

WorkingMouse Services Agreement



Agreement Number	
Effective Date	
Customer	
Services	Application development services, provided by WorkingMouse Pty Ltd ACN 118 569 136 (WM) of 1/55 Railway Terrace, MILTON QLD 4064.

Summary of application development services (WM)		
Project Name		
Initial Scoping	_____ Weeks	
Estimation After Scope	Not Applicable	
Rate	Scoping Rate: \$7680 Per Week Excluding GST Estimated Total: _____	
Estimated Development Cost (to be updated on completion of Scoping – see clause 2(e)(i))	Not Applicable	Not Applicable
Development Fee Type (select one)	Agile (Fixed Time, Variable Scope)	Agile (Fixed Scope, Variable Time)

SIGNED for and on behalf of WorkingMouse Name of person signing: _____ Signature: _____ Authorised Officer	SIGNED for and on behalf of Customer Name of person signing: _____ Signature: _____ Authorised Officer
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Operative Provisions

1. Scope and approach

1.1. Scope of agreement

This agreement covers development of the Application by WM, through the following stages:

- (a) Scoping (clause 2);
- (b) Development (clause 3);
- (c) Testing (clause 4); and
- (d) Environments (clause 5)

1.2. Agile (Fixed Time or Fixed Scope)

- (a) WM will use reasonable endeavours to scope, develop and test the Application to meet the Scoped Requirements, using an agile methodology consisting of a series of Iterations.
- (b) Iterations will be used for Development.
- (c) Customer acknowledges that, in order to gain the benefits of speed and flexibility through using agile, there is no guarantee of time, scope or cost (other than as follows):
 - (i) where the Development Fee Type is "Agile (Fixed Time, Variable Scope)", the length of time of the Project is fixed, but the delivery of the Scoped Requirements is not fixed; or
 - (ii) where the Development Fee Type is "Agile (Fixed Scope, Variable Time)", all Scoped Requirements will be delivered, but the length of time of the Project (and therefore the total Development Fee) is not fixed.
- (d) Both parties acknowledge that a Risk Factor is involved when deriving estimations and that it is inherently difficult to give fixed timeframes in Agile projects where the scope remains undefined.

2. Scoping

- (a) WM will scope the project based on the Customer's problem statement and the priorities identified during the first scoping session.
- (b) Customer will attend scoping sessions as reasonably required by WM (expected to be 1 to 3 per week), and review and provide feedback on the Project Scope.
- (c) Scoping will include identifying the following unless otherwise agreed:
 - (i) A Requirements Backlog;
 - (ii) A non-functional prototype;
 - (iii) A recommended deliverable roadmap (broken up into milestones); and
 - (iv) updated Development Fee.
- (d) Upon completion of the initial Scoping period, WM will consolidate the Requirements Backlog and other documents into the Project Scope.
- (e) Customer will review the Project Scope and the Development Fee, and then advise WM:
 - (i) to proceed with Development, in which case:
the timing set out in the Project Scope applies to, and is incorporated within this agreement; and the Development Fee is set out in the Project Scope and on the Cover Page; or

- (ii) not to proceed with Development, in which the Customer is only required to pay for the Project Scope Fee, and this agreement then automatically terminates.

3. Development

3.1. Iterations

- (a) Each Iteration will commence with a planning meeting, where WM and Customer will prioritise Requirements from the Requirements Backlog to be developed during that Iteration, forming the Iteration Backlog, and will determine the duration and Acceptance Criteria of the Iteration. Subject to the estimates for each Requirement, where an "Agile" Development Fee type applies, Customer will make the final decision on which Requirements are included.
- (b) During the Iteration, WM will use reasonable endeavours to develop the Application to meet the Requirements and Acceptance Criteria in the Iteration Backlog, although as the Iteration proceeds, WM may need to either extend the duration of the Iteration or move Requirements to the next Iteration.
- (c) WM will hold regular meetings with the Customer (usually weekly) to review progress of the Iteration. The Customer will assist WM by prioritising Requirements within the Iteration Backlog.
- (d) On completion of the Iteration, the parties will hold an Iteration review meeting to assess the outcomes of the Iteration and use this information in the planning meeting of the next Iteration (such as undelivered Requirements that need to move to the next Iteration).

