

# DEVELOPMENT AGREEMENT

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This Development Agreement (the "Agreement") is effective [DATE],

**BETWEEN:** [YOUR COMPANY NAME] (the "Customer"), a company organized and existing under the laws of the [State/Province] of [STATE/PROVINCE], with its head office located at:

[YOUR COMPLETE ADDRESS]

**AND:** [SERVICE PROVIDER NAME] (the "Developer"), a company organized and existing under the laws of the [State/Province] of [STATE/PROVINCE], with its head office located at:

[COMPLETE ADDRESS]

## WHEREAS:

1. The Customer is in the business of [SPECIFY] and has prepared and submitted to the Developer the Request for Proposal which is attached hereto as Schedule "A" and which outlines the Customer's requirements for a computer based business system which will satisfy the [DESCRIBE, E.G INVENTORY MANAGEMENT, ACCOUNTING AND ADMINISTRATIVE] needs of Customer.
2. In reply to the Request for Proposal, the Developer has prepared and submitted, and the Customer has accepted, the Proposal which is attached hereto as Schedule "B".
3. The Customer now requires a set of functional specifications which will consolidate and expand on the said Request for Proposal and Proposal so as to provide a detailed description of the proposed [SPECIFY] which will form the basis for the development and implementation of the said [SPECIFY].
4. The Developer has represented that it has the capacity and professional ability to produce such functional specifications and, on the basis of that representation, the Customer wishes to purchase and the Developer wishes to supply its services on the terms and conditions set out.

IN CONSIDERATION of the respective covenants herein contained, the parties agree as follows:

## 1. DEFINITIONS

### 1.1 General

Unless otherwise expressly defined herein, all data procession industry terms in this agreement shall have the meaning applied to them by the [COUNTRY] National Dictionary for Information Processing Systems ([NUMBER] – [YEAR]) and published by the [COMPANY NAME], [FULL ADDRESS] Copyright [YEAR].

### 1.2 Specific

(1) As used in this agreement, and any schedule hereto and any amendment hereof, and any documents to be executed and delivered pursuant to this agreement and in any documents executed and delivered in connection with the completion of the transaction contemplated herein, the following words and phrases shall have the following meanings, respectively:

- (a) "Development Plan" means the activities and functions specified in Schedule "C" hereto for the development and delivery of the Functional Specifications;

- (b) "Development Schedule" means the operative dates for the Development Plan as set forth in Schedule "D" hereto;
- (c) "Functional Specifications" means the specifications to be prepared by the Developer with the co-operation of the Customer which will be based on the Request for Proposal and the Proposal and which will conform in content but not necessarily rigid structure to the requirements specified in the Functional Specifications Content Requirements and which, when completed, will fully describe the required computer based business system at a business rather than a technical level;
- (d) "Functional Specifications Content Requirements" means Schedule "E" attached hereto;
- (e) "Payment Schedule" means the terms and conditions of payment of the Price which are attached hereto as Schedule "F", and
- (f) "Price" means the total fees and expenses payable by the Customer to the Developer for the Functional Specifications as set out in Schedule "G" attached hereto.

### 1.3 Schedules

The following are the schedules attached to and incorporated in this agreement by reference and deemed to be a part hereof:

Schedule No.	Description of Schedule
A	Request for Proposal
B	Proposal
C	Development Plan
D	Development Schedule
E	Functional Specification Content Requirement
F	Payment Schedule & Price

## 2. AGREEMENT

Subject to the terms and conditions hereof the Developer agrees to develop and supply to the Customer and the Customer agrees to accept from the Developer the Functional Specifications.

## 3. CHANGES

The Price is as set forth in Schedule "G" and shall be paid by the Customer to the Developer as outlined in Schedule "F". Unless otherwise provided in this agreement, all fees and expenses related to the services formed by the Developer under this agreement are included in the Price.

