

SYSTEM DEVELOPMENT AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, 20____ by and between _____ (hereinafter "Vendor"), a _____ [type of organization], and _____ (hereinafter "Customer"), a _____ [type of organization]:

RECITALS

WHEREAS, Vendor is in the business of developing and providing hardware/software systems to customers in the industry;

WHEREAS, Customer desires to have Vendor develop and furnish to Customer a computer hardware/software system having certain specifications; and

WHEREAS, Vendor is ready, willing, and able to develop and provide to Customer 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, do hereby agree as follows:

Article 1

SYSTEM DEVELOPMENT

1.1 Vendor shall develop, assemble, and provide to Customer a computer system (the "System") consisting of certain data-processing systems and programs (the "Software") and certain computer equipment (the "Computer Equipment"), and include consulting services and software support services described below, all on the terms set forth in this Agreement.

Article 2

DEFINITIONS

As used in this Agreement, the following capitalized terms shall have the following definitions:

- 2.1 "Acceptance." The meaning set forth in Article 8.2 hereof.
- 2.2 "Licensed Programs." The set of computer programs in machine-readable form, developed or acquired by Vendor, including associated modules, and/or files which are written in _____ [language] and designed to run on the Computer Equipment and which serve the _____ [purpose]. The Licensed Programs are described in the "Program Specifications" attached hereto as Exhibit A [to be created by document user].
- 2.3 "Computer Equipment." The computer hardware configuration, including computer equipment and terminals, that is to be acquired by Vendor from individual sources or Customer by Vendor, and installed under this Agreement. The Computer Equipment is described in the "Equipment Specifications" attached hereto as Exhibit B [to be created by document user].

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2.4 “**Computer System.**” The combination of Computer Equipment developed and acquired by Vendor and provided to Customer under

2.5 “**CPU.**” The single central processing unit included in the Computer Equipment Exhibit B attached hereto *[to be created by document user]*.

2.6 “**Effective Date.**” _____, 20____

Article 3

DELIVERED SYSTEM

3.1 Computer Equipment.

a. **Delivery.** Vendor shall deliver the Computer Equipment to Customer at the Customer's facility in accordance with the specifications set forth in Exhibit C attached hereto *[to be created by document user]*. Customer shall pay the purchase price of the Computer Equipment in accordance with Exhibit D attached hereto *[to be created by document user]*, and Vendor hereby reserves a purchase-money security interest in all of the Computer Equipment as security for the prompt and complete performance by Customer of all its obligations under this Agreement. Vendor shall execute and deliver such further documents and instruments as Vendor may require in order to perfect and maintain its security interest therein. Vendor warrants that the Computer Equipment, at the time of delivery to Customer, shall be (1) free of all claims, liens, and encumbrances; (2) newly manufactured; and (3) free of all claims, and encumbrances, except as expressly set forth above.

b. **Site-Preparation Charges.** Customer shall be responsible for all site preparation charges at the facility, including climate control, foundation mounting, and provision of power and shall bear sole liability for any expenses incurred thereby. Customer shall reimburse Vendor for any such charges. Vendor has provided Customer with written specifications for such site preparation.

c. **Freight and Insurance Charges.** Vendor shall schedule and provide for the shipment of the Computer Equipment through such commercial carrier and under such terms and conditions as Customer may specify. Vendor shall obtain casualty insurance for the shipment of the Computer Equipment sufficient to cover the lesser of repair costs or replacement value if damage should occur in transit. Customer shall reimburse Vendor for freight and insurance charges incurred in connection with shipment of the Computer Equipment from Vendor to Customer.

d. **Supplies.** Customer shall provide all supplies necessary for the normal operation of the Computer Equipment. Customer acknowledges that Vendor has provided a written list of the customary supplies, including (as general information only) the name and price information regarding possible supply sources.

3.2 **Installation of Licensed Software.** Vendor shall deliver the Licensed Software to Customer within _____ days of the delivery of the Computer Equipment to Customer. Vendor shall manage on-site installation of the Licensed Software. Thereafter, Vendor shall provide services covering the implementation and operation of the Licensed Software, including training and assistance regarding clerical methods and procedures, file-creation and operation, and user education classes. These services shall consist of (1) one training session conducted by Vendor's training representatives at Customer's facility; (2) two weeks of advanced training at Customer's facility conducted by Vendor's training representatives; and (3) three days of miscellaneous post-acceptance support services to be rendered by Vendor.

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maintenance representatives at Customer's facility. Scheduling of such services shall be timely to Customer's needs. Vendor shall be liable for all costs, including travel expenses that either it or its personnel may incur in performing such services. Vendor shall be responsible for any additional implementation support beyond that set forth above. Vendor shall be responsible for any additional implementation support beyond that set forth above. Customer and authorized by Vendor, at Vendor's standard time and material and travel expenses of Vendor's personnel. Billable hours for such additional implementation support shall be limited to active work time of Vendor's personnel at Customer's facility.

3.3 Project Management. On the Effective Date of this Agreement, Vendor shall have the responsibility for installation and implementation of the Computer System. Vendor shall designate a Project Manager who is qualified to supervise the project and authorized to issue instructions to Vendor's personnel. Vendor may thereafter substitute other persons as Project Manager with Customer's prior written approval, which shall not be unreasonably withheld. The Project Manager shall designate a Project Coordinator as its representative for purposes of regular communication with Customer. The Project Manager shall report to Customer's Project Coordinator weekly (1) progress of the past period, (2) tasks not completed, (3) tasks assigned for the next period, (4) problems, and (5) recommended actions or solutions.

3.4 Support and Maintenance Services. Following the completion of the installation of the Computer System specified in Article 3.2 hereof, Vendor shall provide software support services for the Computer System in accordance with Exhibit C attached hereto *[to be created]*.

Article 4

LICENSE

4.1 Grant of License. Effective as of the installation of the Computer System and the Licensed Programs, Vendor grants to Customer and Customer hereby accepts a nonexclusive, non-transferable license to use and copy the Licensed Programs in accordance with the terms and conditions of this Agreement. Such right and license authorizes the Customer to:

- a. Install the Licensed Programs on the Computer Equipment;
- b. Make not more than one backup copy of the Licensed Programs for non-commercial purposes only; and
- c. Use the Licensed Programs on the Computer Equipment solely to meet the processing and computing needs of Customer.

4.2 Limitations. The Licensed Programs may be installed and used by Customer on the Computer Equipment described in Exhibit B *[to be created by document]*, however, that if the CPU is damaged or malfunctions, Customer may, upon written request to Vendor, install and execute the Licensed Programs during the period of time necessary to obtain an alternative CPU of similar configuration and capacity.

Article 5

OWNERSHIP

5.1 Exclusive Ownership. This Agreement does not provide Customer with title to the Licensed Programs, but only a limited right to use and copy the Licensed Programs as set forth herein. Customer shall keep the Licensed Programs free and clear of all liens, claims, and encumbrances.

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