3.2. Variations

- (a) Where the Customer wishes to change a Requirement during an Iteration, the Customer will notify WM in writing of the required change.
- (b) WM will record the variation as a Change Request issue type on the Iteration Report.
- (c) The Customer acknowledges that a Change Request may require WM to increase the length of time necessary to complete an Iteration and, the overall length of time to complete the project.
- (d) WM will advise the Customer if a Change Request or accumulation of Change Requests will impact the length of time or required resources necessary to complete an Iteration or the project or the Fee.
- (e) Subject to clause 3.2(d), the Customer will then advise WM in writing whether or not to proceed with the Change Request.
- (f) If a Change Request is made during an Iteration WM may, based on its assessment of the risk involved in the change, place the Iteration on hold and, with the Customer, reassess the Requirements in the current Iteration in accordance with clause 3.1(a).

(g) If WM is unable to adhere to any Iteration as a direct or indirect result of an act or omission of Customer or as a direct or indirect result of a breach by Customer of this agreement, WM may:

- (i) make an Additional Charge for time, overtime, travel, materials and extra resources resulting directly or indirectly from such act or omission of Customer; and
- (ii) if such act or omission or breach causes delay exceeding 30 days beyond the due date of the Iteration, terminate this agreement, whereupon it may pursue such remedies as may be available under this agreement or at law.

4. Testing

- (a) In respect of each Requirement, Customer and WM will use all reasonable endeavors to agree on the scope and format for all Acceptance Criteria for that Requirement prior to commencement of development of that Requirement.
- (b) During an Iteration, WM will undertake testing of the Application against the relevant Acceptance Criteria.
- (c) Once testing is successfully completed, WM will release the Application into the Beta Environment for Customer review. This will occur concurrently with the start of the next Iteration.
- (d) Customer will review the Application in the Beta Environment, and provided the Application meets the Acceptance Criteria of the Requirements in the Iteration Backlog that have been delivered, will provide WM with approval to release the Application into the Production Environment. This task will be added to an Iteration and time adjusted accordingly.
- (e) Customer will be deemed to have given approval on the earlier of:
 - (i) when Customer has satisfactorily completed its review;
 - (ii) 5 Business Days after release of the Application into the Beta Environment (except where Customer has, to WM's reasonable satisfaction, identified Blocker or Critical failures to comply with the Requirements).
- (f) If the Customer is not satisfied that a Requirement in each Iteration complies with all the Acceptance Criteria, the Customer will provide written notice to WM and may reject the Requirement and, at its sole discretion, take one of the following actions noting that it may effect the time and associated Fee payable by the Customer:
 - (i) Advise WM the Requirement requires an urgent resolution and that WM should pause the current Iteration and begin work instead on a new Iteration with this Requirement as it's main priority in accordance with the urgent resolution;
 - (ii) Advise WM the Requirement requires an urgent resolution and that WM should include the Requirement in the current Iteration and either remove another Requirement of equal size, or increase the time agreed to complete the current Iteration
 - (iii) Advise WM the Requirement requires a less urgent resolution and that WM should include the Requirement in the next Iteration;
 - (iv) Advise WM that the Requirement should be returned to the Iteration Backlog, to be re-

prioritised in the future.

- (g) Customer will review the Application in the Beta Environment and advise WM of any issues. Once the Application is in Production the Customer will notify Rogue Two Support (provided they have signed a support agreement) or their own support provider of any issues.

