**DEVELOPMENT AGREEMENT**

This Development Agreement (hereinafter „**Agreement**“) is made on the last date of signature below between:

**[insert name of Party A, B, C, D and/or E in bold]**, a company incorporated in [INSERT: country] and registered in commercial registry under number [INSERT: registration number], whose registered office is at [INSERT: address] (hereinafter „**Company**“); and

**[insert name of Contractor in bold]** *[COMMENT: Contractor may be one of the Parties, their Affiliated Entity or a third Party.][TIP: if the Contractor is a third Party, it must be listed in Annex “List of Third Parties” of the Multi-Party Collaboration Framework Agreement]*, a company incorporated in [INSERT: country] and registered in commercial registry under number [INSERT: registration number], whose registered office is at [INSERT: address] (hereinafter „**Contractor**“); and

hereinafter also referred to individually as „**Party**“ and collectively as „**Parties**“.

WHEREAS:

1. Company is in the business of, among other things, [manufacturing, distributing, licensing, and promoting products and services in the field of] [INSERT: Company’s industry or field of activity];
2. Company has certain business ideas, models and concepts, which it intends to realise by creating certain solutions;
3. Contractor has the financial and technical capabilities, competence, skills, knowledge and technology required to develop certain solutions in the quantity, price, and specifications as anticipated by the Company;
4. Company wishes to engage the Contractor and the Contractor wishes to work with the Company in developing certain solutions for its benefit;

IT IS AGREED AS FOLLOWS:

1. **Definitions**

## Capitalized words and phrases used in this Agreement shall have the same meanings as are ascribed to them in the Framework Agreement, unless new words or expressions are introduced in this Agreement. *[TIP: leave this clause in if you want the capitalised words defined in the Multi-Party Collaboration Framework Agreement to have the same meaning in this Agreement. Otherwise this Agreement uses its own definitions.]*

## In this Agreement, unless inconsistent with or otherwise indicated by the context, the following expressions have the meaning set opposite below:

|  |  |
| --- | --- |
| **Agreement:** | this document, including its Annexes and sub documents, as amended from time to time in accordance with this Agreement. |
| **Deliverables:** | tangible or intangible objects in any form and media (even if they are unfinished or constitute only an intermediate stage of a final outcome), whether or not they can be protected by Intellectual Property Rights, which are created (i) upon performance of the Agreement by or on behalf of the Contractor solely or in collaboration with others, or (ii) outside the scope of the Agreement and used by or on behalf of the Contractor for the performance of the Agreement (including any data and items that are substantially based on the Company’s confidential information, experience, know-how, earlier research or the work of Company’s other contractors in the interest of the Company). |
| **Error:** | any non-conformity of the Works with Specifications. |
| **Framework Agreement:** | the Multi-Party Collaboration Framework Agreement concluded between [some of] the Parties on [INSERT: date of entry into force] |
| **Services:** | any processes and activities carried out by or on behalf of the Contractor that entail value for the Company. |
| **Solution:** | a good, process, device or other item (including a part or element thereof or a combination or integration thereof) that is the result or outcome of the Works performed under this Agreement, as further described in the specifications in the attached Annex “Specifications”. The term “Solution” shall also include any updates to or enhancements thereof, as well as any new version of, or functional replacement for (regardless of price or performance) the Solution. |
| **Transfer Event:** | the moment at which the ownership and Intellectual Property Rights in and to any Works and Solution are passed from Contractor to Company. The Transfer Event may occur at any of the following moments, whichever occurs first: (1) creation of the Solution; (2) recording the Solution on the data media of the Company or otherwise incorporating it into the Company’s information systems; (3) handing the Solution over, making it available or otherwise delivering it to the Company; (4) acceptance of the Solution by the Company; (5) Contractor has received full remuneration for the Solution from the Company. *[TIP: Choose suitable options.]* |
| **Worker:** | employee, subcontractor or other person that the Contractor uses for the performance of Works. |
| **Works:** | all the Services and Deliverables that are necessary to develop the Solution in accordance with this Agreement. |

1. **The object and scope of the Agreement**

## This Agreement governs the conditions under which Contractor can perform Works and sell the Solutions to the Company.

## This Agreement is a sub-agreement to the Framework Agreement and thus subject to the terms and conditions thereof. In case of contradiction, the terms and conditions of the Framework Agreement shall prevail.

