

COMPUTER SOFTWARE AND SERVICES ACQUISITION AGREEMENT

THIS AGREEMENT made effective as of the ____ day of _____, _____.

BETWEEN:

_____ (insert name of customer)
_____ (insert complete address including state & zip code)
(the "Customer")

OF THE FIRST PART

- and -

_____ (insert name of supplier)
_____ (insert complete address including state & zip code)
(the "Supplier")

OF THE SECOND PART

THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties hereby agree as follows:

1. Scope of Agreement

1.1 The agreement between the parties with respect to the transactions contemplated hereunder (the "Agreement") shall consist of this Computer Software and Services Acquisition Agreement, together with all of the schedules attached to this Agreement, which are incorporated by reference and are deemed to be part of this Agreement, as follows:

- (a) Schedule "A" - Software;
- (b) Schedule "B" - Hardware;
- (c) Schedule "C" - Price List;
- (d) Schedule "D" - Payment Schedule;
- (e) Schedule "E" - Implementation Plan;
- (f) Schedule "F" - Performance Acceptance Criteria;
- (g) Schedule "G" - Documentation;
- (h) Schedule "H" - Functional Specifications;
- (i) Schedule "I" - Training Services;
- (j) Schedule "J" - Security for Performance;
- (k) Schedule "K" - Request Form for Modifications;
- (l) Schedule "L" - Consulting Services;
- (m) Schedule "M" - Software Support Services.

1.2 In the event of any inconsistency between this Agreement and any of the Schedules annexed hereof, the provisions of this Agreement shall prevail.

2. Definitions

2.1 Unless otherwise expressly defined herein, all data processing industry terms in this Agreement shall have the meaning applied to them by the _____ (insert name of source for definitions).

2.2 Wherever the same are used in this Agreement or any Schedule hereof, including any amendments hereof, and in any other and further documents to be executed and delivered pursuant to this Agreement, the following words and phrases shall have the following meanings:

- (a) "Business Day" means any day of the week from Monday through Friday inclusive, except where any such day occurs on any federal or state statutory holiday observed in the State of _____ (insert state)

- (b) *(delete this paragraph if inapplicable)* "Custom Developed Software" means those new computer programs and associated Documentation listed under the heading of Custom Developed Software in the Software Schedule, and which are to be developed by Supplier for Customer pursuant to the terms of this Agreement and in accordance with the requirements of the Functional Specifications. The Custom Developed Software will be furnished with all Mandatory Enhancements.
- (c) "Customer Affiliates" means:
- (i) all corporations, companies, trusts and other entities controlled directly or indirectly, by means of a trust, a corporation or otherwise by _____ *(insert names of principals of Customer)* or by any of their respective spouses or children;
 - (ii) all corporations beneficially owned, directly or indirectly, by _____ *(insert names of principals of Customer)* or by any of their respective spouses or children;
 - (iii) all partnerships, co-tenancies, joint ventures, syndicates and other forms of unincorporated association of which _____ *(insert names of principals of Customer)* or any of their respective spouses or children, or any corporation, company, trust, or other entity referred to in (i) or (ii) above is a member;
 - (iv) all third parties for which the Customer performs _____ *(insert type of services)*;
 - (v) all heirs, successors, executors, administrators and assigns of any corporation, company, trust, or other entity hereinabove referred to.
- (d) "Documentation" means all written instructions, procedures, operational guidelines and practices regarding the operation of the Software which are required to enable Customer to operate, maintain and manage the Software upon Customer's Hardware and which includes, without limitation, all of the manuals, handbooks, maintenance libraries, operating instructions, overviews and guides for Software listed in Schedule "G" hereof.
- (e) "Equipment" means all or any part of the computer equipment and related components acquired by Customer for the specific purpose of operating the Software.
- (f) "Hardware" means the Equipment and the System Software.
- (g) "Implementation Period" means the period of time extending from the date of this Agreement to the earlier of: the expiration of ____ *(insert number)* months next following the Date of Computer System Acceptance as hereinafter defined, and the date which is presently contemplated by the Parties as being the day of extensions thereto as contemplated elsewhere in this Agreement.
- (h) "Installation Sites" means those sites as may be designated in this Agreement and as designated from time to time by Customer for both installation and operation of the Software.
- (i) "Mandatory Enhancements" means the changes and additions to the various modules of the Software *(delete the following in brackets if inapplicable)* [and of the Custom Developed Software] which are required to enable such modules to conform to the Functional Specifications and which will be reflected in the design, coding, functionality and operation of such modules.
- (j) "New Release" means a revised version of the Software, *(delete the following in brackets if inapplicable)* [the Custom Developed Software], or a Software module, which is marketed to the public.
- (k) "Party" or "Parties" means either Customer or Supplier or both, as the context requires.
- (l) "Products and Services" means those Software products, services and assistance as more particularly described in Section 3 hereof and in the Schedules hereof.

- (m) "Response Time" means the period of time between the entry of a command involving single file look-ups, database updates or master file updates from any terminal in the network to the central processing unit of the Computer System and the reception of the last character in a full screen at peak times when the computer system is in full operation under maximum processing load conditions.
- (n) "Software" means the computer programs listed on a module-by-module basis under the heading "Software" in Schedule "A" hereof.
- (o) "Software Support Services" means the Software maintenance and support services to be provided by Supplier hereunder.
- (p) "Source Code" means the machine readable object code of every module of the Software required to be provided hereunder, which, upon compilation, is capable of being translated into machine executable object code when operated upon the Computer System.
- (q) "Source Materials" means the Source Code and System Design Specifications, logic diagrams and all other relevant documentation relating to the Software.
- (r) "System Design Specifications" means the technical specifications for the Software and all New Releases developed or to be developed by Supplier, which specifications would enable any reasonably skilled software designer or programmer to maintain and further develop the Software.
- (s) "System Software" means those operating systems, compilers, development software, utilities and related documentation hereafter specifically acquired by Customer from third party software suppliers for the specific purpose of operating the Software upon the Equipment.

3. Deliverables

3.1 Subject to the terms and conditions of this Agreement, Customer shall accept the following Products and Services collectively as a single complete transaction and not as separate items, and Supplier shall provide the Products and Services as follows: