

Custom Software Development Agreement

- 🔊 The first part of the Memorandum should be completed and distributed to the other party along with a copy of the Custom Software Development Agreement.
- 🔊 See also, “Software Development ~ Work for Hire Agreement” It’s better suited to the company hiring the developer.

Date: [Month, Day, Year]

To: [Name of other party]

From: [Owner/Founder]
 [Company]

Subject: **Custom Software Development Agreement**

Attached is a “Custom Software Development” Agreement in order to set forth the exact terms of our contract to develop custom software.

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](#).

Ongoing Update Service Keeps You Current


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 you 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.

Custom Software Development Agreement

☞ This is a standard introductory paragraph that lists the parties to the Agreement and the date it is being entered into. You need to enter the date of the Agreement, the names of the parties, the specific type of organization and their addresses.

Effective Date **[Date]**

between **[Owner/Founder]**, (“[Company]”)
 a [State] [Corporation / Partnership / Sole Proprietorship / Resident],
 located at [Address]
 [City], [State] [Zip Code]



and **[Name of the programmer / programming company]**, (“Contractor”)
 a [State] [Corporation / Partnership / Sole Proprietorship / Resident]
 located at [Address].

Summary

☞ For the first insert in the first paragraph, state the purpose of the computer program, exactly what it will do. For the second insert, enter the basic hardware and operating system of the [Company]'s computer(s).

[Company] desires Contractor to create a computer program and user manual (the “Program”) for the purpose of [Enter purpose] to operate on the [Company]’s [Enter hardware information].

The Contractor is willing to create the Program, subject to the terms set forth below.

In consideration for the mutual promises, covenants, and agreements made below, the parties, intending to be legally bound, agree as follows:

☞ Section 1 sets forth the approval procedure for the software development process. For the first insert, indicate the number of days after this Agreement is entered into that the parties will meet to discuss the Specifications; for the second insert, indicate the number of days following that meeting that the Contractor must submit the Specifications to the [Company].

1. Creation of Specifications

Within [xx] days after the above date, the Contractor will meet with the [Company] to discuss the performance specifications, flow charts, and acceptance test standards for the Program. Within [xx] days after that meeting, the Contractor will provide the [Company] with flow charts and performance specifications for the Program. After the Contractor incorporates the [Company]’s modifications, if any, the parties will approve, in writing, the final flow charts, performance specifications, and acceptance test standards (the “Final Specifications”) further described in Exhibit A attached.

☞ In the first set of brackets in Section 2, the Contractor will give the [Company] a quotation. If the [Company] does not approve of the quotation (within the amount of time entered into the first set of brackets), this Agreement terminates, and the [Company] is required to pay the Contractor within a

certain (indicate time in the third set of brackets) period after termination. The fourth set of brackets has the amount for the contractor's fee for creating the Final Specifications.

2. Establishment & Payment of Final Price

2.1 Within [xx] days after the parties agree to the Final Specifications, the Contractor agrees to provide the [Company] with a written price quotation to create and install the Program and to perform the Training Services (defined below). Assuming the price is satisfactory, the [Company] shall notify the Contractor in writing. If the price is not approved by the [Company] within [xx] days after it is sent to the [Company], this Contract shall terminate, and the [Company] shall pay to the Contractor, within [xx] days after that termination, the sum of \$[xxx] Dollars for services in creating the Final Specifications.

2.2 If the Program is completed and installed, the [Company] shall pay to the Contractor the fees established above within ten (10) days after the Certificate of Acceptance (as described in Section 3) is, or should have been, delivered by the [Company] to the Contractor.

☞ The Contractor will complete the Program within the bracketed period following Final Specification approval. After an acceptance test is successfully conducted jointly by the parties, the [Company] will execute a Certificate of Acceptance that it will send to the Contractor. The Contractor will then complete and deliver any manuals to the [Company] within the final bracketed period.