1. **Mutual obligations**
   1. Parties hereby undertake to:
      1. perform the Agreement with due professional care and diligence in accordance with good industry practice and the provisions of the applicable laws.
      2. exercise their rights in good faith, avoiding damage to the other Party.
      3. contribute to the performance of the Agreement by creating the required conditions, which are either obligatory for the Parties or the creation of which depends on the Party concerned.
      4. assure the timely adoption of all the decisions, which are needed to perform under the Agreement.
2. **Contractor’s obligations**
   1. Contractor hereby undertakes to:
      1. develop the following Solution: [INSERT: description of the Solution, e.g. function, outlook, characteristics etc].
      2. choose the tools and other means, technology and methodology for performing the Works. When making the choice, the Contractor shall act as a professional who takes due account of the Company’s presumptive or disclosed interests in respect of the timing, scope and pricing of the Works.
      3. perform all Works pursuant to the Agreement, including such Works that are not specifically mentioned in the Agreement but can be reasonably inferred from the Agreement as being required for attaining Company’s acceptance of the Solutions as if such Works were expressly mentioned in the Agreement. All Works must be in compliance with the applicable laws, standards and the good practice in the applicable field of activity.
      4. assure that the Works and Solutions comply with the additional specifications in the attached Annex “Specifications” (including quantity, quality etc) and any applicable industry standards. *[TIP: Here the Parties may specify exactly which standards the Solution must be in compliance with.]*
      5. perform the Works and deliver the Solution to the Company in accordance with [*OPTION:* the time schedule provided in Annex “Time schedule”.][*OPTION:* the time schedule agreed in accordance with [INSERT: name the methodology that is applied for developing the Solution, e.g. SCRUM or other agile methodologies in software development.]*[TIP: It is advisable to describe the methodology applied, in order to avoid disputes and misunderstandings.]*].
      6. fully co-operate with other contractors of the Company who are or may become engaged in development, production or further development, enhancement and making interoperable of the Solutions.
3. **Company’s obligations**
   1. Company hereby undertakes to:
      1. grant acceptance to the Works performed by the Contractor in conformity with the Agreement.
      2. remunerate the Contractor for the Works and Solutions accepted by the Company in conformity with the Agreement;
      3. fulfil all dependencies expressly agreed or otherwise reasonably deriving from the nature of the relationship of the Parties.
4. **Delivery**

*[OPTION: the clauses covered under this option should be used for delivery of non-tangible Works and/or Solution, e.g. Software.]*

## [Upon completion of the Works, Contractor shall deliver and hand over the Works to the Company for acceptance.

## Delivery of the Works shall be deemed to have occurred upon the moment of handing over or making available the completed Works to the Company. Contractor is obliged to sign an instrument of delivery and acceptance upon delivery in written form, if Company has required it to do so, in which case the delivery shall be deemed to have occurred as of the act of signing by the Contractor.

## Acceptance of the Works shall be deemed to have occurred, if the Company has not submitted any pretensions or notices concerning Errors within 30 days after the delivery of the Works. If Company has required the Contractor to sign an instrument of delivery and acceptance upon delivery in writing, the acceptance shall be deemed to have occurred as of the act of signing by the Company.

## If the Contractor receives pretensions or notices concerning Errors from the Company within 30 days after the delivery of the Works, the Contractor must eliminate the Errors and redeliver the Works to the Company within a time period that is reasonable to eliminate such kind of Errors.]