## 4. DEVELOPMENT RESPONSIBILITIES

### 4.1 Developer

The Developer shall be responsible for establishing development methodologies, conducting fact gathering and analysis, evaluating the possibility of incorporating any part of the current business system into the proposed system and for the provision and supervision of the services of experienced and competent personnel to carry out the said obligations.

#### 4.2 Customer

At all times during the development of the Functional Specifications, the Customer shall ensure the prompt and efficient cooperation of all of its personnel, provide access to its business records and information and, provide appropriate facilities such that the Developer is in no way hindered from efficiently performing its obligations hereunder.

#### 4.3 Mutual

Both parties shall designate qualified representatives who shall attend at regular meetings scheduled as agreed by the parties from time to time for the purpose of exchanging information at both a business and technical level and coordinating and scheduling such activities as may be necessary or desirable in connection with the development of the Functional specifications. At such meetings, the Developer shall provide regular written progress reports to the Customer on the development of the Functional Specifications and, after such meetings; the Customer shall promptly supply its written comments regarding such progress reports.

### 5. OWNERSHIP

#### 5.1 Clarification of meaning

- (1) Subject to paragraph 5.1(2), for the purposes of this paragraph, the Developer hereby agrees that the meaning of Functional Specifications shall be extended to encompass any and all work, files and other materials produced during the development contemplated by this agreement.
- (2) The Customer hereby acknowledges and agrees that it may be necessary or desirable for the Developer to incorporate certain proprietary information or systems into the Functional Specifications and, therefore, the Customer hereby expressly agrees that for the purposes of this paragraph the Functional Specifications shall be deemed not to include such proprietary information of the Developer which the Developer clearly marks or identifies as being proprietary information.

#### 5.2 General

The Developer hereby acknowledges and agrees that all rights, title and interest in and to the Functional Specifications and all copies thereof are and shall remain the property of the Customer and all intellectual property rights including copyright, trademark and trade secret in the Functional Specifications and any changes, alterations or modifications thereto whether made by the Customer or the Developer are and will remain in the Customer. The Developer shall not sell, transfer, publish, disclose, display or otherwise make available the Functional Specifications, its constituent elements or copies thereof to any other person, firm, corporation or business entity and the Developer further agrees to secure and protect the Functional Specifications and all copies thereof in a manner consistent with the maintenance of the Customer's rights therein and without limiting the generality of the foregoing, to employ the same safeguards to keep the trade secrets confidential as it employs to safeguard its own trade secrets and further without limiting the generality of the foregoing, to take appropriate action by instruction or agreement with its officers, employees or agents who are permitted access to Functional Specifications or copies thereof to satisfy its obligations hereunder.

#### 5.3 Survival:

This paragraph shall survive the termination of this agreement.

## **6. GENERAL CONFIDENTIALITY**

In addition to the confidentiality provisions contained in paragraph 5 hereof, both parties hereby agree that any confidential information pertaining to the other which shall be gained while carrying out the requirements of this agreement, or pertaining directly to this agreement such as price, shall be safeguarded by the party gaining such information in the same manner as it would safeguard its own trade secrets and such confidential information shall be held in trust for the benefit of the other party only. This paragraph shall survive the termination of this agreement.

## **7. DELIVERY AND ACCEPTANCE**

### **7.1 Delivery**

The Developer hereby agrees to deliver the complete Functional Specifications to the Customer for approval on or before the delivery date specified in the Development Schedule.

