



Development Agreement

BETWEEN

Noa Sheer

and

[CLIENT]

SLG LAWYERS

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Details

Agreement Date	As defined in the Purchase Order
Consultant	Name SHEER NEGOTIATIONS PTY LTD ABN 87 619 971 381 Web Address http://sheernegotiations.com/ Email noa@sheernegotiations.com Attn Noa Sheer
Client	Name As defined in the Purchase Order Address Email Attn
Deliverables	As defined in the Purchase Order
Delivery Date(s):	As defined in the Purchase Order
Fee:	As defined in the Purchase Order
Purchase Order	A document sent by the Consultant to the Client setting up the above details

Background

- A. The Client has requested the Consultant to provide design and consulting services as detailed in the Purchase order, on the terms of this agreement.

Terms and Conditions

1. Term

1. This agreement commences on the agreement Date and continues until the Deliverables are delivered to the Client and the fee detailed in section 3 is paid in full (the latest of which), or until the agreement is otherwise terminated in accordance with clause 6.

2. Delivery

1. The Consultant must design the methodology of the deliverables and deliver them on the Delivery Date.
2. The Client may change the Delivery Date, subject to the availability of the Consultant:
 - (a) By giving one month written notice; or otherwise
 - (b) By giving notice shorter than one month, and paying an additional charge of 25% of the Fee.

3. Fee

1. The Client must pay the Consultant the Fee in instalments as follows:
 - (a) 25% when the purchase order is confirmed or issued by the Client; and
 - (b) Any charge payable under clause 2.2, when a new Delivery Date is agreed; and

- (c) The balance within 14 days after delivery.
2. The amounts indicated in 3.1 (a) and (b) are non-refundable
3. If the Client defaults in the payment of any money under this agreement:
 - (a) the Client must pay the Consultant Interest;
 - (b) the Client is liable for any enforcement costs and expenses incurred by the Consultant including legal fees as a debt;
 - (c) the Consultant may suspend all work until the default is remedied; and
 - (d) the Consultant may terminate this agreement.
4. The Fee excludes GST, payable by the Client, unless the Purchase Order expressly indicates otherwise.

4. Variations

1. The Client may request a variation to the Deliverables until 7 days before Delivery Date by submitting written notice to the Consultant setting out the details of the variation.
2. The Consultant must submit to the Client within 5 Business Days (or as otherwise agreed by the parties in writing) a written quote setting out the additional cost or delay to the delivery of the Deliverables, and then the Client may:
 - (a) accept the additional cost and/or delay proposed by the Consultant; or
 - (b) withdraw its proposed variation.

5. Title and Intellectual Property

1. Intellectual Property means any and all items in which Intellectual Property Rights subsist, existing now or in the future and whether or not registered or registrable in connection with the Deliverables.
2. Intellectual Property Rights means all current and future registered and unregistered rights and all renewals and extension of those rights in respect of copyright, Marks, trade secrets, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation 1967 and includes the drawings, plans, manuals, specifications, references guides, trade secrets, methodologies and other intellectual property, irrespective of whether it is registered.
3. Mark means a mark, letter, word, name, signature, numeral, device, brand, heading, label, ticket, logo, slogan, aspect of packaging, shape, colour, sound or scent.
4. Intellectual Property Rights in the Deliverables will be owned by the Consultant. The Client will have no ownership in the same, and will do all things necessary, if required, to pass the ownership to the Consultant.
5. The Consultant grants to the Client a non-exclusive, non-transferable, royalty free licence to use the Deliverables for the limited purpose of improving the methods of operations within the Client's organization, and for improving the skills of the Clients employees.
6. The Client will not do any of the following with relation to the Deliverables:
 - (a) Reverse engineering; or
 - (b) Disclosing them to third parties.
7. The Consultant may use the Client's logo, name and photos to indicate and publish that the Deliverables were delivered to the Client.

