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System Development Time and Material Fixed Price Contract

1. Purpose: To establish a baseline Memorandum of Agreement between Contractor and Client regarding services/products to be provided by Contractor to Client.

2. Contractor: Chaurcey Boyd Enterprises, LLC

3. Client Company Name: _____

4. Definitions:

a. Software: This term is used herein to refer to application software, databases, or websites and related software components.

b. System Development. This term includes activities such as project management, new development, design, specifications, conversion, testing, acquisition, and/or integration of existing commercially available or custom applications, databases, and/or websites and associated hardware/network/internet platforms. It also includes business process analysis for automation/integration, data analysis and data standardization. It also includes major enhancements to existing applications, databases and/or websites. Example major enhancements include new screens/forms, new capabilities, new tables, new modules, new web pages, new graphics, new or changed buttons depending on the level of required effort.

c. Software Maintenance: Minor modifications/corrections to software components including websites that occurs after the final delivery of a developed software product. Example minor modifications/corrections include updating existing application forms, creating new reports based on existing data tables, and adding a few fields to existing tables. Minor modifications also include updating text, replacing an existing graphic with a new version, and adding an external web link. Other tasks may also be deemed maintenance activity. Contractor reserves the right to determine whether an effort is development or maintenance.

d. Technical Support: Technical support includes hardware installation/repair, local area and long haul networking including internet hosting/connectivity, training, help desk, troubleshooting, malware protection/removal, hardware setup, operating system or commercial software installation/configuration, diagnostics, preventive maintenance, performance tuning, and similar activities. Technical support also includes research and tips on acquiring new computer technology and how best to use computer technology to leverage automation in businesses and homes, including home businesses.

e. Statement of Work (SOW).

(1) A SOW is a document used to agree to a specific contract deliverable to include deliverable

requirements, cost, and other factors.

(2) SOWs allow Contractor to provide improved capabilities on an incremental basis. This approach will allow the Client to observe progress and access improved capability as soon as possible. Major capabilities shall be defined in a Statement of Work (SOW) with an agreed to functionality and price structure. The projected start and projected end date for delivery of each capability shall be specified in the respective SOW.

(3) All SOWs must comply with the provisions of this contract.

f. Hourly Rate. Unless otherwise stated, this is the payment contractor charges client per person-hour of work.

g. Prototype. A prototype is an incomplete version of the target system. It typically simulates only major features of the target system. Its typical purpose is to enable the contractor and client to determine and document desired functionality, specifications, technical feasibility as well as time and cost of developing the actual system.

5. Scope of Work:

a. System Development

b. A separate software maintenance contract may be established for implementation at the end of the contract period.

c. A separate technical support contract may be established at any time when and if needed.

6. Contract Duration

Contractor offers 1 to 12 month standard contracts. Contracts are optionally renewable at the end of the contract period. At the end of the contract period a contract may be converted to one of the other contract types with a shorter duration or lower number of monthly hours. Client may convert to a contract with a longer duration and/or larger number of monthly hours at any time. Client may convert from a development to a software maintenance contract at the end of the contract period unless otherwise sooner agreed to by contractor. All renewals and conversions require mutual written agreement of client and contractor.

7. Contracted System Development Provisions:

a. Contractor offers fixed price, time and material, and combination time and material fixed price contracts. This is a time and material fixed price contract.

b. Time and Material (T&M) Fixed Price Contract:

(1) In this type of contract, the client is charged an hourly rate for us to prototype the desired system and prepare system specification document. Once the client approves and accepts the specification document, we will then provide a fixed price based on the approved specification document. The client can then choose to not proceed with the actual development effort or to proceed to have us develop the system based on the determined fixed price. If the client updates the specifications (either through us or otherwise) after we provide the total cost, we reserve the right to adjust the total cost upward to account for client changes. Down payment, milestone, and other information specific to the

fixed price component shall be established once the T&M component is completed.

(2) For the T&M component, the client is charged on an hourly basis and is charged for any material delivered to the client that we acquired in support of the client requirements and which is delivered to the client for ownership or licensing. This includes any commercial software components we acquire on behalf of the client. The minimum hour contract allows the client to budget for its requirements. It also allows the contractor to plan its workload in support of the client and plan the recruitment and retention of qualified personnel sufficient to meet projected client requirements.

(3) Minimum Hours Contracts and Regular Hourly Rates offered follows:

- (a) Minimum of 20 chargeable hours each month @ \$60/hour
- (b) Minimum of 40 chargeable hours each month @ \$55/hour
- (c) Minimum of 80 chargeable hours each month @ \$50/hour
- (d) Minimum of 120 chargeable hours each month @ \$40/hour
- (e) Minimum of 160 chargeable hours each month @ \$35/hour

(4) The hourly rate for each minimum hour category is given above. Hourly rates are person-hour. For each additional hour over the minimum the same **overtime hourly rate of \$75** is also charged. Hours that exceed the minimum must be preapproved by client.

