**SOFTWARE DEVELOPMENT AGREEMENT**

**BETWEEN**

**UNIVERSIDAD MIGUEL HERNANDEZ DE ELCHE**

**AND**

**…………………………….**

**SOFTWARE DEVELOPMENT AGREEMENT BEETWEEN UNIVERSIDAD MIGUEL HERNANDEZ DE ELCHE AND …………………………**

Elche, on ………. …………, …….

**BY AND BETWEEN**

UNIVERSIDAD MIGUEL HERNÁNDEZ DE ELCHE (henceforward referred to as UMH), and in its name and representation Ms. María José López Sánchez, Vice-Chancellor for Transfer and Knowledge Exchange, pursuant to the authority conferred by Resolutions of the Rector’s Office 1145/19, passed on 4th June, published in the Official Journal of the Generalitat Valenciana number 8569, on 13th June 2019, enlarged by Resolution 2038/19 of the Rector’s Office, passed on 12th September, published in the Official Journal of the Generalitat Valenciana number 8647, on 2nd October 2019,

**AND**

……………………. (hereinafter known as the Company), with UTR ……………….. and business address at …………, established before a Notary Public of ………….., on ……….. and registered at the Company’s Registry of ………… on ………………., represented by Mr. ……………. as its …………. . Mr …………. holds ID number …………., and his powers were granted by a public deed signed before the Notary Public of ………, Mr. …………… on ……………….., exhibited in this act and proven to be in force.

**WHEREAS**

I.- The Company is a commercial company whose corporate purpose is to …………...

II.- The Institute/Department …………….. of UMH is experienced in software development.

III.- It is in the interest of both parties to sign this agreement for UMH to develop a **computer application/software** adapted to the needs of the Company.

Both parties responding reciprocally in the aforegoing capacity execute or grant this SOFTWARE DEVELOPMENT AGREEMENT according to the following

**CLAUSES**

**FIRST.-** **Aim of the agreement**

The aim of this agreement is for UMH to develop the computer program described in the Schedule.

**SECOND.- Development stages**

The development of the program subject matter of this agreement will undergo the following stages:

1. **Early stage**, including the analysis and software design stages.

In the analysis stage…………….

The design stage includes the design of user interfaces…………….

This stage will start once this agreement is signed and last ……… days.

1. **Evidence stage**, where UMH will carry out all the necessary activities to check the correct working of the developed program.

The evidence stage will last a maximum of …………………

1. **Modifications stage**: this stage may be completed whenever the need to carry out a series of modifications in the developed program arises as a consequence of the previously described stage.

The modifications stage, if necessary, will start once the evidence stage is over and last a maximum of ……….. days.

1. **Program delivery and final installation stage.**

At this point, UMH will handle all the relevant documents for the use and development of the computer program, including the operations manual.

Each of these stages is further explained at the Schedule to this agreement.

**THIRD.- Term of agreement**

The term of this agreement will be ……………. starting from its signature date, and it may be extended by express agreement of both parties should they deem it necessary for its completion.

**FOURTH.- Place of delivery of service**

The development of the program referred to in this agreement will be carried out in the premises of …………..

Should the UMH work team need to visit the Company’s premises, the latter undertakes to grant access to its offices and premises and provide all the necessary information for the development of the program that may be required.

**FIFTH.- Head of the project**

The head of the program subject matter of this agreement on behalf of UMH will be Professor………….., from the Department/Institute of……………….., and his/her counterpart at the Company will be Mr/Ms……………………….

**SIXTH.- Price and payment method**

The total agreed price to be paid is ………………… plus the corresponding VAT.

A detailed budget including descriptions and items is included in the Schedule.

Upon receipt of invoices addressed to the Company, payments of the amounts shall be made by wire transfer to the account open at Banco de Sabadell S.A. in the name of UMH (Swift Code BSABESBB; IBAN Code ES52 0081 1017 6200 0108 0119).

The payment shall be carried out as per the following payment schedule:

1.- ….% at the signature of this agreement

2.- ….% upon delivery of the necessary documents for the installation.

Payments to the University shall be made within a thirty working days period from the date the corresponding invoice is issued.

**SEVENTH.- Confidentiality**

Both parts undertake not to spread, under any circumstances, the scientific or technical information owned by the other party to which it has an access during the performance of this agreement.

The data and reports obtained upon performance of this agreement and its final results will be confidential.

Both parties engage to make all the staff participating in the project subject matter of this agreement know and abide by the confidentiality commitment governed by this clause.

The provisions of this clause regarding confidentiality shall remain in force for ……. years once this agreement is terminated.

**EIGHTH.- Ownership of results**

The exploitation rights of the intellectual property, explicitly including the right to reproduce, transform, distribute and publicly communicate it, as well as any industrial property rights which may arise, belong exclusively to UMH/the Company.