6. Termination

1. Either party (***Terminating Party***) may terminate this agreement immediately by written notice if the other party (***Defaulting Party***):
 - (a) is Insolvent;
 - (b) breaches this agreement and fails to remedy the breach within 7 days' written notice by Terminating Party;
 - (c) commits an act of dishonesty, or a criminal offence which in the reasonable opinion of Terminating Party is likely to bring Terminating Party into disrepute;
 - (d) commits a breach of any statutory, legal or regulatory requirement of which Terminating Party becomes aware and which, if appropriate, is not remedied within a reasonable time to the satisfaction of Terminating Party;
 - (e) fails to pay any money within 7 days of it becoming due and payable.
2. If the Consultant terminates the agreement under clause 6.1 or due to any other entitlement in law such as repudiation or breach, then:
 - (a) the Client must immediately cease use of the Deliverables;
 - (b) the Client must, within 7 days of such termination, deliver to the Consultant all copies and portions of the Deliverables and related materials and documentation in its possession furnished by the Consultant under this agreement;
 - (c) all amounts payable or accrued to the Consultant under this agreement become immediately due and payable; and
 - (d) all rights and licenses granted to the Client under this agreement immediately terminate.
3. If the Client terminates this agreement for any reason other than under 6.1, then:
 - (a) If the Client gave a written 30 day termination notice, then the Client will not pay the last payment indicated in 3.1 (c); otherwise
 - (b) On termination, the client will pay, instead of the last payment indicated in 3.1 (c), an additional charge of 25% of the Fee.

7. Confidentiality

1. The parties agree to keep any information which has been described as confidential (or could reasonably be considered as confidential information) confidential and not to disclose it or allow it to be disclosed to a third-party except with prior approval of the other party. The parties must not use any such information for any other purpose besides a purpose permitted under this agreement.
2. The obligation under clause 7.1 does not apply to information which:
 - (a) was already in the party's lawful knowledge,
 - (b) is public knowledge; or
 - (c) information which is required to be disclosed by law.
3. This clause 7 survives the expiry or termination of this agreement.

8. Limitation of liability and indemnity

1. Notwithstanding any other provision of this agreement and to the extent permitted by law:

- (a) the Consultant's total aggregate liability (including liability for negligence) under or in any way related to this agreement or the Deliverables is limited to the Fee;
 - (b) the Consultant excludes liability (including liability for negligence) for any Remote Loss; and
 - (c) the Consultant excludes all implied conditions and warranties except any implied condition or warranty the exclusion of which would contravene any statute or cause any part of this clause to be void (**Non-excludable Condition**), and The Client's liability for breach of any Non-excludable Condition is limited to the Fee or (at the Consultant's sole discretion)
 - (i) the resupply of equivalent Deliverables; or
 - (ii) the payment of the cost of resupplying the Deliverables.
 - (d) the Consultant shall not be liable for any claim or demand made against Customer by any third party.
2. The Client shall indemnify the Consultant, its office holders, members, agents and affiliates against all claims, liabilities and costs, including reasonable legal fees, of defending any third party claim or suit arising out of the use of the Deliverables, by the Client, provided under this agreement.
 3. Any liability of the Consultant under this agreement or in relation to the Deliverables is subject to:
 - (a) the Client's duty to mitigate; and
 - (b) the contributory conduct of the Client.
 4. This clause 8 survives the expiry or termination of this agreement.

9. Subcontracting

1. The Consultant is entitled to subcontract any services under this agreement to any third-parties at its sole discretion. The Consultant will remain liable for any work of its subcontractors.

10. General

1. **Further Assurance:** Each party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this agreement.
2. **Entire Understanding:**
 - (a) This agreement:
 - (i) is the entire agreement and understanding between the parties on everything connected with the subject matter of this agreement; and
 - (ii) supersedes any prior agreement or understanding on anything connected with that subject matter.
 - (b) Each party has entered into this agreement without relying on any representation by any other party or any person purporting to represent that party.
3. **Relationship:** Nothing in this agreement will or is intended to establish a relationship of partnership, exclusivity, agency or employment between The Client and the Consultant, or The Client and any other person engaged by the Consultant to perform the Software, and it is the intention of the parties that any such relationship is expressly denied.
4. **Notices:** all notices must be in writing. The parties agree to accept notices by Email and Slack only. Notices are taken to be read on the day they are received, unless they

are received after 5PM, in which case they are deemed to be received on the next Business Day.