5. Environments

- (a) The Customer will create an account with their preferred cloud provider and is responsible for paying the account invoices associated with hosting the applications directly to the cloud provider.
- (b) The Customer will provide RogueTwo (or another 3rd Party) with the account details for a cloud provider login and WM (via RogueTwo or another 3rd Party) will deploy the Application here to both Beta and Production Environments.
- (c) During Development, WorkingMouse will engage RogueTwo to set up the application's Beta and Production environments. If the customer wishes they can use another 3rd party to perform this task. WorkingMouse will assume the cost for the engagement with RogueTwo provided that the application requires a Standard Hosting Environment.
- (d) During Development, WM agrees to deploy (via RogueTwo or another 3rd party) the Application on a Beta Environment if required. The Customer acknowledges that this environment is for UAT purposes only and that no sensitive data should be transmitted within this system.
- (e) The Customer may conduct regular security testing (including pen testing) by a third party.
- (f) WM provides a service to build code to the Requirements specification and the Customer is responsible for (or engages with RogueTwo or another 3rd party) the hosting environment and its security.
- (g) During Development, WM will engage RogueTwo (unless instructed by the customer not to) to be responsible for the Beta hosting environment. Once the application is required to be deployed to Production, the customer must engage RogueTwo (or another 3rd party) to be responsible for all hosting environments going forward.

6. Further Development

- (a) Customer may request further Development of the Application by notice in writing to WM.
- (b) WM may, if it is willing to undertake the further Development, engage in a new scoping exercise with Customer (subject to Customer agreeing in writing to the new scoping exercise or executing a new Services agreement).
- (c) If the Customer accepts the new scoping exercise, then:
 - (i) the Customer and WM will agree in writing to the details of the new scoping exercise;
 - (ii) If the Customer wishes to proceed into Development with the new Scoped Requirements then they will instruct WM in writing, and;
 - (iii) the new Scoped Requirements will become part of this agreement.

7. Title and use

7.1. Ownership of Application

- (a) Customer acknowledges that WM or its licensors remain

the sole owner of the processes followed in the Way of Working.

- (b) WM acknowledges that the Customer remains the sole owner of its business processes.
- (c) Subject to clause 5 (a), WM licenses the Customer to use the Application (hosted by WM in a Beta Environment) for the purpose of conducting User Acceptance Testing where it is required and used.
- (d) Subject to clause 5 (b), once the Application has been released into a Production Environment, WM assigns to Customer Intellectual Property Rights in the Application.
- (e) Upon request WM will provide the source code for the Application to Customer.

7.2. Reservation of rights by WM

Except for those rights expressly granted to Customer under this agreement, WM reserves all other rights in the Codebots Platform and the Application, including without limitation, the right to pursue actions against infringers.

7.3. Third party facilities

Third party facilities, including software programs, may be necessary or appropriate for access to or use with the Application. Customer agrees that its right to make any use of such facilities is governed by the terms of the relevant third party agreement and not by this agreement.

8. Fees and payment

8.1. Fees

- (a) The Fees for the Services are set out in on Schedule 1 located at the end of this agreement (as updated in accordance with clause 2(e)(i) and subject to clause 8.2).
- (b) Customer acknowledges that:
 - (i) the Fees are based on a staff allocation factor of 0.8, to allow for WM staff to also complete general administrative and office requirements;
 - (ii) where WM staff allocated to develop the Application are absent or sick for a complete business day or more, WM will advise the Customer in writing and either replace the staff or discount the invoice for the next billing period; and
 - (iii) WM may charge the Customer for travel expenses necessary for the delivery of the Services. All travel expenses will be agreed to by Customer in writing in advance.

8.2. Payment terms

- (a) Initial Project Scope Fees are payable on delivery of the Project Scope.
- (b) WM will invoice the Customer in advance on the Wednesday prior to the following fortnightly billing period for Development Fees for the time to be spent on any subsequent Scoping or Development on a fortnightly billing cycle as per Schedule 1.
- (c) Where "Agile (Fixed Time)" is selected, WM will notify Customer when 100% of the estimated Development Fees have been invoiced. Customer may then elect to either:

- (i) increase the estimate and continue the Development; or
 - (ii) stop Development, subject to paying the Development Fees invoiced to that point (up to a cap of 100% of the estimated Development Fees).
- (d) Where "Agile (Fixed Scope)" is selected, WM will notify Customer when the initial agreed Development Fee has been invoiced, and then continue with further Development as needed until all of the Scoped Requirements are delivered (subject to Customer's right to terminate under clause 9). WM will notify Customer of the time and Fees required for continued Development to achieve the remaining scoped Requirements at agreed intervals.
 - (e) All invoices are due 14 days after the invoice date.
 - (f) If an invoice is not paid when due, and WM is not in discussions with the Customer, WM may, at its discretion:
 - (i) cease provision of the Services; and
 - (ii) charge a rate of interest in accordance with the CBA Business Loan rate at the time incurred on the unpaid fees from the due date.

