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*Carlton Fields practices law in California through Carlton Fields Jorden Burt, LLP*

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**WORK FOR HIRE AGREEMENT FOR SOFTWARE**

This Work for Hire Agreement for Software (“Agreement”) is entered into the date listed on Attachment 1 hereto (the “Effective Date”), by and between [INSERT COMPANY NAME] (the “Company”) with offices at [INSERT OFFICE ADDRESS], and the entity/individual specified on Attachment 1 hereto (“Contractor”), with the address of specified on Attachment 1 hereto (each individually referred to as a “Party” and collectively referred to as the “Parties”).

**WITNESSETH:**

**WHEREAS**, Company desires to employ the services of the Contractor for preparation and production of certain software for Company, its subsidiaries, related entities, licensees and distributors (the “Software”) for the project listed on Attachment 1 hereto (the “Project”); and

**WHEREAS**, Contractor wishes to perform services for Company as a Contractor and to make creative contributions in connection with the Software.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the mutual covenants herein contained and intending to be legally bound hereby, the Parties agree as follows:

**SECTION 1. COMMISSION**

1.01. Contractor agrees to render personal services as a Contractor and to make creative contributions in connection with the Software in the amount and in the manner provided for in Attachment 1 hereto. Payment is conditioned on Contractor’s full and faithful performance of the terms of this Agreement to the satisfaction of Company. Contractor further agrees that the compensation set forth in this Section 1.01 is full and complete payment to Contractor for all services in connection with the Software. No additional sums whatsoever will be due to Contractor.

1.02. Contractor agrees to render its personal services to the best of its ability and of the same high quality as induced Company to engage Contractor, and agrees to perform its services at the times and places and in the manner Company requests. The Software shall be subject to Company’s approval (in its sole discretion), in each of form, content, and appropriateness for the Project. Company shall retain final editing authority over the Software.

**SECTION 2. DISPOSITION OF THE SOFTWARE**

2.01. Contractor agrees that Company shall own all right, title, and interest in and to the Software, including, without limitation, any and all copyrights and extensions and renewals of such copyrights, free of any claim whatsoever by Contractor or by any persons deriving any rights from Contractor. Contractor represents and agrees that its entire contribution to the Software is specially ordered or commissioned for use as a contribution to a collective work and that, as such, its entire contribution to the Software is a work made for hire for Company, free of any claim whatsoever by Contractor or by any persons deriving any rights from Contractor. If Contractor’s contribution to the Software is determined not to be a work made for hire for Company, then Contractor’s contribution to the Software, together with all rights therein and thereto, shall be irrevocably assigned and transferred to Company by this Agreement pursuant to Section 2.02.

2.02. Contractor agrees to irrevocably assign and transfer to Company any and all right, title, and interest the Contractor has or may have in and to the Software, including any and all copyrights and all other rights of any kind that may now or hereafter exist relating to the Software. Contractor agrees to execute any and all documents requested by Company to evidence, record, or effectuate this assignment and/or to assist Company in applying for or obtaining any copyright, or other registration relating to the Software at Company’s expense.

2.03. To the extent any right, title, or interest the Contractor has or may have in and to the Software is not assigned and transferred to Company pursuant to Section 2.02, the Contractor hereby grants to Company, its subsidiaries, related entities, licensees and any other entity or individual associated with Company an irrevocable, paid up, exclusive worldwide license to (i) display, use, reproduce, distribute, sell, and exploit the Software; (ii) prepare derivative works based in whole or in part on the Software in any medium; and (iii) use Contractor’s name and likeness in connection with the Software.

**SECTION 3. REPRESENTATIONS AND WARRANTIES**

3.01. Contractor represents and warrants that (i) Contractor has the full right, power and authority to provide the Software to Company; (ii) the Software does not in any way infringe, invade, or violate the intellectual property rights or personal rights of any third party; (iii) Contractor is free to enter into and to perform as set forth in this Agreement; and (iv) all works created or furnished by Contractor under this Agreement will be unpublished, wholly original, and not copied from any sources, except the public domain or material furnished by Company.