5. **Variation:** An amendment or variation to this agreement is not effective unless it is in writing and executed by the parties.
6. **Assignment:** The rights and obligations of each party under this agreement are personal. No party may assign, encumber or otherwise deal with such rights and obligations without the prior written consent of all other parties.
7. **Waiver:**
 - (a) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
 - (b) The exercise of a power or right does not preclude its exercise in the future or the exercise of any other power or right.
 - (c) A waiver is not effective unless it is in writing.
 - (d) Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.
8. **Governing Law and Jurisdiction:** The law of the State governs this agreement and the parties submit to the non-exclusive jurisdiction of the courts of the State and the Commonwealth of Australia and agree that any lawsuit must be heard in those courts.
9. **Severability:**
 - (a) If anything in this agreement is unenforceable, illegal or void then it is severed and the rest of this agreement remains in force.
 - (b) If anything in this agreement is unenforceable, illegal or void in one jurisdiction but not in another jurisdiction, it is severed only in respect of the operation of this agreement in the jurisdiction where it is unenforceable, illegal or void.
10. **Force Majeure**
 - (a) The Consultant will not be liable to liable for any Loss incurred as a result of delay or failure to observe any of this agreement due to an event of force majeure, being any cause or circumstance beyond the Consultant's control. During the continuance of an event of force majeure the Consultant's obligations under this agreement will be suspended and will resume as soon as the cause of circumstance has ceased to have effect.

11. Definitions

1. **Definitions:** In this agreement, unless the context otherwise requires:

Affiliate means:

- (a) in relation to a party which is a body corporate, any corporation, trust, partnership or other legal entity controlled by:
 - (i) the party;
 - (ii) a wholly owned subsidiary of the party; or
 - (iii) the ultimate holding corporation of any of them;
- (b) in relation to a party which is an individual, a person or entity which is an Associate (within the meaning of the Corporations Act) of that individual.

Authorisation means an authorisation, approval, consent, exemption, permit, licence, declaration, notarisation or waiver of any nature whatsoever.

Background IP means any Intellectual Property Rights subsisting in the Consultant prior to the agreement Date and also including development tools, routines, subroutines and other programs, data and materials that Consultant may include in the Software developed under this agreement.

Business means The Client's business of providing assistance and guidance in relation to fitness, sports, nutrition and health.

Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the State.

Claim means a claim, action, proceeding, notice, litigation, investigation, judgment, liability or demand made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or deferred whether based in contract, tort or statute and whether involving a third party or party to this agreement.

Corporations Act means *the Corporations Act 2001 (Cth)*.

Documentation means high quality documentation for the Software (as expected from an expert in the industry) which explains how to use, understand, maintain, and further develop the Software.

Fee means the total fee set out in the Specifications for delivery of the Software plus any agreed adjustments (which must be in writing).

GST means GST as defined in *A New Tax System (Goods and Software Tax) Act 1999*.

Insolvent means, in relation to a person, when the person:

- (a) is:
 - (i) **insolvent** as that term is defined in Section 9 of the Corporations Act; or
 - (ii) the subject of an event described in Sections 459C(2) (a) to (f) or Section 585 of the Corporations Act (or it makes a statement from which another party to this agreement may reasonably deduce it is so subject); or
 - (iii) an **insolvent under administration** or suffers the appointment of a **controller, administrator, liquidator or provisional liquidator** as those terms are defined in Section 9 of the Corporations Act; or
 - (iv) dissolved;
other than to carry out an amalgamation or reconstruction while solvent; or
- (b) is otherwise unable to pay its debts as and when they become due and payable; or
- (c) being a natural person, commits or suffers an act of bankruptcy; or
- (d) takes or suffers a similar under the law of any jurisdiction.

Interest means interest at the rate equivalent to two percent (2%) higher than the rate for the time being set as the pre-judgement interest rate pursuant to the Civil Procedure Act 2005 (NSW) on any amounts owing to it under this agreement.

Loss means a damage, loss, cost, expense or liability incurred by the person concerned (including legal costs on a full indemnity basis) however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Related Entity means a related entity as defined by the *Corporations Act 2001 (Cth)*.

Remote Loss means any consequential loss, indirect loss, special loss or loss of profits.

State means the state of New South Wales.

Execution

EXECUTED as an agreement on

EXECUTED by Noa Sheer)
)
)

Signature of Noa Sheer
Director

EXECUTED by [insert client name and ACN])
in accordance with section 127(1) of the)
Corporations Act 2001

Signature of Director (Print name)

Signature of Director (Print name)