## Contractor shall bear all risk of damage or loss until the Works and/or Solutions are delivered to the Company.

*[OPTION: the clauses covered under this option should be used for delivery of tangible Works and/or Solution.]*

## Contractor will arrange for delivery of the Works and Solution by carrier chosen by the Company. Delivery to Company will occur when the Company collects (or arranges collection of) Works or Solutions from the carrier, unless Parties agreed upon different delivery arrangements.

## Company shall pay reasonable shipping costs of the Works and/or Solutions in accordance with its shipping instructions, but the Contractor shall be responsible for packaging, shipping and safe delivery and shall bear all risk of damage or loss until the Works and/or Solutions are delivered to the Company's address.

## Company, upon receiving possession of the Works and/or Solutions, shall have a reasonable opportunity to inspect the Works and/or Solutions to determine if they conform to the requirements of this Agreement. If Company, in good faith, determines that all or a portion of the Works and/or Solutions contain Errors or are otherwise non-conforming, Company may return the Works and/or Solutions to Contractor at Company's expense. Company must provide a notice to Contractor of the reason for rejecting the Works and/or Solutions. Contractor will have [INSERT: number of days] days from the return of the Works and/or Solutions to remedy such Errors and non-conformity under the terms of this Agreement.

1. **[Ownership and Intellectual Property Rights**

*[COMMENT/TIP: this whole clause of “Ownership and Intellectual Property Rights” should be included only if the Contractor is an Affiliate Party or third party (and not a Party). Otherwise the respective clauses from the Framework Agreement shall apply (generation of Results and any rights therein and thereto).]*

* 1. The Contractor undertakes to promptly make full written disclosure to the Company of any Works generated, modified or improved by Contractor or on its behalf under the Agreement. All these Works will rest with the Company, unless expressly agreed otherwise herein.
  2. The Contractor hereby agrees and certifies that the ownership and transferrable Intellectual Property Rights in and to Works and Solution and any part or element thereof are considered to be automatically transferred to and shall automatically become the sole property of the Company upon the occurrence of Transfer Event. The Contractor undertakes to deliver and assign (or cause to be assigned) and hereby irrevocably assigns these rights in and to the Works and Solution fully to the Company as of the Transfer Event.
  3. To the maximum extent permitted by applicable law, all non-transferrable Intellectual Property Rights in and to the Works are considered to be automatically, irrevocably and [non-exclusively][exclusively] licensed to the Company upon the occurrence of the Transfer Event. The license is world-wide, transferrable, perpetual, royalty-free and unrestricted in terms of any persons. The license also includes the right to create derivative results, grant sub-licenses, include in databases and other collections or compilations, use individual parts of the Works separately from the whole, to practice any method related thereto and use all other rights and consents, which accompany with or otherwise relate to the non-transferrable Intellectual Property Rights in any jurisdiction. The license shall be valid until the end of term of protection of the licensed rights.
  4. If there is a Work or a group of Works, including Solution, or parts or elements of thereof, in which case any of the Intellectual Property Rights subsisted therein or thereto cannot be transferred to the Company, then all such Intellectual Property Rights shall be licensed to the Company in the same terms and conditions as the license provided in clause [7.3] above, unless Parties conclude a separate license agreement for such Works. This alternative may be used only upon the Company’s prior consent at least in a format which can be reproduced in writing.
  5. The transfer of rights and grant of licenses in and related to the Works and Solution or any parts or elements thereof, as provided herein, shall be deemed to have been validly occurred without the Parties being obliged to grant any consents, to conduct any acts of disposal or to sign any documents in addition to those incorporated in the Agreement, unless expressly provided otherwise in the Agreement or required by applicable laws. However, upon Company’s request, Contractor is obliged to confirm transfer of ownership and Intellectual Property Rights or the licensing thereof to the Company within 7 calendar days as of the receipt of the corresponding request from the Company.
  6. To the maximum extent permitted by applicable law, the Contractor shall (i) not alter, modify, reverse engineer, reverse assemble, decompile, disassemble or otherwise use or exploit the Works or any part or element thereof, in whole or in part, and (ii) waive, stop and refrain from exercising and enforcing any ownership and Intellectual Property Rights in and to the Works and any part or element thereof as of the moment of Transfer Event, and (iii) sign a confirmation thereon, if requested by the Company.]

