

SOFTWARE MODIFICATION AGREEMENT

THIS SOFTWARE MODIFICATION, LICENSING, AND MARKETING
“Agreement”), made and entered into this _____ day of _____
between _____ (hereinafter ‘Licensee’), a _____
of corporation) with its principal offices at _____
and _____ (hereinafter “Licensor”), a _____
of corporation) with its principal offices at _____

RECITALS

WHEREAS, Licensor is the author of, or has acquired the rights to, certain
documentation, and related written materials, and Licensee desires to acquire a right
market such programs and materials under the terms and conditions set forth herein;

WHEREAS, Licensor is willing to grant such rights and licenses and is fur
modifications and additions to the existing computer programs, documentation
materials on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants herein con
be legally bound, the parties hereby agree as follows:

Article 1

DEFINITIONS

The definition of terms set forth in this Article shall apply in this Agree
elsewhere expressly defined herein) including any and all exhibits, addendums, an
or incorporated herein now or in the future.

- 1.1 **“Code.”** Computer programming code, together with all Maintenance Mo
including object code and source code as well as associated procedural code
- 1.2 **“Derivative Work.”** A work that is based upon one or more preexisting w
modification, translation, abridgement, condensation, expansion, or any ot
preexisting works may be recast, transformed, or adapted and that
authorization of the owner of the preexisting work, would constitute cop
other infringement of proprietary rights of the owner therein.
- 1.3 **“Documentation.”** All textual material relating to Code, including t
instructions, and related technical information, plus all Maintenance Modi
generally relate to the Code. Documentation shall also include customary e
as user manuals.
- 1.4 **“End-User License.”** The present standard Licensee Program License
which has been delivered to Licensor, or any revisions thereto or replacem
equivalent protection against unauthorized duplication or use, employed b
Product to end-users.
- 1.5 **“Enhancements.”** Changes or additions (other than Maintenance Modif
new releases, made by Licensor to Licensor Code that add signific
substantially improved performance of Licensor Code by changes in syste

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related Licensor Documentation.

- 1.6 **“Licensor Code.”** The existing program code specified in Exhibit A here *document user*. [Specify whether source or object code. Insure that it is pro
- 1.7 **“Licensor Documentation.”** All documentation and related materials cu
Licensor with Licensor Code.
- 1.8 **“Maintenance Modifications.”** Modifications or revisions to Code or Docu
Enhancements, including both the source code and object code the
Program/Documentation Errors, support new releases of the operating sys
Code is designed to operate, support new input/output (I/O) devices, or prov
corrections.
- 1.9 **“Marketing Transferees.”** Any commercial entities, including dealers and
Licensee may transfer Product in connection with the marketing and distribut
- 1.10 **“Minor Derivative Work.”** A Derivative Work of the Licensor Code or a p
based upon or incorporates less than 40 percent of the Licensor Code.
- 1.11 **“Product.”** Any product offered by Licensee which includes Licensee Ve
Licensor Documentation, or a Derivative Work of any or all of the foregoing
- 1.12 **“Program/Documentation Error.”** Any error, problem, or defect caused
(1) an incorrect functioning of Code or (2) an incorrect or incomplete sta
Documentation, if such error, problem, or defect renders the Code inoperabl
fail to meet the specifications thereof, causes Documentation to be inaccurat
material respect, causes incorrect results, or causes incorrect functions to
materials are used for their intended purposes.
- 1.13 **“Licensee Version.”** A combination of Licensor Code, Licensor
developments undertaken pursuant to this Agreement (including Code and I
delivered by Licensor to Licensee hereunder. Licensee Version shall be pro
(1) conform to and implement the specifications set forth in Exhibit B her
document user] with respect to Code and (2) conform to Exhibit C here
document user] with respect to Documentation.

Article 2

LICENSOR DEVELOPMENT

- 2.1 **Modification of Licensor Code.** Licensor shall modify the Licensor
Documentation and shall develop and incorporate the developments u
(including Code and Documentation) as necessary in order to create the L
Licensee Version shall be delivered by Licensor to Licensee
_____, 20____. [The Licensee Version is to
separately deliverable module defined in the specifications at Exhibit I
document user] in accordance with the delivery schedule set forth in Exhibi
document user]]. The Licensee Version shall be recorded on

[quantity and
stated] tapes or disk packs or such other suitable medium as shall be desig
writing.

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- 2.2 Joint Testing and Correction of Program/Documentation Errors.** Licensee shall test the Licensee Version jointly with Licensor in the testing of the Licensee Version in accordance with the testing procedures set forth in Exhibit D *[to be created by document user]*. Licensee shall promptly correct all Program/Documentation Errors identified during such testing. Testing and correction of Program/Documentation Errors shall not be deemed to constitute compliance of the Licensee Version with the specifications set forth at Exhibit E *[to be created by document user]* has been demonstrated in accordance with the testing procedures set out at Exhibit E hereof *[to be created by document user]*.
- 2.3 Preparation of Maintenance Modifications.** Licensor shall provide Maintenance Modifications to Licensee for the Licensee Version for a period of _____ years after the release of the Licensee Version in accordance with acceptance test procedures referred to in Exhibit F *[to be created by document user]*. Maintenance Modifications shall be provided by Licensor in accordance with the Maintenance Modifications set forth at Exhibit F *[to be created by document user]*.
- 2.4 Enhancements.** Licensor shall provide to Licensee, at no additional cost beyond that set forth in Article 8 hereof, any Enhancements prepared by Licensor during the term of this Agreement. Licensor shall keep Licensee advised as to its plans for Enhancements. Such Enhancements shall become part of the Licensee Version and its Documentation.

[Alternate provision]

- 2.4 Enhancement Options.** Licensor shall, upon request by Licensee, of Licensee Version Enhancements prepared by Licensor. Licensor shall propose reasonable additional Enhancements for the Licensee Version and shall keep Licensee advised as to its plans for Licensee Version Enhancements. If Licensee elects to obtain such Enhancements for such cost, Licensor shall modify this Agreement to reflect same. Upon such modification of this Agreement, such Enhancements shall become part of the Licensee Version and Licensee Documentation.
- 2.5 Failure to Meet Development Requirements.** The failure of Licensor to meet the Licensee Version development requirements set forth in this Article 2 shall constitute a material breach of this Agreement, and, in addition to any other contract remedies available to Licensee, Licensee shall be entitled, at its option, to exercise the remedies provided in Article 12 hereof. Licensor shall, at Licensor's expense, completion of such development requirements by Licensee, if selected by Licensee].

Article 3

LICENSEE REQUIREMENTS

- 3.1 Licensee Confidential Information.** Licensee shall provide to Licensor as "Licensee Confidential Information" (subject to the terms of Article 13 hereof) disk packs containing Licensee Confidential Information supporting Documentation developed by Licensee for use only by Licensor in the Licensee Version. A listing of such Licensee Confidential Information shall be provided to Licensor upon delivery. After delivery of the Licensee Version, Licensee shall keep Licensee Confidential Information while this Agreement is in effect, for use only by Licensee or provided to or at the direction of Licensee. Licensee shall return to Licensor all Licensee Confidential Information of such Licensee Confidential Information upon termination of this Agreement. Licensee shall provide programming and documentation standards and other technical information that relate to preparation of the Licensee Version. All such materials shall be Licensee Confidential Information.

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