### **7.2 Acceptance**

- (1) Following actual delivery to it of the complete Functional Specifications, the Customer shall have a period of five days to either:
  - (a) accept the Functional Specifications by notice in writing to the Developer;
  - (b) reject the Functional Specifications by notice in writing to the Developer (specifying in reasonable detail the reasons for such rejection) and terminate this agreement, or
  - (c) reject the Functional Specifications as delivered and request specific clarifications, modifications or additions to the Functional Specifications as delivered.
- (2) In the event that the Customer requests clarifications, modifications or amendments to the Functional Specifications pursuant to paragraph 7.2(1) hereof, then the Developer shall have a further period of [NUMBER] days after receipt of the notice under the said paragraph 7.2(2), or such longer period as may be specified in that notice, in which to deliver amended Functional Specifications to the Customer for approval. Following such delivery, the Customer shall have a further [NUMBER] days to either accept the Functional Specifications, reject the Functional Specifications and terminate this agreement, or reject the Functional Specifications and request further specific clarifications Modifications or additions to the Functional Specifications.
- (3) If the Customer again requests further clarification, modifications or amendments to the Functional Specifications pursuant to paragraph 7.2(2), then the Developer shall have a further period of [NUMBER] days after receipt of the notice under paragraph 7.2(2) or such longer period as may be specified in such notice in which to deliver re-amended Functional Specifications to the Customer. Following such delivery the Customer shall have one further [NUMBER] day period to either accept the Functional Specifications or to reject the Functional Specifications and terminate this agreement.
- (4) Any approval, rejection or request of the Customer under this paragraph 7.2 shall be in writing, shall be in the sole subjective discretion of the Customer and, if not given by the Customer within the required evaluation periods, then the Customer shall be deemed to have accepted the Functional Specifications.

## **8. SCOPE OF RETAINER**

The Developer expressly acknowledges that the contracted for services to be provided by it to the Customer extend solely to the development and production of the Functional Specifications as provided for in this agreement, and the use of the Functional Specifications or any components thereof by the Customer before or after delivery shall be at the sole discretion of the Customer, including, without limiting the generality of the foregoing, the engagement by the Customer of other suppliers for the supply of the computer system to be developed from the Functional Specifications. Furthermore, the engagement by the Customer of the Developer under this agreement shall not in any way be taken to imply that the Customer is bound to use the services of the Developer for other purposes including those related to the computer system.

## **9. COPYRIGHT INDEMNITY**

The Developer shall defend or settle any suit or proceeding brought against the Customer based on a claim that the Functional Specifications furnished by the Developer hereunder or the copying in [COUNTRY] by the Customer of any part of the Functional Specifications constitutes an infringement of any existing copyright, trade secret or other property right, provided that the Developer is notified promptly in writing and is given complete authority and information required for the settlement or defense of same. The Developer shall pay all damages and costs awarded therein against the Customer, but shall not be responsible for any costs, expense, compromise or settlement incurred or made by the Customer without the Developer's prior written consent. This indemnification shall survive the termination of this agreement.

## **10. WARRANTIES**

The Developer warrants and represents to the Customer that:

- (a) the Functional Specifications to be provided hereunder will conform in all respects to the general requirements of the Request for Proposal and the Proposal;
- (b) the Functional Specifications will be designed and delivered in a proper, efficient and businesslike manner and at a professional level at least equal to current information processing industry standards, and
- (c) the Functional Specifications will not be designed in such a way as to bind the Customer to the Developer either directly or indirectly for the supply of other materials or services related to the computer system.

## **11. DEVELOPER DEFAULT**

11.1 Developer default occurs upon the happening of any of the following:

- (a) failure by the Developer to deliver Functional Specifications which conform to the requirements of this agreement within [NUMBER] days of the date designated for delivery in this agreement for causes not directly attributable to the Customer;
- (b) non-performance or non-observance of any other obligations of the Developer under this agreement and a continuance of such non-performance or non-observance for a period of thirty days after the Customer has delivered written notice thereof to the Developer, or
- (c) dissolution, insolvency, appointment of a Receiver in circumstances which could substantially affect the interests of the Customer hereunder, assignment for the benefit of creditors or the commencement of any proceedings under any bankruptcy or insolvency laws by or against the

Developer or any guarantor or surety for the Developer which are not discharged within [NUMBER] days but only in circumstances which could in a real and substantial manner affect the interests of the Customer hereunder.