UMH/the Company may protect the software developed by means of an entry at the Intellectual Property Registry under its name as well as, if applicable and possible, an entry at the *Oficina Española de Patentes y Marcas* (Spanish Patent and Trademark Office)

Under all circumstances, the holder of the exploitation rights (UMH/Company) shall acknowledge and respect the moral rights inherent in the program’s authors, especially the right to be referred to as its designers.

Such rights protect both the computer program and the data, lists, diagrams and charts drafted during the analysis stage, the application manual, all other support data and materials, identification symbols, their originals, any partial or total copies made by the company itself, the legal right to copy, the patents, trademarks, trade secrets and any other items that may arise during the performance of this agreement.

UMH/the Company will be the holder of those rights during their whole legal life and within the geographical area of the countries where they are protected.

**NINTH.- Exploitation of results and regulation of royalty fees**

[*ALTERNATIVE 1: The ownership of the results of the agreement belongs to the University and the Company intends to exploit them*]

The University will grant the Company a non-exclusive, non-transferrable licence in exchange for a percentage of the revenue generated by the exploitation of the results. The conditions of this licence will be specified in an agreement to be subscribed between the parties within six months from the termination of this agreement.

[*ALTERNATIVE 2: The ownership of the results belongs to the Company and its financial contribution to the agreement does not add up to its total budget*.] The Company will pay the University a percentage of the revenue generated by the exploitation of the results. Such sum will be specified in an agreement to be subscribed between the parties within six months from the termination of this agreement.

[*ALTERNATIVE 3: The ownership of the results belongs to the Company and its financial contribution to the development of the software is the same as its total budget, including all the University costs in both human resources and materials*. In this case, it is not necessary to establish a payment for the exploitation of the results generated in the agreement.]

**TENTH.- Service warranty**

The term of the warranty will be 20 working days from the date when the computer program is installed in the Company’s equipment. Should the Company fail to notify the existence of defects to UMH during this warranty period, it will be understood that it is in agreement with all aspects of the program’s functioning, thus waiving the right to make any claims from that moment onwards.

This warranty will remain valid as long as the Company uses the developed program according to the technical specifications provided by the UMH work team.

**ELEVENTH.- Liabilities**

UMH will not be liable for any direct or indirect losses or damages suffered by the Company, its employees and clients as a consequence of program errors.

**ELEVENTH.- Additional activities**

Any additional activities related to the developed software such as its maintenance, extension or modification will be stated in a new agreement.

**THIRTEENTH.- Agreement modification and termination**

The parts are entitled to modify this agreement at any time within its validity period as long as they do so by mutual consent and state the modifications in a new agreement.

This agreement may be terminated for the following reasons:

1.- By mutual consent between the parties.

The head researcher will send a document to SGI-OTRI stating the parties’ clear intention to terminate the agreement and the date when this decision will be made effective.

2.- Due to unforeseeable circumstances or force majeure.

If any of the parties had to terminate the agreement for these reasons, the other party must be notified in a reliable way.

3.- Due to a breach of conditions.

Whenever one of the parties deems that the other one is not complying with the commitments made under this agreement, a notification will be sent to the breaching party in a reliable way, indicating the causes for such lack of compliance. The non-compliant party must correct the breach within 30 days from the reception of the notification.

Should the non-compliant party fail to rectify the breach, the other party will be entitled to terminate this agreement and an appraisal of the work carried out so far, the expenses incurred into and the damages caused by the non-performance. Such appraisal is never to exceed the total amount of this agreement.

**FOURTEENTH.- Notifications**

The following addresses are established for purposes of notifications related to this agreement:

|  |  |  |
| --- | --- | --- |
| UMH | **For scientific and technical issues**: | Particulars of the head professor |
|  | Address: |  |
|  | Telephone: |  |
|  | Fax: |  |
|  | e-mail: |  |
|  | **For financial issues:** | José López Valero |
|  | Address | Avda. de la Universidad s/n. Edificio de Rectorado y Consejo Social 03202 Elche (Alicante) |
|  | Telephone | 966 658 660 |
|  | e-mail | contabilidad@umh.es |
|  | **For other notifications:** | Carlos Pérez Vidal |
|  | Address | Avda. de la Universidad s/n. Edificio de Rectorado y Consejo Social 03202 Elche (Alicante) |
|  | Telephone | 966 658 782 |
|  | e-mail | otri@umh.es |
|  |  |  |
| COMPANY | Contact person: |  |
|  | Address: |  |
|  | Telephone: |  |
|  | Fax: |  |
|  | e-mail: |  |

The parties undertake to notify any changes in these addresses.