(5) Client should choose the minimum hours that best fits the anticipated workload and desired completion time frame. The higher the minimum selected the lower the risk of incurring the relatively high overtime cost.

c. Prices are valid for the length of the contract. Prices may change at renewal and conversion from one contract type to another.

8. Standard T&M Component Contract Cost Based on Client Selections:

a. Total Cost: _____

Selected Length _____

Projected Start Date: _____

Projected Completion Date: _____

b. Monthly Cost : _____

Minimum Hours Per Month Selected: _____

Regular Hourly Rate: _____

c. Initial Retainer Fee (IRF): _____

* This is the fee we optionally charge to survey and evaluate client project requirements, cost and

time frame for delivery. This fee shall be deducted from the first invoice.

9. Statement of Work (SOW) Cost:

System methodology divides the overall contract deliverable into blocks of capabilities. Contractor in coordination with client shall prepare a SOW describing a block of capabilities to be delivered next. This block shall be constrained by the client contract budget as outlined in the above paragraph entitled *Standard Contract Cost Based on Client Selections*. Contractor will provide client with an estimated cost of that SOW capability block. The selected hourly rate shall apply to the preparation of the SOW. Client can then decide to delay all or part of the capability block until a later time based on the client budget. Optionally, the client may decide to temporarily or permanently increase the client's budget.

10. Software Development Services/Products Provided By Contractor:

a. Contractor shall prototype client target system and produce a specifications document as well as time and cost required to develop the system. This prototype shall address major system features but will be a non-operational system. Contractor shall ascertain required major features through interviews, examination of client business operations, processes, operational systems/software and documents.

b. Contractor developed prototype shall include interfaces and integration to any major target systems identified by client

c. Contractor shall ensure that any affected Client operational databases/applications/websites are backed up to provide a restore point, if needed.

d. Contractor shall test each provided capability and provide a written report to Client of the test results to ensure compliance to Client's requirements.

e. Contractor shall provide all Contractor-needed equipment/supplies including hardware/software needed to satisfy this agreement except as provided for elsewhere in this document or otherwise stated in an agreed to SOW.

f. Contractor shall deliver all prototyped capabilities in both source code and binary form as applicable as each SOW is completed. However, Client should understand that these may change as the project progresses through each SOW. A final product in both source code and binary form as applicable shall be delivered once the project is completed.

11. Services/Products Provided By Client:

a. Client shall provide a sufficiently detailed description of the capabilities/functionality to be provided. Client may satisfy this requirement by providing a copy of printed documents, existing/sample databases/applications/websites, contractor provided worksheets, other resources, and by being available for interviews by Contractor.

b. Client shall provide a returnable copy or access to any application or software to be interfaced to the developed database/applications. This copy shall be returned to Client by Contractor when no longer needed to service Client.

c. Client shall make Client's computer hardware/software including web hosting available as needed for Contractor to install and test developed capabilities. Client shall participate in the testing of the delivered capabilities as requested by Contractor to ensure compliance to Client's requirements..

d. Client shall provide other equipment/supplies including hardware and software as specified and agreed to in a statement of work (SOW).

e. Client shall timely complete and update contractor required specification documents clearly defining the client requirements for products for development/maintenance. Substantial or repetitive changes to client submissions due to client error may cause us to bill client an additional amount at our option.

12. Software Ownership:

a. The contractor is engaged in software development/maintenance contract programming services involving creating and/or modifying software/websites under this contract specifically for the client and transfers all exclusive legal rights to the client for such software/websites.

b. Any component provided by contractor not specifically produced for client but which is provided as a part of client product remains under the ownership of contractor or contractor suppliers; client is permitted to use such components only as a part of the product delivered by contractor. Any such components shall be identified in writing by contractor as part of the delivery to client.

13. Payment Schedule for Services Provided:

a. Contractor shall submit a report of completed billable man-hours or fixed price charges as well as information as to the progress made and estimated percentage of scheduled work yet to be completed and delivered. Contractor shall submit this report to Client every two weeks for Time and Material (T&M) work and a minimum of monthly for fixed price work.

b. Client shall timely pay Contractor for all invoiced items. Client shall provide this payment to Contractor no later than 15 calendar days following the submission of the invoice.

c. Contractor business depends on prompt payment for its products and services. Payments not received within 15 days of due date will be assessed a late fee of \$40. Payment not received within 30 days will be assessed an additional late fee of 5% of the amount due and not yet paid each month the payment is late. We reserve the right to remove web pages or software from service and/or suspend contract work until payment is made.

d. Payment may be made by cash, check, or credit card. Credit card payment service is available on the contractor website. Checks returned for nonsufficient funds shall be charged a minimum fee of \$20.00; usual fee is around \$35.00 but may be more as bank fees change.

