

System Development Services Agreement

This Packet Includes:

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General Information

System Development Services Agreement

This System Development Services Agreement is between a customer and a vendor who will develop and provide an integrated computer hardware/software system to the customer. This agreement sets out the specific terms of the arrangement including how the system will be developed, delivered and installed. It also sets forth how much the vendor will be paid for this service and any warranties on the system.

It is crucial that this business arrangement be clearly and succinctly set out in writing. A written System Development Services Agreement will be useful in the event of disagreements or miscommunication between the parties surrounding the development and set-up of the computer system.

Instructions and Checklist

System Development Services Agreement

- Both parties should read the agreement carefully.
- Insert all requested information in the spaces provided on the form.
- This form contains the basic terms and language that should be included in similar agreements.
- Both parties should read the "Computer System Provided by Vendor" provision carefully to ensure that it spells out specifically what vendor is to provide. If the provision is ambiguous, describe it fully and include examples to remove as much ambiguity as possible.
- Read the "Grant of License" and "Proprietary Protection of Licensed Programs" carefully. If there are disagreements, they will likely focus on these provisions.
- Both vendor and customer must sign the agreement.
- Both parties should retain either an original or copy of the signed agreement.
- All legal documents should be kept in a safe location such as a fireproof safe or safe deposit box.

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**SERVICE AGREEMENT
SYSTEM DEVELOPMENT**

THIS AGREEMENT made and entered into this _____ day of _____, 20__ by and between _____ located at _____ (hereinafter "Vendor"), and _____ located at _____ (hereinafter "Customer")

RECITALS:

- A. WHEREAS**, Vendor is in the business of developing and providing integrated computer hardware/software systems to customers in the _____ industry;
- B. WHEREAS**, Customer desires to have Vendor develop and furnish to Customer an integrated computer hardware/software system having certain specifications; and
- C. WHEREAS**, Vendor is ready, willing, and able to develop and provide to Customer such a system on the terms and conditions set forth herein;
- D. NOW THEREFORE**, in consideration of the premises, as well as the obligations herein made and undertaken, the parties, intending to be legally bound, do hereby agree as follows:

**Section 1
DEVELOPMENT OF THE COMPUTER SYSTEM**

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

**Section 2
DEFINITIONS**

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

2.1 "Acceptance." The meaning set forth in Section 8.2 hereof.

2.2 "Licensed Programs." The set of computer programs in machine-readable (object-code-only) form, developed or acquired by Vendor, including associated modules, components, formats, and/or files which are written in [designate programming language] and designed to run on the Computer Equipment and which have the following purpose: _____ [specify purpose] _____. The Licensed Programs are described in the "Program Specifications" attached hereto as Exhibit A.

2.3 "Computer Equipment." The computer hardware configuration, including associated

peripheral equipment and terminals, that is to be acquired by Vendor from individual vendors, provided to Customer by Vendor, and installed under this Agreement. The Computer Equipment is described in the "Equipment Specifications" attached hereto as Exhibit B.

2.4 "Computer System." The combination of Computer Equipment and Licensed Programs developed and acquired by Vendor and provided to Customer under this Agreement.

2.5 "CPU." The single central processing unit included in the Computer Equipment, as identified in Exhibit B attached hereto.

2.6 "Effective Date." _____, 20__

Section 3 COMPUTER SYSTEM PROVIDED BY VENDOR

3.1 Computer Equipment.

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

b. Site-Preparation Charges. Customer shall be responsible for all site preparation at its facility, including climate control, foundation mounting, and provision of adequate utilities, and shall bear sole liability for any expenses incurred thereby. Customer acknowledges that Vendor has provided Customer with written specifications for such site preparation.