3. Creation of the Program

Within [xx] days after agreeing to the Final Specifications, the Contractor will create, test, and then deliver to the [Company] the software portion of the Program that the [Company] will install onto its computer. A representative of the Contractor and the [Company] will then jointly perform an acceptance test. If the Program does not meet the Final Specifications, the Contractor shall promptly correct and re-submit the Program for acceptance testing. When the Program performs in accordance with the Final Specifications, the [Company] shall deliver to the Contractor a Certificate of Acceptance (see Exhibit B). Once the Certificate of Acceptance is delivered, the Contractor shall prepare the applicable user manuals and deliver them within [xx] days after the date of the Certificate of Acceptance.

4. Modifications

If the [Company] desires to modify the Final Specifications, it shall notify the Contractor, and the Contractor shall quote a price and revised timetable that will be incorporated into a Change Order signed by both parties.

☞ Assuming that training is included, complete the following section. The first insert describes the number of employees who will be trained, and the second insert establishes the training period.

5. Training

Upon delivery of the Program to the [Company], the Contractor shall provide the [Company] with training of up to [x] (Enter number) days, of the [Company]'s employees in the use of the Program. This training shall be for a period of up to [Enter number] hours. The Training is provided at no charge, except that the [Company] will reimburse the Contractor for the reasonable out-of-pocket expenses incurred by employees of the Contractor (transportation, room, and board in connection with the training).

6. Updates & Enhancements

Although the Contractor is not obligated to update or enhance the Program, if it does it will promptly notify the [Company] who will have the right to acquire the updated material at the Contractor's regular and established prices.

- 🔊 Following, are two versions of Section 7, "Ownership of the Program." Select the one that best fits your needs.
- 🔊 If the Contractor will own the Program and license it to the [Company] for its internal use only, then select the first Section 7. However, if the [Company] will own the Program and the Contractor will maintain no interest, use the second Section 7 and delete Sections 8, 9, 10, 11 and 14.2.

7. Ownership of the Program

The entire right, title, and interest in the Program and all materials relating to the Program belong to the [Contractor], subject to the license grant set forth in Section 10 of this Contract.

🔊 [Or]

7. Ownership of the Program

The entire right, title, and interest in the Program, Source Code, and all materials relating to the Program belong to the [Company].

8. Proprietary Information

- 🔊 This is a standard non-disclosure provision so that both parties agree that any confidential information disclosed to either is the property of the disclosing party and such information, in addition to the terms of this Agreement, may not be disclosed to third parties. The exception to this is when the disclosing party can prove that it already had the information, or the information becomes available to the general public. This non-disclosure requirement continues to be effective even upon or after termination of this Agreement.

Each party acknowledges that it may be furnished with or may otherwise receive or have access to information or material which relates to past, present or future products, software, research development, inventions, processes, techniques, designs or technical information and data, marketing plans, and so on, (The "Proprietary Information"). Each party agrees to preserve and protect the confidentiality of the Proprietary Information and all of its physical forms, whether disclosed to the other party before this Agreement is signed or afterward. In addition, a party shall not disclose or disseminate the Proprietary Information for its own benefit or for the benefit of any third party. The previously stated obligations do not apply to any information which

- (1) is publicly known;
- (2) is given to a party by someone else who is not obligated to maintain confidentiality; or
- (3) a party had already developed prior to the day this Agreement is signed, as evidenced by documents.

Neither party shall take or cause to be taken any physical forms of Proprietary Information (nor make copies of same) without the other party's written permission. Within three (3) days after the termination of this Agreement (or any other time at the other party's request), a party shall return to the other party all copies of Proprietary Information in tangible form. Despite any other provisions of this Agreement, the requirements of this Section shall survive termination of this Agreement.

9. License Grant

- 🔊 If you are paying to have a program written for you, then make it exclusive – the programmer can otherwise sell this program to whomever s/he chooses.

The Contractor grants to the [Company] a non transferable, non-exclusive right and license to use the Program for the [Company]'s internal purposes only, subject to the terms of this Contract (the "License").

10. Multiple Copies


For its internal purposes only, the [Company] may make copies of and use the Program on as many computers and terminals as it owns or leases.