1. **Workers**
   1. [Contractor may use only Workers who have been approved by the Company upon the Contractor’s prior notice, both the Company’s approval and Contractor’s notification fixed at least in a format which can be reproduced in writing. Making any changes in the composition of Workers (additional Workers, replacements, discontinuances etc) shall also be subject to the Company’s prior consent at least in a format which can be reproduced in writing. *[COMMENT/TIP: this clause should be included only if the Contractor is an Affiliate Party or third party (and not a Party). Otherwise the respective clauses from the Framework Agreement shall apply (use of personnel, Key Workers etc).]*
   2. The Contractor agrees to impose on the Workers the same obligations as imposed upon the Contractor under the Agreement, including, but not limited to, good industry practices, due care and security, protection of Confidential Information, protection, transfer and licensing of Intellectual Property Rights, and warranties.
   3. The Contractor’s execution of any subcontracts for the purposes of performing this Agreement[ is subject to Contractor’s prior approval at least in a format which can be reproduced in writing and *[COMMENT/TIP: use this specification only if the Contractor is an Affiliate Party or third party (and not a Party).*] will not relieve, waive or diminish any obligation that the Contractor may have towards the Company under the Agreement. The Contractor shall remain responsible and liable for the (in)activity and conduct of the Workers as if it were its own.
2. **[Payment**

*[COMMENT/TIP: this whole clause of “Payment” should be included only if the Contractor is an Affiliate Party or third party (and not a Party). Otherwise the respective clauses from the Framework Agreement shall apply (Budget, Payment Plan, Financial Contributions etc).]*

* 1. The Company shall remunerate Contractor based on [an hourly fee][fixed fee] as follows: [INSERT: description of the pricing and payment terms]. Contractor shall issue the respective invoice to the Company by [INSERT: due date]. The payment shall be made in accordance with Contractor’s invoice to Contractor’s bank account by [INSERT: due date].
  2. The remuneration does not include any applicable taxes but it does include compensation for (i) any transfer and assignment of ownership and Intellectual Property Rights in and to the Works and Solution and any part or element thereof and (ii) any transfer, assignment, waiver or licenses of Intellectual Property Rights in and to the Works and Solution any part or element thereof.
  3. If any Party fails to make any payment due to another Party under this Agreement, without prejudice to any other right or remedy available to that other Party, that other Party may charge interest (both before and after any judgement) on the amount outstanding, on a daily basis [OPTION:] [at the rate of [4] per cent of the due payment per annum (365 days)] [OPTION:] [in accordance with the Estonian Law of Obligations Act]. That interest will be calculated from the date of last date for payment to the actual date of payment, both dates inclusive, and will be compounded quarterly. The Party that is late paying will pay that interest on demand.
  4. Contractor agrees to pay all taxes and fees levied or based upon the development and sales of Solution and Works under this Agreement, or any part thereof, including any property, sales or use tax, except for any tax levied or based upon the income of Company.
  5. In addition to any other right or remedy provided by law, if Company fails to pay for the Products when due, Contractor has the option to treat such failure to pay as a substantial breach of this Agreement, and may terminate this Agreement and/or seek legal remedies.]