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

d. Supplies. Customer shall provide all supplies necessary for the normal operation of the Computer Equipment. Customer acknowledges that Vendor has provided Customer with a written list of the customary supplies, including (as general information only) current vendor 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's facility and shall manage on-site installation of the Licensed Software. Thereafter, Vendor shall provide consulting services covering the implementation and operation of the Licensed Software, including advice and assistance regarding clerical methods and procedures, file-creation assistance, computer operation, and user education classes. These services shall consist of: (1) a preliminary ___-day training session conducted by Vendor's training representatives at Customer's facility; (2) man-weeks of advanced training at Customer's facility conducted by Vendor's training representatives; and (3) days of miscellaneous post-acceptance support services to be rendered by Vendor's maintenance representatives at Customer's facility. Scheduling of these consulting services shall be timely to Customer's needs. Vendor shall be liable for all compensation, travel, and related expenses that either it or its personnel may incur in performing such services. Customer shall pay Vendor for any additional implementation support beyond that set forth above, if requested by Customer and authorized by Vendor, at Vendor's standard time and material rates, plus reasonable 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 assign principal responsibility for installation and implementation of the Computer System to 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 Managers only with Customer's prior written approval, which shall not be unreasonably withheld. Customer shall designate a Project Coordinator as its representative for purposes of regular contact with Vendor. The Project Manager shall report to Customer's Project Coordinator weekly on: (1) progress during the past period, (2) tasks not completed, (3) tasks assigned for the next period, (4) anticipated problems, and (5) recommended actions or solutions.

3.4 Support and Maintenance Services. Following the completion of the consulting services specified in Section 3.2 hereof, Vendor shall provide software support services to Customer for the Computer System in accordance with Exhibit C attached hereto.

Section 4 GRANT OF LICENSE

4.1 Grant of License. Effective as of the installation of the Computer System at Customer's facility, Vendor grants to Customer and Customer hereby accepts a nonexclusive, nontransferable right and 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 no more than one backup copy of the Licensed Programs for nonproductive, archival purposes only; and
- c. Use the Licensed Programs on the Computer Equipment solely to meet the internal data-processing and computing needs of Customer.

4.2 Limitations. The Licensed Programs may be installed and used by Customer only on the Computer Equipment described in Exhibit B, provided, however, that if the CPU is damaged or malfunctions, Customer may, upon prior written notice to Vendor, install and execute the Licensed Programs during the period of malfunction on an alternative CPU of similar configuration and capacity.

Section 5 PROPRIETARY PROTECTION OF LICENSED PROGRAMS

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

5.2 Acknowledgment of Proprietary Features. Customer acknowledges that the Licensed Programs and all program documentation relating thereto to be provided by Vendor hereunder are commercially valuable, proprietary products of Vendor, the design and development of which reflect the effort of skilled development experts and the investment of considerable time and money. Customer acknowledges that the Licensed Programs and all program documentation relating thereto contain substantial trade secrets of Vendor, which Vendor has entrusted to Customer in confidence to use and copy only as expressly authorized by this Agreement. Customer further acknowledges that Vendor claims and reserves all rights and benefits afforded under federal copyright law in all Licensed Programs and program documentation as unpublished works. Any copying, modification, or distribution of such copyrighted works not expressly authorized by this Agreement is strictly forbidden.

5.3 Restrictions on Use. In addition to those limitations pertaining to Customer's right and license in the Licensed Programs set forth in Section 4 hereof, Customer shall not, at any time, disclose or disseminate the trade secrets embodied in the Licensed Programs or any program documentation to any person, including any employee or contractor of Customer who does not need to obtain access thereto as a necessary incident of the effective utilization of the Licensed Programs by Customer in accordance with this Agreement. Customer shall devote its best efforts to ensure that all persons afforded access to the Licensed Programs and all program documentation protect Vendor's trade secrets against unauthorized use, dissemination, or disclosure. Under no circumstances may Customer modify, reverse engineer, reverse compile, or reverse assemble the object code version of the Licensed Programs. Under no circumstances may Customer disclose or disseminate such trade secrets to any competitor of Vendor.

5.4 Legending. Customer shall reproduce and include in all copies of the Licensed Programs prepared by Customer the copyright notices and proprietary legend(s) of Vendor as they appear in the Licensed Programs and on the media containing the Licensed Programs supplied by Vendor.

5.5 Duration. Customer's obligations under this Section 5 shall survive termination of this Agreement for any reason and shall remain in effect for as long as Customer continues to possess, use, or control the Licensed Programs, any supporting program documentation relating thereto, or

any trade secrets embodied therein.

Section 6

LIMITED WARRANTY; LIMITATION ON REMEDIES

6.1 Limited Warranty. Vendor warrants, for the benefit only of Customer, that the Licensed Programs shall conform in all material respects to the Program Specifications attached hereto as Exhibit A and that the Computer Equipment shall conform in all material respects to the Equipment Specifications attached hereto as Exhibit B, except with respect to subsequent modifications made at Customer's request. This warranty shall apply only for a period of one year after Acceptance of the Computer System under Section 8.2 hereof. Vendor assumes no responsibility for obsolescence of the Computer System or any component thereof.

