

# SOFTWARE DEVELOPMENT AGREEMENT

This Software Development Agreement ("Agreement") is made and effective \_\_\_\_\_, by and between \_\_\_\_\_ ("Developer") and \_\_\_\_\_ ("Customer").

## 1. Definitions

1.1. "Confidential Information" shall mean all material and information supplied by Customer that has or will come into Developer's possession or knowledge of Developer in connection with its performance hereunder. Confidential information does not include information that:

(a) is or becomes public knowledge through no fault of Developer; (b) Developer knew before Customer disclosed it;

(c) Developer obtains from sources other than Customer who owe no duty of confidentiality to Customer; or

(d) Developer independently develops.

1.2. "Deliverables" shall mean a listing of all items to be delivered to Customer under this Agreement.

1.3. "Derivative Work" [as an adaption] shall mean a work that is [substantially] based on any preexisting works, such as a revision, modification, translation, abridgement, condensation, expansion, or any other form in which such preexisting works may be recast, transformed, or adapted, and that, if prepared without authorization of the owner of the copyright in such preexisting work, would constitute a copyright infringement under the United States Copyright Act.

"Derivative Work" [as an extension] shall mean a work that is [substantially] based on any preexisting works...

1.4. "Open Source License Agreement" means the terms under which Software is licensed in source code form to the general public for use without charge, including without limitation any license agreement that

(a) conditions the use or distribution of any Software program that incorporates such Software on the disclosure, licensing or distribution of the source code of such program (including such Software) and

(b) otherwise materially limits a licensee's freedom of action with regard to seeking compensation in connection with licensing or distributing such program or Software in object code form, including without limitation the GNU General Public License or the GNU Lesser General Public License.

1.5. "Open Source Software" means Software licensed pursuant to the terms of an Open Source License Agreement.

1.6. "Schedule" shall mean the delivery dates for each Deliverable.

1.7. "Specifications" shall mean the specifications for the Software as directed by Customer, together with any modifications that may be agreed to in writing by the parties during the term of this Agreement.

2.0 **Maintenance.** Developer shall perform remedial and preventive maintenance for the Software after its acceptance so that the Software continues to perform in accordance with the technical design for first 6 months following completion. Maintenance following then is subject to negotiation

3.0 **Cost.** Customer agrees to pay 50% of the agreed upon cost up front, and 50% upon satisfactory completion of deliverables.

Total Cost: \_\_\_\_\_

4. **Ownership of Software.** Developer agrees that the development of the Software is "work for hire" within the meaning of the Copyright Act of 1976, as amended from time to time, and that the Software shall be the sole property of Customer. Developer assigns to Customer its entire right, title and interest in anything created or developed by Developer for Customer under this Agreement ("Product") including all patents, copyrights, trade secrets and other proprietary rights. This assignment is conditioned upon full payment of the compensation due Developer under this Agreement.

5. **Term.** This Agreement shall commence upon \_\_\_\_\_ and continue until all of the obligations of the parties have been performed or until earlier terminated as provided herein.

6. **Representations** 6.1. **No Infringement.** Developer represents and warrants that the Software will not infringe any patent, copyright, trademark, trade secret or other proprietary right of any person.

**In Witness whereof, the parties have executed this Agreement as of the date first written above.**

**Customer:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Developer:** \_\_\_\_\_ **Date:** \_\_\_\_\_