8.3. GST

Unless expressly stated otherwise, all Fees and pricing in this agreement are exclusive of GST.

9. Termination and Suspension

9.1. Termination by Customer

During Scoping and Development, Customer may terminate this agreement immediately by notice in writing to WM. On termination under this clause;

- (a) WM will cease provision of the Services at the end of the Iteration (for Development) or week (for Scoping) currently in progress and provide all code/artifacts developed up to and including the cessation date;
- (b) Customer will pay WM:
 - (i) the full Fees for the billing period (for Development) or week (for Scoping) currently in progress; and
 - (ii) the full Fees for the next billing period (for Development) or week (for Scoping)

9.2. Termination by WM

Without limiting the remainder of this agreement, WM may terminate this agreement immediately by notice in writing and provide all code developed up to and including the cessation date for Customer to take elsewhere if:

- (a) Customer fails to pay any amount due under this agreement and the amount remains unpaid for 14 days after the date it is due;
- (b) Customer is in breach of any express or implied term of this agreement and, where the breach is capable of remedy, the breach is not remedied within 30 days of notification by WM; or
- (c) Customer becomes, threatens, or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration.
- (d) Customer suspends the development of the project for greater than three (3) months.

9.3. Effect of Termination

If notice is given by either the Customer or WM they may, in addition to terminating the agreement:

- (a) retain any moneys paid;
- (b) be regarded as discharged from any further obligations under this agreement; and
- (c) pursue any additional or alternative remedies provided by law.

9.4. Suspension by Customer

During Scoping and Development, Customer may suspend this agreement from a nominated date for a maximum of three months by notice in writing to WM. On suspension under this clause;

- (a) WM will cease provision of the Services on the nominated date and if requested by the Customer, provide all code/artifacts developed or scoped up to and including the suspension date;
- (b) At the full discretion of WM, the Customer will pay WM:
 - (iii) the full Fees for the billing period to date (for Development) or week to date (for Scoping) currently in progress; and
 - (iv) the full Fees for the next billing period (for Development) or week (for Scoping)
- (c) WM will continue to provide the Services until the end of the next billing period or the nominated suspension date.

10. Customer Assistance

- (a) Customer will ensure WM's staff are given the information, data, facilities and services WM requires to enable it to comply with its obligations under this agreement. Customer acknowledges that failure to provide this in a timely manner may delay WM in its performance of the Services.
- (b) Customer shall provide on request a product manager, domain expert or other suitably qualified or informed representative, agent or employee, who shall be available on call during WM's normal business hours to advise WM on access, use of Customer's resources and any other matter within Customer's knowledge or control which may assist WM in complying with its obligations under this agreement.

11. Customer logos and trade marks

Customer grants a non-exclusive royalty-free licence to WM to reproduce and display Customer's logos and trade marks during this agreement and for 12 months after the expiration or termination of this agreement, for the purposes of providing the Services and identifying Customer as a WM customer.

12. Confidentiality

- (a) A Party shall not, without the prior written approval of the other party, disclose the other Party's Confidential Information.
- (b) A Party shall not be in breach of clause 12 in circumstances where it is legally compelled to disclose the other Party's Confidential Information.
- (c) Each Party shall take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of this agreement, do not make public or disclose the other Party's Confidential Information.
- (d) This clause shall survive the termination of this agreement.

13. Liability and indemnity

13.1 Limitation of liability

WM-services-agreement

- (a) To the extent permitted by law, neither WM nor the Customer or their officers, employees, agents, contactors or suppliers, are liable for Consequential Damages even if WM or the Customer (as the case may be), their officers, employees, agents, contactors or suppliers are aware of the possibility of those Consequential Damages.
- (b) WM's liability (other than that addressed in clause 13.1(a)), whether in contract, tort, statute or otherwise, to Customer or any third party concerning performance or non-performance by WM, or in any manner related to this agreement, for all claims, is limited in the aggregate to an amount equal to the fees paid by Customer.