6.2 Exclusive Remedy. As the exclusive remedy of Customer for any non-conformity or defect in the Licensed Software or the Computer Equipment for which Vendor is responsible, Vendor shall attempt through reasonable effort to correct or cure such nonconformity or defect. However, Vendor shall not be obligated to correct, cure, or otherwise remedy any nonconformity or defect in the Computer System (1) if Customer has performed any maintenance to the Computer System without Vendor's authorization; (2) if the Computer System has been misused or damaged in any respect; or (3) if Vendor has not been notified of the existence and nature of such nonconformity or defect promptly upon its discovery.

6.3 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, VENDOR DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS, AND WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE COMPUTER SYSTEM, OR ANY COMPONENT THEREOF, INCLUDING ALL WARRANTIES RESPECTING THE CONDITION, CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, EXISTENCE OF ANY LATENT OR PATENT DEFECTS, OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE COMPUTER SYSTEM OR ANY PORTION OR COMPONENT THEREOF.

6.4 Limitation of Liability. The cumulative liability of Vendor to Customer for all claims whatsoever related to the Licensed Software, the Computer Equipment, or this Agreement, including any cause of action sounding in contract, tort, or strict liability, shall not exceed the total amount of all fees paid to Vendor by Customer under this Agreement. This limitation of liability is intended to apply to all claims of Customer, without regard to which other provisions of this Agreement have been breached or have been proven ineffective.

6.5 Exclusion of Consequential Damages. In no event shall Vendor be liable for any loss of profits; any incidental, special, exemplary, or consequential damages; or any claims or demands brought against Customer, even if Vendor has been advised of the possibility of such claims or demands. This limitation upon damages and claims is intended to apply to all claims of Customer, without regard to which other provisions of this Agreement have been breached or have proven ineffective.

Section 7

INSTALLATION AND SERVICE RESPONSIBILITIES

7.1 Installation Environment. Customer shall be responsible for all site preparation, including preparation of a suitable installation environment, for the Computer System in accordance with the written specifications furnished by Vendor. Vendor shall, at its expense, inspect the installation environment not less than [Period] days nor more than [Period] days prior to the scheduled date of installation. At that time, Vendor shall furnish Customer with a written statement of any deficiencies in the environment that would preclude the installation or performance of the Computer System as contemplated by this Agreement.

During the installation period, Customer shall procure and make available, at its own expense, such miscellaneous parts as Vendor may specify, provided that such parts can be readily procured and do not, in the aggregate, cost in excess of [Amount] . Customer shall give Vendor, together with its agents and employees, reasonable access to the installation site during normal business hours for purposes of installation and implementation of the Licensed Programs and the Computer Equipment.

7.2 Computer Equipment Maintenance. Customer shall bear all responsibility for maintenance of the Computer Equipment following expiration of the warranty period set forth in Section 6 hereof. Vendor has furnished to Customer (as general information) a written list of maintenance vendors, but Customer shall determine for itself which maintenance vendor to engage and for what level of services.

7.3 Installation Assistance. Customer shall make available personnel and information reasonably necessary to assist Vendor in the definition of clerical methods and procedures, master file creation, and user education classes. Customer shall cooperate with Vendor in the installation of the Computer System by, among other things, making management decisions concerning the installation promptly as reasonably requested by Vendor.

7.4 System Parameter List. Customer shall furnish to Vendor the input data necessary for the creation of the System Parameter List and any other files to be specifically configured to Customer's requirements. Vendor shall provide Customer with a human-readable report promptly following the creation of the System Parameter List and other requisite files, whereupon Customer shall verify that the input data provided to Vendor has been accurately included in the files.

7.5 Operation of System. Customer shall bear sole responsibility for the supervision, management, and control of the operation of the Computer System, including: (1) assuring proper machine environment, audit controls, and operating methods; (2) establishing adequate backup plans to apply in the event of a program or equipment malfunction; and (3) implementing sufficient procedures to satisfy the requirements for security and accuracy of input and output as well as restart and recovery to apply in the event of a program or equipment malfunction. Vendor shall advise Customer as to the feasibility of such procedures but shall not be responsible for their implementation or execution.