11. Transfer of [Company]'s License

- ☞ Except for a merger or sale of the [Company]'s business, it must receive the Contractor's approval in order to sell or otherwise transfer any copies of the Program.
- ☞ If you are the customer of the contractor, I would reverse or delete this paragraph

The [Company] does not have the right to sell or otherwise transfer its copies of the Program or the license granted in Section 9 without the express written consent of the Contractor, except in connection with its merger or the sale of all or substantially all of its assets. In the event of such a merger or sale, the permitted successor must notify the Contractor of its succession to the [Company]'s rights and agree in writing to be bound by the terms of this Agreement.

12. Labels

Each copy of the Program must be conspicuously labeled or otherwise marked in such a manner that indicates that the material is  property of the Contractor and may not be used or copied except as permitted by this Agreement.

13. Defects

- ☞ If the Program proves to be defective within the period of time (inserted in the brackets) following execution of the Certificate of Acceptance, the Contractor will remedy the problem. However, the [Company] modifications will void this warranty.

In the event of any defect in the Program within [Enter number] year(s) after the date of the Certificate of Acceptance, the [Company] shall notify the Contractor in writing. At no charge, the Contractor shall then take prompt action to remedy and correct any failure of the Program to meet the Final Specifications. However, if the [Company] makes modifications to the Program, the remedy set forth in this Section 13 shall not apply.

14. Waiver of Warranty

- ☞ This is a standard warranty disclaimer.

The contractor makes no warranty of any kind, express or implied, including, without limitation, warranties of merchantability and fitness for a particular purpose. The contractor shall not be liable for any damages, whether direct, indirect, special, or consequential. The [Company] agrees that the programs are not consumer goods for purposes of federal or state warranty laws.

15. Termination

15.1 Upon payment of the amount stated in Section 2 and pursuant to that section, the [Company] may terminate this Agreement.

- ☞ If the [Company] breaches and does not cure its breach within the period of time (inserted in brackets) following notice by the Contractor, the License terminates and the [Company] must either erase or return all copies of the Program and any manuals to the Contractor.

15.2 If the [Company] breaches this Agreement and the breach is not cured within [x] (Enter number) days after the Contractor notifies the [Company], the License shall terminate immediately. The [Company] shall then erase and / or return to the Contractor all disks or other storage medium bearing the Program and all user manuals.

🔊 This section, often titled “Miscellaneous,” lists a number of standard clauses found in most agreements.

16. 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..

16.1 **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.

16.2 **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.

16.3 **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 the 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.

16.4 **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 [Client] have agreed to is included in this Agreement. Otherwise, it is as if it were not agreed to.

16.5 **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.

16.6 **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.

16.7 **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.

16.8 **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., monetary 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.

16.9 **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.

16.10 **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.

16.11 **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.

16.12 **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 and you want to make sure that all of your agreements can be transferred to the new owners.) I wouldn't want to seek (let alone pay for) permission to sell my company.
- ☞ Generally, neither party may assign their respective rights to a third party; however, with the possible exception of assignment to a successor corporation or partnership, either party may transfer its rights or obligations under this Agreement without the approval of the other party. This Agreement would be binding on the 3rd party.
- ☞ However, you may want to limit each other's ability to pass along this deal to another possibly unknown and possibly unfriendly entity. The second paragraph prevents unauthorized transfer of responsibilities...
- ☞ CHOOSE one or the other of these two following paragraphs.

16.13 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; provided, however, 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.

☞ --Or --

- ☞ This paragraph DOES NOT ALLOW either party to transfer its rights to a successor company without prior approval.

16.13 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.

- ☞ If any part of this Agreement is unenforceable or invalid, the balance of the Agreement should still be enforced. Basically, ignore any sections that are invalid.

16.14 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.

- ☞ The headings of the various sections are meant to explain or otherwise give meaning to those sections; they are for convenience only.

16.15 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.

16.16 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.

🔊 Every copy shall be just as valid as the original.

16.17 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.

🔊 Even after the termination of the Agreement, the parties may still have certain responsibilities such as keeping information confidential.

16.18 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]



Contractor

[Owner/Founder]

Contractor Name

Title

Title

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).
- 3) Xxx
- 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]

By

Title

Title

Date

Date

Exhibit B

Certificate of Acceptance

The undersigned [Company] acknowledges that the Program has been found to perform according to the Final Specifications of the Contract and accepts the Program.

[Month, Day, Year]

[Owner/Founder]



Title