13.2 WM Indemnity

Customer indemnifies and will defend WM and its employees, officers and agents (those indemnified) from and against any loss or damage (including reasonable legal costs and expenses) or liability incurred or suffered by those indemnified resulting from:

- (a) a breach by Customer of its obligations under this agreement; or
- (b) any willful, unlawful or negligent act or omission of Customer.

13.3 Customer Indemnity

WM indemnifies and will defend the Customer and its employees, officers and agents (those indemnified) from and against any loss or damage (including reasonable legal costs and expenses) or liability incurred or suffered by those indemnified resulting from:

- (c) a breach by WM of its obligations under this agreement; or
- (d) any willful, unlawful or negligent act or omission of WM.

14. General

14.1 Assignment

Neither party will transfer or assign its rights under this agreement without the prior written consent of the other party.

14.2 Counterparts

- (a) This agreement may consist of one or more counterpart copies and all counterparts will, when taken together, constitute one document.
- (b) Without limiting the operation of clause 14.2 (a), this agreement may be entered into by an exchange of emails of the executed agreement or counterparts of this agreement.

14.3 Governing law

This agreement will be governed by the laws of Queensland, Australia. The parties submit to the non-exclusive jurisdiction of the courts of that State.

14.4 Severability

If any provisions of the agreement or the application of any such provision shall be held by a tribunal of competent jurisdiction to be contrary to law, the remaining provisions of this agreement shall continue in full force and effect.

14.5 Waivers and modifications

The waiver, amendment or modification of this agreement or any right hereunder shall not be effective unless made in writing and signed by an authorised representative of both parties.

14.6 Notices

- (a) Any notice, approval, request, demand or other

communication (notice) to be given for the purposes of this agreement must be in writing and must be:

- (i) Served personally,
 - (ii) Sent by ordinary or registered post – person to person mail (airmail if overseas) to the address of the party specified in this agreement (or such other address as that party notifies in writing); or
 - (iii) Sent by email; or
 - (iv) Published on an issue management system (e.g Jira) as part of an issue.
- (b) A notice given:
- (i) personally will be served on delivery;
 - (ii) by email will be served upon receipt and reading; or
 - (iii) by post will be served fourteen days after posting; or
 - (iv) as part of an issue on an issue management system (e.g Jira), saved within the Requirements Backlog.

14.7 Entire understanding

- (a) This agreement contains the entire understanding and agreement between the parties as to the subject matter of this agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this agreement are merged in and superseded by this agreement and will be of no force or effect and no party will be liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by any party to another will affect the meaning or interpretation of this agreement or constitute any collateral agreement, warranty or understanding between any of the parties.

14.8 Non-exclusivity

Both parties agree that each is free to enter into similar agreements with other persons.

14.9 Interpretation

In this agreement unless the context requires otherwise:

- (a) reference to a person includes any other entity recognised by law and vice versa;
- (b) the singular includes the plural and vice versa;
- (c) one gender includes every gender;
- (d) clause headings are for reference purposes only;
- (e) reference to a party includes that party's executors, administrators, successors (including any entity resulting from a permitted amalgamation), permitted assigns and substitutes; and
- (f) reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it.

15. Time

- (a) Notwithstanding the date of signing of this agreement, this agreement commences on the Effective Date.
- (b) WM reserves the right to choose what date the Services are delivered. This may differ from the Effective Date .

16. Definitions

Acceptance Criteria means the acceptance tests or criteria for acceptance for each Requirement.

Additional Charge means a charge in accordance with WM's standard rates in effect from time to time.

Application means the software to be developed by WM under this agreement.

Beta Environment means the non-production environment in which Customer can review the Application.

Blocker means a problem which produces an emergency situation in which the Application is inoperable, produces incorrect results, or fails catastrophically.

Business Day means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business in Brisbane, Queensland.

Change Request means a piece of functionality reflected through a ticket on Jira that was not part of the Scoped Requirements and is added during Development.

