to Developer in excess of the actual demonstrable cost to Developer for developing the Deliverable Items up to the date of termination.

## 2.7 PUBLISHER shall have the right, at PUBLISHER's expense, to send PUBLISHER personnel to Developer's place of business upon reasonable notice during normal business hours for consultation with respect to the development of the Deliverable Items.

## 2.8 PUBLISHER shall have the right, in its sole discretion, to approve any subcontractors or licensors from whom Developer obtains services or rights which pertain to the Deliverable Items. All such services shall be rendered only in connection with an agreement rendering the performance of such services work for hire for PUBLISHER and shall expressly acknowledge that PUBLISHER owns all rights to the product of any such services, including without limitation the copyright, with appropriate waivers of all moral rights in work performed.

## 2.9 Subject to payment of the fees set forth in section 1 above upon acceptance of the relevant Deliverable Items, Developer shall be responsible for all development costs associated with Developer's work on the Deliverable Items.

## 2.10 It is understood and agreed that PUBLISHER shall have the right to all underlying line art, including all drawings, paintings and other artwork created relating to the Deliverable Items. Such underlying artwork shall be delivered to PUBLISHER on or before the date that the final Deliverable Item is due to be delivered to PUBLISHER.

# PROPRIETARY RIGHTS

## 3.1 The Deliverable Items and all revisions thereof, if any, and all works created for the Deliverable Items are written, created and commissioned at PUBLISHER's request and direction, and shall be considered works-for-hire.

## 3.2 PUBLISHER shall be considered the creator of the Deliverable Items and all rights to the Deliverable Items and underlying artwork and other works, including but not limited to the copyright, shall be the property of PUBLISHER or its assignee. Developer shall not acquire any right, title or interest in or to the Deliverable Items in any format through the exercise of any rights or performance of any obligations by Developer hereunder. PUBLISHER shall have the right to revise the Deliverable Items, and Developer shall not have any right to make revisions of the Deliverable Items without PUBLISHER's prior written consent.

## 3.3 To the extent that the rights to the Deliverable Items and underlying artwork and other works does not automatically reside in PUBLISHER, Developer has the authority to assign PUBLISHER any and all rights Developer may now have or may be deemed to have in the future with respect to the Deliverable Items, including but not limited to the copyright to the Deliverable Items and any and all portions thereof and underlying works.

## 3.4 PUBLISHER retains the exclusive rights to distribute, market, sell, display, advertise, and promote the Deliverable Items and underlying artwork and works contained therein in perpetuity throughout the universe. The timing and manner of exercise of these rights shall be solely within the discretion of the PUBLISHER.

# Warranties and Indemnification

## 4.1 Developer warrants and represents that, except as to portions of the Deliverable Items or underlying artwork provided by PUBLISHER, Developer created all of the content to be incorporated into the Deliverable Items, and all portions of the Deliverable Items are original and not in the public domain.

## 4.2 Developer represents, warrants and covenants that it has all right, power and authority to enter into this Agreement and to grant the rights granted herein without violating any other agreement or commitment of any sort; that it has no outstanding agreements or understandings, written or oral, concerning the artwork and other underlying works to be incorporated in the Deliverable Items that conflict with the rights granted herein; that Developer has not previously sold, licensed, encumbered or pledged the Deliverable Items or any portion thereof as security to any third party; and that the Deliverable Items and all programming, artwork and other works incorporated therein will not infringe or constitute a misappropriation of any trademark, patent, copyright, trade secret or another proprietary right of any third party and PUBLISHER's use of the Deliverable Items and their component and underlying parts shall not violate any rights of any kind or nature of any third party. Developer further warrants that it will proceed expeditiously to complete the Deliverable Items.

## 4.3 Developer shall defend, indemnify and hold harmless PUBLISHER, its successors, assigns, affiliates, licensors, licensees and sublicensees, and their respective officers, directors, agents and employees, from and against any action, suit, claim, damages, liability, costs and expenses (including reasonable attorneys' fees), arising out of or in any way connected with any breach of any representation or warranty made by Developer herein or any claim that the Deliverable Items or underlying programming, artwork or work incorporated therein infringe any intellectual property rights or other rights of any third party. PUBLISHER shall give Developer prompt notice of any such claim or of any threatened claim.

## 4.5 If PUBLISHER receives any information that would lead a reasonable person to believe that there has been a breach of Developer's warranties as set forth herein, PUBLISHER shall have the right to withhold from any payments due to Developer under this Agreement, and deposit in an interest-bearing account with a commercial bank, reasonable amounts as security for Developer's obligations hereunder, unless Developer posts other security reasonably acceptable to PUBLISHER. Upon resolution of the claim, the amount in this account including accrued interest thereon shall be distributed to Developer after deductions of any amounts required to be paid to PUBLISHER or third parties under this indemnity.

## 4.6 Neither Developer nor PUBLISHER shall agree to the settlement of any such claim, demand or suit prior to final judgement  thereon without the consent of the other party, whose consent shall not be unreasonably withheld.

## 4.7 PUBLISHER hereby represents, warrants and covenants that it has all right, power and authority to enter into this Agreement. PUBLISHER shall defend, indemnify and hold harmless Developer, its successors, assigns, affiliates, licensees and sublicensees, and their respective officers, directors, agents and employees, from and against any action, suit, claim, damages, liability, costs and expenses (including reasonable attorneys' fees), arising out of or in any way connected with any breach of any representation or warranty made by PUBLISHER herein. Developer shall give PUBLISHER prompt notice of any such claim or of any threatened claim.

## 4.8 The parties' indemnification obligations set forth in the foregoing paragraphs shall survive termination of this Agreement.

# Termination

## 5.1 Without prejudice to any other rights or remedies available to PUBLISHER, PUBLISHER shall have the right, in its sole discretion either with or without cause, to terminate this Agreement upon [NUMBER] days written notice to Developer. Upon such termination, Developer's sole remedy shall be to retain all fees paid to it under Annexure A; provided, however, that if Developer has incurred expenses in performing work on a subsequent Deliverable Item which expenses have not been paid for by PUBLISHER as part of the fee already paid to Developer, then PUBLISHER shall reimburse Developer for such expenses up to but not exceeding the amount that PUBLISHER would have paid Developer upon acceptance of the next Deliverable Item.

## 5.2 This Agreement shall be subject to termination by Developer, by written notice to PUBLISHER, where there has been a default in the due observance or performance of any material covenant, condition or agreement herein by PUBLISHER, and such default has continued for a period of [NUMBER] days after written notice specifying the same shall have been given by Developer.

## 5.3 In the event of any termination of this Agreement, PUBLISHER shall own all work completed or then in development by Developer, and Developer shall immediately deliver to PUBLISHER any and all materials related to the Deliverable Items, including without limitation programming, artwork, and other underlying work created for the Deliverable Items, including all work in progress in all formats, whether electronic or in any other form.

## 5.4 Termination of this Agreement shall not extinguish any of PUBLISHER's or Developer's obligations under this Agreement which by their terms continue after the date of termination. Termination of this Agreement also shall not affect any rights, remedies or claims, which the parties may have in law or equity.

# CONFIDENTIAL INFORMATION

## 6.1 Developer shall not disclose to any party not bound by this agreement, without the prior written consent of PUBLISHER, the Deliverable Items or components thereof, provided, however, that Developer may disclose to subcontractors which sign confidentiality agreements with Developer such portions of the Deliverable Items as may be reasonably necessary to perform Developer's obligations under this Agreement.

## 6.2 Neither PUBLISHER nor Developer shall, without the prior written consent of the other party, disclose to anyone any information specifically designated in writing by the other party as confidential proprietary or business information of the other party or its parent or affiliated companies, either during or after the time this Agreement is in effect. The information shall not be deemed confidential if it:

### is now or hereafter becomes, through no act or omission on the part of the disclosing party, generally known or available within the relevant industry, or is now or later enters the public domain through no act or omission on the part of disclosing party;

### was acquired by the disclosing party before receiving such information from the other party and without restriction as to use or disclosure;

### is hereafter rightfully furnished to the disclosing party by a third party, without restriction as to use or disclosure;

### is information which the disclosing party can document was independently developed by the disclosing party;

### is required to be disclosed pursuant to law, provided the disclosing party uses reasonable efforts to give the other party reasonable notice of such required disclosure;

# ASSIGNMENT

This Agreement and the rights granted hereunder are personal to Developer and shall not be assigned without the prior written consent of PUBLISHER. This Agreement shall be mutually beneficial and legally binding for all successors and assigns of the Parties.

# ENTIRE AGREEMENT

This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and may not be modified or amended except by written agreement executed by the parties hereto.

If any provision of this Agreement is declared to be invalid, void or unenforceable, (a) the remaining provisions of this Agreement shall continue in frill force and effect, and (b) the invalid or unenforceable provision shall be replaced by a term or provision that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term or provision.

# LAW/LEGAL ACTION

This Agreement shall be governed by the laws of [COUNTRY] applicable to agreements made and to be wholly performed therein (without reference to conflict of laws). In any action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and expenses.

# INDEPENDENT CONTRACTOR

Developer shall be deemed to have the status of an independent contractor, and nothing in this Agreement shall be deemed to place the parties in any other kind of relationship. Developer shall be responsible for any withholding taxes, payroll taxes, disability insurance payments, unemployment taxes and other similar taxes or charges on the payments received by Developer hereunder.

# NOTICE

The address of each party hereto as set forth below shall be the appropriate address for the mailing of notices, checks and statements, if any, hereunder. All notices which either party is required or may desire to serve upon the other party may be served personally or by first class certified or registered mail (postage prepaid), reputable commercial overnight courier, or by facsimile transmission. Notice sent by certified or registered mail shall be deemed effective three days after dispatch. Notice by commercial overnight courier shall be effective one day following dispatch. Notice by facsimile transmission or personal delivery shall be effective upon receipt. Notices to PUBLISHER shall be sent to the attention of the Executive Producer assigned to the Title by PUBLISHER, with a copy to the General Counsel. Notices to Developer shall be sent to the attention of [SPECIFY]. Either party may change its mailing address by written notice to the other.

# NO BROKERS

All negotiations relative to this Agreement have been carried on by the parties directly, and in good faith, without the intervention of any person as a result of any act of either party (and, so far as known to either party, without the intervention of any such person) in such manner as to give rise to any valid claim against the parties hereto for brokerage commissions, finder's fees or other like payment.

# WAIVER

No waiver by either party, whether express or implied, of any provision of this Agreement shall constitute a continuing waiver of such provision or a waiver of any other provision of this Agreement. No waiver by either party, whether express or implied, of any breach or default by the other party, shall constitute a waiver of any other breach or default of the same or any other provision of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly Authorised representatives on the date set forth above.

# PUBLISHER DEVELOPER

Authorised Signature Authorised Signature

Print Name and Title Print Name and Title

**ANNEXURE A**

 **DESCRIPTION OF SERVICES TO BE PERFORMED:**

|  |  |  |
| --- | --- | --- |
| Date | Deliverable Item | Amount to be Paid UponAcceptance |
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