11.2 If the Developer defaults, the Customer will have the right to exercise any one or more of the following remedies:

- (a) immediately terminate this agreement, in which case the Developer shall deliver to the Customer all copies of all available working papers, files and other documentation then in its possession and which are applicable to this agreement and return to the Customer all files and other materials belonging to the Customer together with all copies thereof wherever located without demand or notice. The Developer hereby waives a prior hearing and process of law for the Customer's exercise of such right;
- (b) demand the immediate repayment of any or all of the payments made under this Agreement to the date of termination, and
- (c) pursue any other remedy existing by law in [COUNTRY] or in equity.

## 12. CUSTOMER DEFAULT

12.1 Customer default occurs upon the non-payment of any charges referred to in this agreement or non-performance of any other obligations of the Customer under this agreement and the continuance of such non-payment or non-performance for a period of ten days after the Developer has delivered written notice thereof to the Customer.

12.2 If the Customer defaults, the Developer will have the right to exercise any one or more of the following remedies:

- (a) declare all unpaid charges to be immediately due and payable, and
- (b) terminate this agreement.

## 13. REMEDIES

The remedies of the Developer and the Customer provided for in this agreement are neither exclusive nor mutually exclusive and either Party shall be entitled to resort to any such remedies or any other remedy available to it at law or in equity or some or all in any combination at its discretion. No delay or failure of either party to exercise any right or remedy will operate as a waiver thereof, except where specifically provided herein to the contrary.

IN WITNESS WHEREOF, each party to this agreement has caused it to be executed at [PLACE OF EXECUTION] on the date indicated above.

### COMPANY

### DEVELOPER

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Print Name and Title

**SCHEDULE A**  
**REQUEST FOR PROPOSAL**

**SCHEDULE B**  
**PROPOSAL**



**SCHEDULE C**  
**DEVELOPMENT PLAN**

**SCHEDULE D**  
**DEVELOPMENT SCHEDULE**

**SCHEDULE E**  
**FUNCTIONAL SPECIFICATIONS CONTENT REQUIREMENTS**

**1. Overview**

- (1) narrative description of business functions to be addressed, including the interfaces to other business functions;
- (2) narrative description and chart of the proposed data flow within the Customer's business;
- (3) narrative description and chart of the proposed computer system configuration and location(s);
- (4) narrative description of backup facilities, security methods, audit requirements and controls;
- (5) narrative description of telecommunications requirements.

**2. Input**

- (1) layout of each input screen image or document with each field separately identified;
- (2) appended to each layout, a description of each field including:
  - (a) source of the field information
  - (b) field size (e.g., 4 characters)
  - (c) field content limitations (e.g., alphabetic characters only, not mandatory in each input document, numeric only between 1,000 and 2,000, etc.)
  - (d) field storage requirements (e.g., keep on file or accumulate for 2 years);
- (3) further appended to each layout, a general description of the input screen or document including:
  - (a) screen or document purpose;
  - (b) input frequency;
  - (c) anticipated maximum and minimum input volume;
- (4) data dictionary - data dictionary details include a listing of all data elements to be entered into the system with specific, fixed names; descriptions, structure, specifications and relationships.

**3. Output**

- (1) layout of each output screen, hard copy or file with each field separately identified;
- (2) appended to each layout, a description of each field including:
  - (a) calculation formulae or input element(s) which is (are) the source of the field;
  - (b) field size and nature;
- (3) further appended to each layout, a general description of each output including:
  - (a) purpose of output type;

- (b) frequency;
- (c) volumes;
- (d) sort sequences.

**4. Alternative for Customer Driven Systems using a Data Base**

- (1) description of inquiry methodology.

**5. Enhancement Requirements (optional)**

- (1) description of file space for anticipated additional data;
- (2) description of possible outputs;
- (3) description of potential linkage requirements to other systems.

**6. Technical Matters**

- (1) programming language;
- (2) operating system modifications;
- (3) other technical peculiarities.

**APPENDIX F**  
**PAYMENT SCHEDULE & PRICE**