7.6 Dial-In Equipment. To enable Vendor to use its dial-in capability in providing necessary services, Customer shall maintain the modem provided under this Agreement or a reasonable equivalent acceptable to Vendor. Such modem shall be reserved for the exclusive use of Vendor's

maintenance representatives on a 24-hour basis and shall be configured as an auto answer device, connected to the Computer System through a standard terminal input device, and connected to a phone jack or a reasonable equivalent acceptable to Vendor, without the use of a dataphone unit. Unless otherwise agreed by Vendor, Customer shall provide a direct line to the modem, and not an extension line through Customer's switchboard.

Section 8 DELIVERY AND ACCEPTANCE

8.1 Delivery. Vendor shall deliver the Computer System to Customer and install the Computer Equipment in Customer's facility in accordance with Exhibit C attached hereto.

8.2 Acceptance.

a. Within [Period] days of completion of the delivery and installation of the Computer System, Vendor shall demonstrate to Customer the operation of system functions. If Vendor fails to demonstrate all functions to Customer's reasonable satisfaction, Vendor shall, within [Period] days, use its best efforts to modify the Computer System so as to cure such deficiency

b. Upon successful demonstration of all system functions, Customer shall, for a period of [Period] days, conduct acceptance testing of the Computer Equipment in a "live" environment.

i. Customer shall advise Vendor of any detected deficiencies in the operation of the Computer System in reasonable detail by the end of such day period through a deficiency letter. If no such deficiencies are reported, Customer shall confirm to Vendor its Acceptance of the Computer System.

ii. If Customer reports any deficiencies to Vendor and such deficiencies are corrected, Customer shall confirm to Vendor its Acceptance of the Computer System.

iii. If Customer reports any deficiencies to Vendor and Vendor fails to correct such deficiencies despite the use of its best efforts, Customer shall return the Computer System to Vendor, Vendor shall return all fees received pursuant to Exhibit D attached hereto, and this Agreement shall terminate without further recourse of Customer against Vendor with respect to such deficiencies.

Section 9 PAYMENTS

9.1 Charge for Computer System, Installation, and Implementation. For the delivery, installation, and support of the Computer System, Customer shall pay Vendor the amounts prescribed in Exhibit D attached hereto on the dates corresponding to such amounts.

9.2 Charge for Software. For the license and support of the Licensed Programs, Customer shall pay Vendor the amounts prescribed in Exhibit E attached hereto on the dates corresponding to such amounts.

9.3 Charge for Additional Services. For additional services provided pursuant to Sections 3.2 and 3.4, Customer shall pay Vendor at its standard time and material rates as quoted from time to time plus travel, living, and telephone expenses. As of the date of this Agreement those rates are \$ [Amount] per hour.

9.4 Taxes. In addition to the charges prescribed by this Agreement, Customer shall pay any taxes, however designated or levied, based on such charges, or upon this Agreement, or the products or services provided hereunder, or shall reimburse Vendor for any taxes paid by Vendor in respect of the foregoing, exclusive of taxes based on the net income of Vendor.

9.5 Time and Method of Payment. Unless otherwise provided in this Agreement, Customer shall pay all charges due to Vendor under this Agreement within days of receipt of Vendor's invoice.

Section 10 TERMINATION

10.1 Term. This Agreement shall commence on the Effective Date. This Agreement and all licenses hereunder shall remain in effect in perpetuity (or for the longest time permitted by applicable law), unless earlier terminated according to this Section 10.

10.2 Material Breach of Agreement. Either party may terminate this Agreement at any time in the event of a material breach of the terms hereof by the other party, if such breaching party fails to cure such breach within days of receipt of written notice thereof.

10.3 Remedies Upon Termination. Upon termination of this Agreement for any reason by either party, Customer shall immediately cease use of the Licensed Programs and shall, within days of such termination, return to Vendor all materials furnished to Customer by Vendor, including all documentation and media pertaining to the Licensed Programs, provided, however, that to the extent Customer has paid for the Computer Equipment, such equipment shall remain the property of Customer. Customer shall certify in writing to Vendor, promptly at its request, that all use of Licensed Programs or any portion thereof has been permanently discontinued. Upon termination of this Agreement, Vendor's obligation to provide warranty or other services hereunder shall cease.

10.4 Rights Cumulative. Except as expressly provided otherwise in this Agreement, all rights granted to Vendor or Customer under any provisions of this Agreement shall be cumulative of, and in addition to, all other rights available to Vendor or Customer at law or in equity, whether or not Vendor or Customer shall have instituted any suit for collection, foreclosure, or other action in connection with a material breach of this Agreement.

