

SOFTWARE DEVELOPMENT AND DISTRIBUTION AGREEMENT

This Agreement is made this _____ day of _____, _____[year], by and between _____[name] ("Owner") and _____[name] ("Programmer").

In consideration of the premises and of the mutual covenants and agreements contained in this Agreement, the parties agree as follows:

1 Owner owns the computer equipment which is listed in Exhibit "A."

2 Programmer is a computer programmer, experienced in the operation and use of computer programming on the equipment described and identified in Exhibit "A."

3 The parties wish to develop a software applications package to be run on the equipment for use in business establishments.

4 Both parties have services, monies, knowledge, expertise, and equipment that is necessary to combine their efforts to develop a useful software program for businesses and, therefore, the parties agree to the following terms:

I. DEFINITIONS

1.01. The term "business establishment" includes, but is not limited to, any prospective customer of the parties' program subject to this Agreement who leases or purchases either the software or hardware necessary to maintain a computer program for use in a retail business for the purpose of keeping inventory, cost control, expenses, accounts receivable, or other data base management information that may be the subject of the software program contemplated by the parties.

1.02. "Software" means the computer applications program that is to be written by the parties and eventually sold, licensed, or leased to prospective business establishments.

1.03. "Hardware" means any and all computer equipment, including, but not limited to, the equipment described in Exhibit "A" that is necessary to produce, market, sell, or use the computer software which is the subject of this Agreement.

II. SCOPE OF AGREEMENT AND LIMITATIONS OF AUTHORITY

2.01. The purpose of this Agreement is to allow the parties to combine their resources and talents to produce a business software application program for business establishments. It is contemplated in this Agreement that both parties shall contribute the time, money, services and equipment that may be necessary to produce the program, as detailed below.

2.02. Neither party has authority for and on behalf of the other except as provided for in this Agreement. No other authority, power, partnership, use, or rights are granted or implied.

2.03. Neither party may make, revise, alter, or otherwise diverge from the terms, conditions, or policies which are subject to this Agreement without a written amendment to this Agreement.

2.04. Neither party may incur any debt, obligation, expense, or liability of any kind against the other

without the other's express written approval.

2.05. All funds collected by either party or a party's agents or employees for the sale of the products covered under this Agreement shall be placed in an escrow account. After the deduction of expenses as contemplated in this Agreement, the monies shall be distributed in accordance with the parties' agreement as detailed below. Neither party shall withhold any funds from the other in the event of a dispute, offset, counter-claim or other grievance.

2.06. Both parties agree to comply with all local, state, and federal laws and regulations applicable to the transactions contemplated in this Agreement.

2.07. Both parties expressly recognize that they are not responsible or liable for any misrepresentations, errors, omissions of any kind, negligence, carelessness, or other problems or disputes which through the fault of the other party may arise during the terms of this Agreement. Accordingly, in the event such a dispute or otherwise arises, the party through whose error or omission the dispute arose agrees to indemnify the other party and pay for any and all costs of defending the action that may arise as a result of the dispute, including, but not limited to, attorney's fees.

2.08. Both parties agree to maintain records and insurance applicable to the business subject to this Agreement.

III. TERMS OF THE AGREEMENT

3.01. The term of this Agreement shall be _____ years from the date this instrument is signed by all of the parties.

3.02. If, after the term of the Agreement has expired, the parties continue to do business together as if this Agreement were still in effect, the Agreement shall be renewed and shall continue in effect until one of the parties notifies the other in writing of the termination of this Agreement. Any such termination letter must give 30 days' notice to the other party.

3.03. Termination may be by agreement, on 30 days' written notice pursuant to provision 3.02 above, or may occur immediately upon the breach of this Agreement by one of the parties. A breach of this Agreement includes, but is not limited to, a violation of the policies and rules by one of the parties, breach of the noncompetition clause of this Agreement, the making of a misrepresentation or false statement by one of the parties, nonperformance of the party's duties, death of a party, or the occurrence of a conflict of interest between the parties.

3.04. Duties. Owner agrees to supply to Programmer any and all necessary equipment or hardware required to develop the software program contemplated under this Agreement, including, but not limited to, the equipment listed in Exhibit "A."

Once the software program is developed, Owner agrees to market and sell the program to prospective businesses. Owner is given the right to market the product in the geographic territory and by the method and manner that Owner sees fit. It is anticipated that Owner will sell the product for \$____; however, Owner has the right to adjust the price of the program and hardware to be competitive with current market conditions.

Programmer will write and prepare the software program and any and all support and/or training materials necessary to market the program, and will be available for consultation to explain the operation and use of the program to Owner and prospective customers. Programmer will be available for a

demonstration of the program and will answer technical or usage questions applicable to the software program. Programmer will be responsible for providing and writing any and all updates, changes, or modifications to the software program if the same becomes necessary.

Each party agrees to devote the party's full time, energy and attention to the duties specified in this Agreement in order to complete the program in a reasonably efficient and expeditious time period. Each party agrees to provide prompt, courteous and professional efforts to promote the sale of the software program once the program has been developed.

Each party agrees to refrain from doing any act that would hurt, prejudice or impair the sale or development of the software program subject to this Agreement.

IV. COMPENSATION

4.01. Owner agrees to market and sell the program at the market price that in Owner's determination would produce the most income for the parties. All monies received from the sale of the business software package will be placed into the operating account in the name of _____ *[specify one or both parties]*. All necessary expenses directly attributable to the marketing, sale, production, and distribution of the software package will be deducted from the operating account. Net profits, after the initial distribution, will be distributed to the parties. Distributions will be made quarterly and will be paid in equal shares to Owner and Programmer.

