

SOFTWARE DEVELOPMENT AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____ by and between _____ (hereinafter "Developer" organized and existing under the laws of the State of _____ and _____ (hereinafter "Customer"), a corporation duly organized and existing under the _____;

RECITALS

WHEREAS, Developer has acquired specific expertise in the development in the field of _____;

WHEREAS, Customer has a need for certain application software as herein

WHEREAS, Developer is ready, willing, and able to undertake the development and to grant Customer a license to utilize same on the terms and conditions set forth

WHEREAS, Customer desires to have developed and to acquire a license on the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the premises as well as the obligations undertaken, the parties, intending to be legally bound, agree as follows:

Article 1

PROJECT DEFINITION

- 1.1 Project Definition.** Developer shall, within 10 days of final execution commence work upon and diligently proceed with the development of _____ according to and in conformity with the specifications and performance Exhibit A hereto (the "Specifications and Performance Standards") *[to be created by document user]*. The term "Subject Programs" shall be deemed to include modifications, and enhancements made thereto. The term "Enhancements" or new functions of the Subject Programs which are developed under the "Specifications and Performance Standards" shall be deemed to include those set forth in the "Addendum," executed by the parties hereto.
- 1.2 Budget and Timetable.** Developer shall commit and utilize sufficient resources to complete development of the Subject Programs within the timetable set forth in Exhibit B hereto *[to be created by document user]* and development budget set forth in Exhibit C hereto *[to be created by document user]*. Developer shall notify Customer of any circumstances, when and as they arise, that are anticipated to lead to a material deviation from the development timetable or milestones set forth in Exhibit B *[to be created by document user]*. Developer shall allocate sufficient personnel resources to complete such development as may be required for the development and testing thereof. Developer shall conduct such development and tests in a professional manner, incorporate into the development such modifications as the tests indicate are necessary, and conduct such further development in the circumstances.
- 1.3 Restrictions on Developer Activities.** During the term of this Agreement, Developer shall not, without the prior written consent of Customer, contract to provide similar

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party (excluding Customer or any affiliate or subsidiary of the party) shall not apply or divert any funds or other resources budgeted to the development or use of any services or products to be provided to any third party. Developer shall not engage any third party that is engaged in the development, licensing, sale, or use of services or products functionally similar to the Subject Programs and that is, or may be, in direct competition with Customer.

1.4 Use of Third-Party Consultants. Developer may retain third parties to fulfill its obligations in connection with its work on the Subject Programs if necessary as only for development activities; provided, however, that all third parties who perform or assist in the development of the Subject Programs shall execute appropriate documentation of their work-for-hire status, effecting assignments of all rights with respect to the Subject Programs and undertaking obligations of confidentiality respecting such work.

1.5 Designation of Supervisor. Developer shall designate an employee who shall be responsible for Developer to supervise the development of the Subject Programs. Such employee shall devote substantially all of his or her business time to such endeavor.

Article 2

DELIVERY AND ACCEPTANCE

2.1 Delivery and Installation. Immediately upon the completion of each development milestone set forth at Exhibit B [*to be created by document user*] Developer shall deliver the Subject Programs at the _____ [*data-processing operations center of Customer*] and shall deliver thereto all other materials required to be provided in accordance with such milestone. Developer shall notify Customer of the availability of each portion of the Subject Programs for testing and the date of such notification hereinafter being referred to as the Acceptance Test Date.

2.2 Acceptance Tests. Promptly after the Acceptance Test Date, Customer shall conduct the Acceptance Tests specified in Exhibit D hereto [*to be created by document user*] (hereinafter referred to as the Acceptance Tests), during the time period specified therein, to determine whether the Subject Programs (1) conforms to the Specifications and Performance Standards for each module, and (2) performs repetitively on an appropriate variety of data volumes. Upon completion of the final development milestone, the Acceptance Tests shall be conducted on the Subject Programs in their entirety in order to determine whether the Subject Programs conform to the Specifications and Performance Standards and (2) operate with internal controls. If the Acceptance Tests establish that the Subject Programs do not conform to the Specifications and Performance Standards, Customer and Developer shall modify the Subject Programs to ensure that they conform to the Specifications and Performance Standards. Customer and Developer shall thereafter undertake further Acceptance Tests of equal duration until the Subject Programs to comply with the Specifications and Performance Standards. A single round of Acceptance Tests shall constitute a material breach of this Agreement if the Subject Programs under Article 10.2 hereof.

2.3 Completion of Development Phases. If and when the Acceptance Tests establish that the Subject Programs delivered upon completion of any phase of development comply with the provisions of the Specifications and Performance Standards, Customer shall notify Developer that it accepts the Subject Programs, and the date of such notification shall be the date on which Customer shall be obligated to make the applicable milestone payment. The date of such notification shall be set forth in Exhibit C hereto [*to be created by document user*].

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Article 3

COMPENSATION

- 3.1 Installment Payments for Development.** Customer shall pay Developer _____ in installments in accordance with the payment schedule set forth in *[to be created by document user]*, and each installment shall be payable upon completion of each milestone by Developer and acceptance by Customer in accordance with Article 2 hereof.
- 3.2 Support Services Payment.** Customer shall pay fees to Developer for certain support services (“Support Services Fees”) in the annual sum of \$_____ payable in quarterly installments beginning on the first day of the first month following the end of the warranty period set forth in Article 6 hereof. Developer shall be entitled to increase the Support Services Fees at any time after the three-year period beginning upon acceptance of all Subject Programs upon prior written notice to Customer of not less than 12 months.
- 3.3 Taxes.** The fees set forth above are exclusive of taxes. Customer shall be responsible for all taxes, levies, and assessments, excepting taxes based on the net income of Developer. Customer shall, upon receipt of notice from Developer, promptly pay, or if Developer has paid, promptly reimburse Developer for all such taxes, levies, or assessments.

Article 4

LICENSE

- 4.1 License.** Developer hereby grants to Customer, subject to the terms and conditions of this Agreement, a perpetual, nontransferable license (without the right to grant or sublicense) to use the Subject Programs in object code form. The license granted hereunder shall be limited to _____ *(insert named territories)* for a period of _____ months from the date of acceptance by Customer of all of the Subject Programs as set forth in Article 2 hereof. If the license shall automatically revert to a non-exclusive license following the one-year period of exclusivity granted herein.
- 4.2 Scope of License.** The license granted pursuant to Article 4.1 shall authorize Customer to:
- Install the computer software portion of Subject Programs on computer hardware owned, leased, or otherwise controlled by Customer;
 - Utilize the Subject Programs for its internal data-processing purposes (including, but not limited to, data sharing or service bureau purposes); and
 - Copy the Subject Programs only as necessary to exercise the rights granted herein.

Article 5

LIMITED RIGHTS

- 5.1 Limited Right of Use.** This Agreement does not provide Customer with title or ownership in the Subject Programs, but only a limited right to use and copy the Subject Programs as set forth herein. Customer shall keep the Subject Programs free and clear of all

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