**FIFTEENTH.- Settlement of Discrepancies**

The parties hereto undertake to attempt to resolve any dispute that may arise from the execution of the contract herein in an amicable fashion.

Any controversy, disagreement or claim whatsoever arising from this contract and its amendments or related to them will be settled by mediation. Mediation will take place at the International Chamber of Commerce, and subject to its Mediation Rules. The place of celebration will be Madrid, and the language used on the process will be the defendant’s or that chosen by the mediator.

Should the controversy or claim remain unresolved after mediation, or after 90 days from the moment the mediation process started, it will be yielded to arbitration. An arbitration application will be filed by any of the parties so that the discrepancy can be conclusively settled in compliance with the Arbitration Rules of the International Chamber of Commerce. The arbitration tribunal will be made up of only one referee, and the process will take place in [Madrid /Paris]. The language used during the proceedings will be the defendant’s or that chosen by the referee. The controversy will be solved in compliance with legal dispositions in force at the arbitration tribunal. The resolution will be binding for both parties.

**SIXTEENTH.- Data protection**

The Company authorises UMH to provide public information about the signing of this contract in which it may include title, contracting entity, amount and the deadline for completion.

In accordance with the provisions of REGULATION (EU) 2016/679, of the European Parliament and Council, of 27th April 2016, regarding the protection of physical persons with respect to the processing of personal data and the free circulation of the same (henceforth GDPR), and Organic Law 3/2018, of 5th December, regarding Personal Data Protection and guaranteeing digital rights, the signatories of this contract are informed that:

(I) The personal data will be processed by each party independently as Controllers of the data processing.

(II) The details of the data protection delegates of each responsible party are as follows:

a. Universidad Miguel Hernández de Elche: dpd@umh.es

b. [Entity]: [their email address]

(III) Purpose of the processing: entering into the contract and executing the same. Due to this, the processing of the data represents a necessary condition for proceeding to enter into the same, having article 6.1.b of the GDPR as the legitimate basis. Similarly, you are informed that the personal data will only be processed by the processing controllers and, as the case may be, by those third parties to whom they are legally or contractually bound to communicate them. Under no circumstances may these data be transferred by the processing controllers to a third country or international organisation.

(IV) The data will only be kept during the validity of this contract without prejudice to the data being kept for as long as necessary during the time in which responsibilities deriving from the processing may arise in compliance with the regulations that may be in force at any time.

The interested parties may exercise their rights of access, rectification, opposition, elimination, portability and limitation of the processing, as well as not to be the object of decisions solely based on the automated processing of their data. With respect to UMH; the rights may be exercised in the following way: through the electronic headquarters (sede.umh.es), in writing to la Universidad Miguel Hernández de Elche, for the attention of the Data Protection Delegate, Edificio Rectorado y Consejo Social, Avda. de la Universidad S/N, 03202, Elche-Alicante. With respect to [entity] for the attention of their Data Protection Delegate, at the address that appears at the start of this contract or by email to the address established for this purpose. Similarly, the interested party has the right to present a claim before the supervisory Authority ([www.aepd.es](http://www.aepd.es)) should he/she consider that the processing does not conform to regulations currently in force.

**SEVENTEENTH.- Other**

This Contract is subject to those conditions set forth in the *Regulations for contracts for scientific, technical and artistic work*, *teaching specialization and specific training activities of the University Miguel Hernández of Elche* approved by the University Council on Decembre 1, 2009, as well as in the *Provisional Regulations concerning the administrative economic management of agreements concerning research and services rendered along with postgraduate, on-going, and specialized education* as approved by the Management Commission on November 5, 1997, and subsequent amendments.

IN WITNESS WHEREOF the parties execute this agreement in two counterparts on the abovementioned place and date.

|  |  |  |
| --- | --- | --- |
| UNIVERSIDAD MIGUEL HERNÁNDEZ DE ELCHE |  | THE COMPANY  |
|  |  |  |
| Ms. María José López Sánchez |  | Mr./Ms. ………………………… |
|  |  |  |
| THE HEAD RESEARCHER FOR THE AGREEMENT |  |  |
|  |  |  |
| Mr./Ms. …………………………..  |  |  |

**SCHEDULE**

**1.- DESCRIPTION OF THE WORK**

**2.- PARTICIPATING STAFF**

**3.- BUDGET**

The definitions and items of the agreement are as follows:

|  |  |  |
| --- | --- | --- |
| Staff expenses | ….. % |  Euros |
| Allowances and Transport | …..% |  Euros |
| Consumables | …..% |  Euros |
| Inventory | ….. % |  Euros |
| Indirect costs | ….. % |  Euros |

Notwithstanding this, the use of the above sums may vary whenever the head professor deems such changes necessary for the improvement of the subject matter of the agreement, and the participating parties state their consent by signing this agreement.