Confidential Information means the confidential information of a party which relates to the subject matter of this agreement and includes:

- (a) confidential information relating to the design of the Application;
- (b) information relating to the personnel, policies or business strategies of either WM or the Customer;
- (c) information relating to the terms upon which the Application has been supplied and installed pursuant to this agreement;
- (d) information which either party stipulates is confidential in nature

Consequential Damages means special, incidental, indirect, exemplary, punitive or consequential damages, loss of revenue, loss of profits, loss of production, loss of data, loss of goodwill or credit, loss of reputation or future reputation or publicity, loss of use, loss of interest, damage to credit rating, loss or denial of opportunity, loss of anticipated savings, or increased or wasted overhead costs, or which relates to additional expenses incurred or rendered futile; or which is not a natural or immediate consequence of the cause of action; or which is suffered as a result of a claim by a third party; or which consists of a claim for personal injury or damage to property, whether in contract, tort, statute or otherwise.

Cover Page means the first page of this agreement.

Critical means a problem which produces a detrimental situation in which performance (throughput or response) of the Application degrades substantially under responsible loads, such that there is a severe impact on use, the software is usable but materially incomplete, one or more mainline functions or commands is inoperable or the use is otherwise significantly impacted

Development means the Services provided under this agreement to create the Application.

Fee means a fee as set out on the Cover Page or additional Fees as agreed by Customer in writing. Schedule 1 outlines the rates for additional fees. Should the rates in Schedule 1 be updated, WM will notify Customer in writing and seek approval

for the updated rates.

Intellectual Property Rights means all and any patents, patent applications, trade marks, service marks, trade names, registered designs, unregistered design rights, copyrights, know how, trade secrets, domain names, internet addresses, rights in Confidential Information, and any other intellectual property rights, whether registered or unregistered, and including all applications and rights to apply for any of the same now or in the future

Iteration means a Development period (of a duration agreed by the parties at the start each Iteration) in which the scope within the Iteration Backlog is developed.

Iteration Backlog has the meaning given to it in clause [3.1\(a\)](#).

Iteration Report means the report given to the Customer at the conclusion of each iteration.

Party includes both the Customer and WM

Platform means the Codebots platform (including models and code generators) that WM or Customer (as applicable) uses to design, build and deploy the Application.

Production Environment means the live production environment where the Application can be used in full.

Project Brief means the document prepared by WM defining our understanding of the clients domain, setting out the problem statement for the scoping exercise and defining the recommended length of scope.

Project Scope means the document prepared by WM which includes the scoped requirements, a non-functional prototype, the proposed data model and estimated length of time to develop the scoped requirements.

Requirement means an element of proposed functionality of the Application.

Requirements Backlog means the set of Requirements to be potentially developed.

Risk Factor refers to the ratio calculated from the level of complexity and unfamiliarity the team have assessed a requirement to have.

Scoped Requirements means the requirements compiled during a scoping exercise and agreed for upcoming development stage.

Scoping/Scoping Exercise means the process taken before and optionally during development to explore the project and outline a set of scoped requirements which are ready for development.

Services means the scoping and the Development.

Standard Hosting Environment is the hosting environment required to host a standard application produced using the Platform.

User Acceptance Test (UAT) means the testing performed by the Customer to confirm that the Application performs as per the Requirements.

Way of Working is the document outlined throughout scoping and development, available on WM's website

Schedule 1 – Fees

All fees are excluding GST

Role	\$/Day	\$/Week
Squad Lead	\$300*	\$1,500*
Software Developer	\$900	\$4,500
Product Designer	\$900	\$4,500
Solution Architect	\$1500	\$7,500
DevOps	\$1200	\$6,000

*Per developer

Proposed Scoping Team Weekly Fees

Role	Days/week	Total
Product Designer	5	\$4500.00
Developer	5	\$4500.00
Scoping Team Total		\$9000.00

Proposed Development Team Weekly Fees

Role	Days/week	Total
Developer	5	\$4500.00
Developer	5	\$4500.00
Squad Lead	10*	\$3000.00
Development Team Total		\$12000.00

* Developer days