1. **Warranties and limitations of liability**
   1. Contractor grants to Company, and hereby permits Company to pass through to each Customer and End User, the following sole and exclusive warranties concerning the Solution or Customer License, Documentation, Support Services and other services delivered by Contractor to Company pursuant to this Agreement, which warranties supersede any other oral or written representations, warranties, marketing presentations or other information submitted to Company:
      1. the Solutions shall be free of substantive defects in material and workmanship and in conformance with industry standards.
      2. [Contractor warrants that the Software contained in Solutions will perform under normal usage substantially in accordance with its applicable Documentation for a period of [6][9][12] months from its date of Solution acceptance by the Customer under this Agreement (the “**Software Warranty Period**”).]
      3. [During the Software Warranty Period, Contractor shall promptly notify Company of any defects or malfunctions in the Solution of which it learns from any source. Contractor shall promptly correct any defects or malfunctions in the Solution discovered during such warranty period and provide Company’s Customers and End-Users with corrected copies of same, without additional charge. Contractor's obligation hereunder shall not affect any other liability which it may have to Company.]
      4. [Contractor shall provide to Company’s Customers and End Users, without additional charge, copies of the Solution revised to reflect any corrections or minor enhancements to the Solution made by Contractor during the Software Warranty Period. Such minor enhancements shall include all modifications to the Software contained in Solutions which increase the speed, efficiency or ease of operation of the Software, or add minor additional capabilities to or otherwise improve the functions of the Software. The categorization of any enhancement as minor or major will be agreed between Contractor and Company on a case by case basis.]
      5. [During and after expiration of the Software Warranty Period, Contractor shall provide additional maintenance, support and enhancements in connection with the Solution, pursuant to the maintenance and support agreement to be agreed between the Parties.]
   2. [Contractor’s liability, if any, for defective Software in Solutions discovered and notified during Software Warranty Period, is limited to replacement, repair or refund of the defective Solutions, at the Company's option.]
   3. Contractor agrees to pass through to Company and its reseller’s, any Customer and End User, to the extent permitted, all warranties and maintenance support established by the manufacturer or supplier of any Software components purchased by Contractor and resold to Company hereunder as part of or in conjunction with Solutions.
   4. In no event shall Company indicate to any third Party, including any Customer and End User that Contractor makes any warranties greater than those expressly agreed to be provided by Contractor herein.
   5. The warranties set forth in the Agreement cover normal use and do not cover failure due to Company’s or its reseller’s, Customer’s or the End User’s abuse, misuse, or misapplication, or as a result of service or modification of Solution other than by Contractor or as specified by Contractor.
   6. The cumulative liability of Contractor to Company for all claims arising under or related to this Agreement, whether in contract, tort or otherwise, shall not exceed the fees paid by Company under this Agreement. In no event will Contractor be liable to Owner for loss of profit *[COMMENT: in Estonian “saamata jäänud tulu” in the meaning of the Law of Obligations Act § 128 section 2]* and any indirect damages or losses, provided such damage was not caused intentionally or by breach of confidentiality obligations as provided in this Agreement. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the success or effectiveness of other remedies.

*[TIP: if the Parties intend to cooperate in jurisdictions other than Estonia, especially in common law jurisdictions, the Agreement may need to be revised in order to reflect other appropriate mutual and individual warranties, representations and indemnities]*

1. **Confidentiality**
   1. The contents of this Agreement are confidential and may be disclosed by one Party only upon prior consent of all the other Parties. For the protection of this and the rest of the confidential information exchanged between the Parties, the Parties have concluded a Non-Disclosure Agreement on [INSERT: date of entry into force] which shall also govern the confidentiality obligations under this Agreement.
   2. The receipt of Confidential Information pursuant to this Agreement will not prevent or in any way limit any Party from developing, making or marketing products or services that are or may be competitive with the products or services of any of the other Parties; or providing products or services to others who compete with any of the other Parties; as long as those results have not become from a breach of this Agreement. *[SOURCE: IPR Helpdesk Mutual Non-Disclosure Agreement Template 2012 clause 5][TIP: if Parties wish to introduce a more strict non-competition obligation, then it needs to be verified that such non-competition obligation is in compliance with applicable competition laws.]*
   3. Except as otherwise expressly provided in this Agreement, the Parties agree that any press release, public announcement, confirmation or other information regarding this Agreement or the transactions contemplated thereby shall be made only after each Party has approved at least in a format that can be reproduced in writing the time, form and content of any such information to be disseminated to third Parties or the public.
2. **Termination**
   1. Each Party may terminate this Agreement, by notice given in written form by means of communication ensuring evidence and date of receipt (e.g. registered mail with return receipt, special courier):
      1. with immediate effect in case of a substantial breach by the other Party of the obligations arising out of the Agreement, or in case of exceptional circumstances justifying the earlier termination;
      2. with [3][6][9] months prior notice without cause.
   2. The occurrence of any of the following shall constitute a substantial breach under this Agreement:
      1. the failure to make a required payment when due.
      2. the insolvency, bankruptcy, or general assignment for the benefit of creditors, application or sale for or by any creditor or government agency of either Party.
      3. the failure to make available or deliver the Products in the time and manner provided for in this Agreement.
      4. Contractor has considerably prejudiced the market image of the Solution or the Company.