3.02. Contractor agrees to indemnify, defend, and hold Company, and its respective successors, assigns, agents, attorneys, distributors, licensees, past and present officers, directors and employees harmless against any and all claims, suits, actions, proceedings, judgments, liabilities, loses, damages, costs and expenses (including reasonable attorneys’ fees and legal costs) arising from or in connection with its (i) breach of its representations, warranties, or obligations hereunder, including, without limitation, those contained in Sections 3.01; and (ii) negligent or intentional acts or omissions.

**SECTION 4. MISCELLANEOUS**

4.01. Headings. Titles, headings, and captions (if any) of sections or paragraphs in this Agreement are for convenience only and neither limit nor amplify the provisions of this agreement.

4.02. Binding Agreement. The terms and provisions of this Agreement shall be binding upon and shall extend to, and inure to the benefit of the Parties and their representatives, successors and assigns. This Agreement or any interest herein shall not be assigned, delegated, or transferred (including but not limited to by operation of law) by Contractor without the prior written consent of Company.

4.03. Severability. In the event that any term or provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, the remaining terms and provisions of this Agreement shall not in any way be affected or impaired thereby.

4.04. Survival. It is expressly understood and agreed that certain provisions of this Agreement, which by their nature are expected to survive the termination or expiration of this Agreement, including but not limited to Sections 2.01, 2.02, 2.03, 3.01, 3.02, 4.03, 4.04, 4.05, and 4.08, shall survive the termination or expiration of this Agreement.

4.05. Governing Law. This Agreement shall be construed in accordance with the laws of the State of [INSERT STATE], excluding its conflicts of law provisions. The Parties hereby irrevocably consent to the exclusive jurisdiction of the federal and state courts located in [INSERT COUNTY, STATE] in connection with any action or proceeding arising out of or relating to this Agreement or any document or instrument delivered pursuant to, in connection with, or simultaneously with this Agreement. Any such action, suit or proceeding must be brought only in the appropriate state or federal court located in [INSERT COUNTY, STATE] and each Party covenants and agrees not to assert, by way of motion, as a defense, or otherwise, in any such action, suit, or proceeding, any claim that such Party is not subject personally to the jurisdiction of such court, that such Party's property is exempt or immune from attachment or execution, that the action, suit, or proceeding is brought in an inconvenient forum, that the venue of the action, suit or proceeding is improper, or that this Agreement or the subject matter hereof may not be enforced in or by such court.

4.06. Waiver. Any delay or forbearance by any Party in exercising any right hereunder shall not be deemed a waiver of that right. A waiver of any term, condition, right or remedy contained in this Agreement, or at law or in equity, on any occasion, will not be deemed a waiver of such term, condition, right or remedy on any future occasion, or of any other term, condition, right or remedy contained in this Agreement, or available at law or in equity.

4.07. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

4.08. Recover of Cost. In the event it is necessary for either Party to enforce its rights under this Agreement, the prevailing Party in any lawsuit shall be entitled to recover from the non-prevailing Party, all of its attorneys’ fees, costs and other expenses associated with the enforcement of its rights under this Agreement.

4.09. Relationship of the Parties. The relationship between Company and Contractor is that of owner and independent contractor and nothing contained in this Agreement will be interpreted or construed as creating a partnership, joint venture, agency, franchise, employment or any other such relationship between the Parties. Neither Party will have the authority to, or represent itself as having the authority to, bind or obligate the other Party in any manner whatsoever.

4.10. Force Majeure. Each Party assumes no liability and will not be liable for any failure to perform or delay in performance solely as a result of strikes, lockouts, or any other labor disputes, floods, fires, hurricanes, or any other cause beyond the control and without the fault of the performing Party. Each Party will timely notify the other Party if it anticipates any potential delay in filling its performance.

4.11. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof, and supersedes any and all prior or contemporaneous oral and written negotiations or agreements between the Parties. This Agreement, may not be changed, amended or modified, except by a writing signed by both Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

**CONTRACTOR**: **[INSERT NAME]**

By:

Name:

Title:

Date:

**COMPANY: [INSERT NAME]**

By:

Name:

Title:

Date:

**ATTACHMENT 1**

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| --- | --- |
| **PROJECT START DATE:**  |  |
| **CONTRACTOR NAME:** |  |
| **CONTRACTOR ADDRESS** |  |
| **PROJECT DESCRIPTION:** |  |
| **FEE:** |  |
| **PAYMENT TERMS:** |  |