Section 11 INFRINGEMENT

11.1 Vendor provides Customer with the following protection against claims of infringement with respect to the intellectual property rights and interests reflected in the Licensed Programs:

a. Vendor shall indemnify and hold harmless Customer from and against any liability, cost, loss, or expense of any kind and defend any suit or proceeding against Customer arising out of or based on any claim, demand, or action alleging that the Licensed Programs furnished under this Agreement and used within the scope of the license hereunder infringe any third-party rights in copyright, issued patents, or trade secrets in the United States. Vendor shall pay any costs, damages, or awards of settlement, including court costs and attorney fees arising out of any such claim, demand, or action, provided that Customer promptly gives written notice of the claim, demand, or action to Vendor and that Vendor may direct and fully participate in the defense and agrees to any settlement of such claim, demand, or action.

b. In case the Licensed Programs or any portion thereof furnished under this Agreement and used within the scope of the license hereunder are held in such a suit or proceeding to infringe any of the third-party rights referred to in Section 11.1(a) above, and the use of the Licensed Programs or portion thereof is enjoined, Vendor shall, at its sole option and expense, procure for Customer the right to continue using the Licensed Programs or portion thereof, replace the same with non-infringing software of equivalent functions and efficiency, or refund a reasonable portion of the license fee in consideration of Customer's cessation of use of the Licensed Programs or such portion thereof.

Section 12 MISCELLANEOUS

12.1 Right to Upgrade. Customer shall be entitled to replace the Computer Equipment with any higher-capacity CPU and associated peripheral equipment offered by Vendor at any time within the first months of this Agreement. Customer shall be given a credit against the purchase price of the replacement equipment so purchased for the Computer Equipment procured hereunder or portion thereof to be upgraded, according to the depreciated value of such equipment using the straight-line method of depreciation and assuming a useful life of years.

12.2 Force Majeure. Each party shall be excused from delays in performing or its failure to perform hereunder to the extent that such delays or failures result from causes beyond the reasonable control of such party, provided that, in order to avail itself of such excuse, such party must act diligently to remedy the cause of, or to mitigate or overcome, such delay or failure.

12.3 Relationship of Parties. Vendor, in furnishing services to Customer, is acting solely as an independent contractor of Customer. Vendor does not undertake by this Agreement or otherwise to perform any obligation of Customer, whether by regulation or contract. In no way is Vendor to be construed as the agent of, or as acting as the agent of, Customer in any respect, any other provisions of this Agreement notwithstanding.

12.4 Counterparts. This Agreement may be executed in several counterparts, and all such counterparts together shall constitute one single agreement between the parties.

12.5 Schedules, Headings, and Interpretation. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. The exhibits attached hereto are incorporated herein to the same extent as if set forth in full herein.

12.6 Approvals and Consents. Where agreement, approval, acceptance, or consent by either party is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld.

12.7 Waiver. No delay or omission by either party hereto to exercise any right or power occurring upon any noncompliance or default by the other party with respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions, or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition, or agreement herein contained.

12.8 Right to Supervise. Vendor has the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed all work to be performed by Vendor hereunder unless otherwise provided herein.

12.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of _____.

12.10 Entire Agreement. This Agreement and the exhibits attached hereto constitute the entire Agreement between the parties. There are no other understandings or agreements relating to the subject matter hereof, and no change, waiver, or discharge hereof shall be valid unless in writing and executed by the party against whom such change, waiver, or discharge is sought to be enforced.

12.11 Notices. Wherever under this Agreement one party is required to give notice to the other, such notice shall be deemed given if delivered in person or mailed by U.S. mail, first class, postage prepaid, and addressed as follows (or as subsequently noticed to the other party): [insert names and addresses of the parties].

12.12 Binding Nature and Assignment. Except for an assignment by Customer to a parent, subsidiary, or affiliate entity, neither party shall without the prior written consent of the other party assign or transfer this Agreement except by merger, reorganization, consolidation, or sale of all or substantially all of the party's assets, and any attempt to do so shall be void and of no force and effect.

IN WITNESS WHEREOF, Vendor and Customer have caused this Agreement to be signed and delivered by their duly authorized officers.

VENDOR

By: _____
Title: _____
Date: _____

CUSTOMER

By: _____
Title: _____
Date: _____