*[COMMENT/TIP: the other occasions of substantial breach may be further specified in here.]*

* 1. Circumstances in which it would be unreasonable to require the terminating Party to continue to be bound by this Agreement, shall be considered as exceptional circumstances mentioned above. Furthermore, the Parties agree that the following situations shall be considered as exceptional circumstances which justify the earlier termination by the other Party: insolvency, declaration of bankruptcy, moratorium, liquidation or any circumstances which are likely to affect substantially one Party's ability to carry out its obligations under this Agreement.
  2. Provisions of this Agreement that by their nature regulate the rights and obligations of the Parties after the termination of this Agreement shall remain in force after the termination of this Agreement. This concerns, above all, the provisions regulating dispute resolution, confidentiality and liability of the Parties.

1. **Notices**
   1. Any notice to be given under this Agreement must be in a format which can be reproduced in writing (e-mail, document print-out, Skype-message etc), unless this Agreement expressly requires the notice to be given in written form (i.e. signed by hand or equivalent).
   2. Notice shall be deemed served, if hand delivered, at the time the notice is delivered in person to the individual or member or officer of the entity for whom it was intended, or, if sent by courier, at the date of signature of the notified Party, or, if sent by registered letter, at the date 3 (three) days after the registered sending, or, if sent by fax or email, at the date after the email was sent, provided the sender does not receive a notice of error or failure to complete the transmission to the correct fax number or email address.
   3. Contact details of the Parties:
      1. Company: name: [INSERT: name] address: [INSERT: address], phone: [INSERT: number], e-mail: [INSERT: address], fax: [INSERT: number];
      2. Contractor: name: [INSERT: name] address: [INSERT: address], phone: [INSERT: number], e-mail: [INSERT: address], fax: [INSERT: number];
2. **Final clauses**
   1. The Agreement shall enter into force on the last date of signature below and shall remain in effect indefinitely, until terminated.
   2. This Agreement is governed by, and is to be construed in accordance with, the laws of the Republic of Estonia without regard to the conflicts of law principles thereof.
   3. No variation or amendment of this Agreement will be effective unless it is made in writing and signed by each respective Party's duly authorised representative.
   4. Any differences between Parties in the interpretation or application of this Agreement will be settled amicably by mutual consultation. In case an amicable settlement cannot be reached, the dispute shall be resolved in the Harju County Court, Republic of Estonia.
   5. None of the Parties may assign or transfer this Agreement as a whole, or any of its rights or obligations under it, without first obtaining the written consent of all of the other Parties. That consent may not be unreasonably withheld or delayed.
   6. If the Agreement is signed by hand, then the Agreement shall be signed in identical counterparts equal to the number of the Parties, of which each Party shall have one copy.
3. **Annexes**
   1. Specifications
   2. Time schedule
4. **Signatures**

|  |  |
| --- | --- |
| **Company:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: [INSERT: name]  Title: [INSERT: title]  Date of signing: [INSERT: date] | **Contractor:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: [INSERT: name]  Title: [INSERT: title]  Date of signing: [INSERT: date] |