14. Warranty, Indemnity, and Disclaimer:

a. The services/products are made available for use "as-is" and without any warranty or indemnity of any kind except as provided for elsewhere in this contract. Contractor makes no other warranties, conditions, indemnities, representations or terms, express or implied, whether by statute, common law, custom, usage, or otherwise.

b. By installing and/or using the provided services/products Client agrees to hold Contractor harmless from any liabilities, losses, actions, damages, or claims, including all expenses and attorney fees, arising out of or relating to any use of, or reliance on, the services/products provided.

c. Client agrees that in no case will Contractor or its partners or suppliers be liable to Client or any of Client's representatives for any damages, claims, or costs whatsoever or any consequential, indirect, or incidental damages, or any loss of profits or savings, or any other finances even if Contractor has been advised of the possibility of such loss, costs, damages, or claims.

d. Contractor and its subcontractors shall protect client's sensitive, confidential, and proprietary information, tools, and processes. Client shall do the same for contractor's sensitive, confidential, and proprietary information, tools, and processes.

e. Client guarantees and shall ensure that all material such as text, graphics, multimedia, photo, design, artwork, other software, and other resources provided by client are free of copyright and trademark and similar violations. Contractor shall not be responsible in any way for copyright, trademark and similar violation regarding items provided by client. Client agrees to indemnify contractor and not hold contractor responsible in any way for such violations regarding items provided by client.

f. Contractor guarantees and shall ensure that all material such as text, graphics, multimedia photos, design, artwork, music, other software and other resources delivered by contractor are free of copyright and trademark and similar violations. Contractor agrees to indemnify client and not hold client responsible in any way for such violations regarding items provided by contractor. If items delivered by contractor to meet client requirement require copyright notice to be a part of product, client agrees that as long as such items are part of product, such copyright notices shall properly remain a part of product.

15. Sales Tax:

a. Contractor shall charge client appropriate sales tax according to the laws governing the performance of the work. Generally, this will be according to the laws of the state in which the work is performed or tangible goods delivered.

b. Generally, sales tax is not chargeable for development and maintenance and configuration of software owned by or being developed for client ownership.

c. Technical support services involving hardware repair is generally taxable.

d. In any case, the prevailing state law in effect at the time the work is performed shall be adhered to.

e. Contractor shall timely forward received sales tax to the applicable government entity.

16. Independent Contractor:

a. Contractor shall provide all services/products as an independent contractor for all purposes. Contractor reserves the right to employ subcontractors to ensure work is performed according to client requirements. Neither Contractor nor any employee or subcontractor of Contractor engaged in rendering services to Client hereunder shall be treated as an employee of Client.

b. Client shall not exercise any control or direction over the methods by which Contractor performs Contractor's obligations.

c. Contractor shall have sole responsibility for the payment of all Federal and State Income Taxes including, any associated Social Security, Medicare, unemployment, and self-employment taxes; and the filing of any information returns related to any fees or other income received by Contractor from Client. Therefore, Client shall not withhold any such taxes from Contractor fees.

17. Amendments:

No changes or amendments or supplements to this agreement shall be binding unless made in writing and signed by both Contractor and Client.

18. Other Contracts Between Contractor and Client.

Unless otherwise stated in this contract, this contract does not affect other contracts previously established or established in the future between Contractor and Client.

19. Entire Agreement:

This agreement, together with any supplements or modifications thereof signed by both parties, comprise the entire agreement. None of the parties has made any representations or warranties other than those set forth in this agreement and such supplements or modifications, if any.

20. Successors and Assignees:

This agreement binds and benefits the heirs, successors, and assignees of the parties.

21. Notices:

All notices must be in writing. A notice shall be delivered to the parties at the party's respective address listed elsewhere in this contract or its amendments. A notice should be delivered in person, by registered or certified mail, or by traceable courier service.

22. Termination of Agreement.

a. This agreement may be terminated by either party upon notice to the other party. Such termination notice shall be given at least 30 days prior to the effective date of termination.

b. All deliverables and payment obligations incurred prior to the effective date of termination shall be provided to the party due such deliverables and/or payments.

c. Additional termination provisions may be specified and apply when if the fixed price option is exercised.

23. Counterparts:

The parties may sign several identical counterparts of this agreement. Any fully signed counterpart shall be considered as an original.

Effective Date: _____

Client:

Company Name: _____

Company Address:

Street _____

City/State/Zip: _____

Company Mailing Address (if different from above address)

Street _____

City/State/Zip: _____

Authorizing Official:

Printed Name: _____

Signature _____

Company Title: _____

Phone(s): _____

Email: _____

Contractor:

Company Address: Chaurcey Boyd Enterprises LLC
ATTN: Chaurcey Boyd
2107 Spruce St.
Texarkana, TX 75501

Company Mailing Address: Chaurcey Boyd Enterprises LLC
PO Box 3082
Texarkana, TX 75504

Authorizing Official:

Printed Name: _____

Signature _____

Company Title: _____

Phone(s): _____

Email: _____