4.02. Owner agrees to pay to Programmer Programmer's share of the distribution _____ *[number]* days following the expiration of the quarter in which the monies are owed. Prior to the distribution, the parties will agree between themselves as to how much money should remain in the operating account for recovery, operating expenses, and the like after distribution.

4.03. The initial distribution of the profits will be as follows: Programmer will keep a record of all hours spent in developing the program, as if Programmer were doing this project for a billable client, up to a maximum of _____ *[number]* hours. Programmer will then be reimbursed from net profits; Owner will then be reimbursed for Owner's total cost of equipment and monies expended on the program as documented by receipts. Finally, remaining profits will be split equally.

V. NONCOMPETITION PROVISIONS

5.01. The parties agree that the covenants, agreements and restrictions ("this covenant") contained in this agreement are necessary to protect the business goodwill, business interests and proprietary rights of _____ *[name]* and that the parties have independently discussed, reviewed and had the opportunity of legal counsel to consider this agreement and now agree and stipulate to the following:

A This covenant is an integral part of an enforceable agreement, _____ *[an employment agreement]*, and the covenants contained in this agreement were made at the time this agreement was consummated by the parties.

B This covenant is fair and reasonable in its:

1 geographical area;

2 length of time; and

3 scope of activity being restrained.

5.02. The parties expressly agree that while this Agreement is in effect, and for a period of two years following termination of this Agreement, Programmer will neither directly nor indirectly as an employee, agent, proprietor, partner, broker, stockbroker, stockholder, officer, director, or otherwise use special knowledge, training, or divulge trade secrets to any person or to any competitive business that would compete directly or indirectly with Owner's business without prior consent of Owner.

The agreements contained in this section shall be construed as agreements independent of any other provisions of this Agreement, and the existence of any claim or cause of action of one of the parties against the other, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the parties of the agreements contained in this section.

5.03. Neither party shall, for a period of _____[number] years immediately following the termination of this Agreement, regardless of the party causing the termination of this Agreement, either directly or indirectly make known to any person, firm, or corporation the names and addresses of any of the customers subject to this Agreement or call on, solicit, or take away, or attempt to call on, solicit, or take away any of the customers of the parties of this Agreement.

VI. GENERAL AND ADMINISTRATIVE PROVISIONS

6.01. Parties Bound. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

6.02. Assignment. Neither party shall have the right to transfer or assign their interests in this Agreement without the prior written consent of the other party.

6.03. Corporate Authority. If any party is a legal entity (partnership, corporation and/or trust), that party represents to the other that this Agreement, the transaction contemplated in this Agreement, and the execution and delivery of this Agreement, have been duly authorized by all necessary partnership, corporate, or trust proceedings and actions, including, without limitation, action on the part of the directors, if the party is a corporation. Certified copies of any corporate or other resolutions authorizing this transaction shall be delivered at execution.

6.04. Time Limits. Time is of the essence in this Agreement. All time limits shall be strictly construed and rigidly enforced.

6.05. No Waiver. A failure or delay in the enforcement of the rights detailed in this Agreement by either party shall not constitute a waiver of rights or be deemed a basis for estoppel. The parties may exercise their rights under this Agreement despite delay or failure to enforce those rights.

6.06. Dispute or Contest. In the event that a dispute occurs or an action in law or equity arises out of the operation, construction, or interpretation of this Agreement, the losing party shall bear the expense of attorney's fees and costs incurred by the prevailing party in the action.

6.07. Paragraph Headings. The paragraph headings used in this Agreement are descriptive only and shall have no legal force or effect whatever.

6.08. Use of Pronouns. The use of the neuter singular pronoun to refer to any party described in this Agreement shall be deemed a proper reference even though the party may be an individual, a partnership, a corporation, or a group of two or more individuals, partnerships or corporations. The grammatical changes

required to make the provisions of the Agreement applicable to groups of individuals, corporations, partnerships, males or females shall, in all instances, be assumed as though in each case fully expressed.

6.09. Governing Law. This Agreement shall be subject to and governed by the laws of the State of _____ [state]. Any and all obligations or payments are due and payable in _____ County, _____ [state].

6.10. Severability. If any provision of this Agreement shall, for any reason, be held violative of any applicable law, and so much of the Agreement is held to be unenforceable, then the invalidity of the specific provision in this Agreement shall not be deemed to invalidate any other provisions, which other provisions shall remain in full force and effect unless removal of the invalid provision destroys the legitimate purposes of this Agreement, in which case this Agreement shall be canceled.

6.11. Entire Agreement. This Agreement represents the entire agreement by and between the parties except as otherwise provided in this Agreement, and it may not be changed except by written amendment duly executed by all parties.

SIGNED, accepted, and agreed to this _____ day of _____, _____ [year], by the undersigned parties, who acknowledge that they have read and understood this Agreement and its attachments. The undersigned parties execute this legal document voluntarily and of their own free will.

By: _____

_____ [Title]

By: _____

_____ [Title]

State of _____ [state]

County of _____ [Name of County]

This instrument was acknowledged before me on _____ [date] by _____ [Name of person giving the acknowledgment].

Notary Public's Signature:

[Notary's typed or printed name]

NOTARY PUBLIC FOR THE STATE OF _____ [STATE]

(Seal)

My commission expires: _____

[or Notary's Stamp]