



Monarch Model File Development Agreement

The agreement is made and entered into on _____, by and between Datawatch Corporation, a corporation at Quorum Office Park, 271 Mill Rd., Chelmsford, MA 01824 (“Datawatch”) and _____ (“Customer”) located at _____.

1. Background

- A. Customer desires to contract with Datawatch Corporation for the purpose of creating a Monarch Model File specific to a report type.
- B. Datawatch has experience and expertise in creating Monarch Model Files.

2. Scope

- A. Datawatch agrees to develop the Monarch Model File in accordance with the Model File Requirements Form for the set rate of \$250 (US) for standard service, \$500 (US) for rush service and \$1,000 (US) for super rush service. If Datawatch finds that the report is more complex than usual, we will notify the customer that there will be a consulting fee involved. It will then be up to the customer to agree that they still want Datawatch to create their model for them. If the customer decides against Datawatch developing the model, no charges apply. If the customer needs several models built, please contact Robert Sarno/Datawatch at 978-275-8242 to see if you are entitled to a volume discount.

The development will include the creation of the Monarch Model File, determination and implementation of trapping parameters, field definitions, and filter, summary, and sort definitions as reasonably necessary to satisfy Customer’s requirements.

- B. Datawatch will use reasonable efforts to deliver the Monarch Model File to Customer within 10 days after delivery to Datawatch of the necessary Report Files and other information and payment for the Monarch Model File.

3. Rights and Obligations

- A. Customer’s Obligations. Customer agrees to provide Datawatch with one or more Report Files of the report type for which the Monarch Model File is to be built. Customer also agrees to provide Datawatch with information regarding the Report File format, and data that is sufficiently detailed and inclusive to allow Datawatch to build the Monarch Model Files accurately and completely. Customer will deliver the Report File(s) as an ASCII text file via diskette, CD, or electronically via e-mail or FTP, or by another mutually agreed upon medium or mechanism. Customer will accept all responsibility for ensuring that the delivery mechanism used meets or exceeds Customer’s requirements for secure transfer of information.

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- B. Datawatch's Obligations and Confidentiality. Datawatch acknowledges that it has a limited right to use the Report File(s) for the development of the Model File as provided herein. Datawatch shall have no right to use the Report File(s) for any other purpose without obtaining expressed written permission of Customer. Datawatch hereby agrees to take commercially reasonable steps to maintain and protect the Report Files in confidence for the benefit of Customer, and will not, at any time, without the express written permission of Customer, disclose any information directly or indirectly to any third person, excepting employees of Datawatch who are bound by an appropriate confidentiality provision. Datawatch agrees that all copies of the Report File(s) in a tangible form, including all copies thereof, will be returned to Customer upon delivery of the completed Model file. At such time, Datawatch also agrees to erase or destroy all copies of all portions of any of Customer's Report Files and Monarch Model Files in its possession or under its responsibility which may have been loaded onto Datawatch's computers.

4. Modifications to Specifications

Datawatch shall develop the Monarch Model File in accordance with the Model File Requirements Form, which shall be deemed to be part of this Agreement. No changes in or deviations from the specifications will be permitted unless the following procedure is followed:

- a) Customer must submit a written request detailing the changes that are desired.
- b) Within five (5) business days of the receipt of the request, Datawatch will inform Customer, in writing, of any problems posed by the proposed change, and of any change in price or schedule that will be caused by the proposed change in specifications.
- c) Unless Customer accepts the change, in writing, within 5 business days thereafter, the change will not be made. If the change is accepted, the written request for change, and Datawatch's response thereto, will be deemed to constitute an amendment to this Agreement.

5. Acceptance

- A. Acceptance. Upon delivery of the sample Monarch Table File, Customer shall have five (5) business days to examine it and to determine whether if the Monarch Table File substantially conforms to the specifications outlined in the Model File Requirements Form.
- B. Successful Completion. If the Monarch Table File successfully meets the Customer's expectations, Customer shall so notify Datawatch in writing. Datawatch will then deliver to the Customer the Monarch Model File that was used to create their new Monarch Table File. If Datawatch receives no notice from the Customer within the 5 business-day period, the Monarch Table File shall be deemed to be accepted. In such case, the Acceptance Date shall be the fifth business day after delivery of the Monarch Table File. Datawatch will then deliver to the Customer the Monarch Model File that was used to create their new Monarch Table.
- C. Unsuccessful Completion. If the Monarch Table File does not meet the Customer's expectations, Customer shall so notify Datawatch in writing and Datawatch shall have ten (10) additional business days after receipt of the notice to correct, modify, or improve the Monarch Model File so that it conforms to the specifications outlined in the Model File Requirements Form. Thereafter, Customer shall have five (5) additional business days in which to review the new Monarch Table to see if it meets all their requirements. This process may be repeated three (3) times until the Monarch Table File is deemed to be accepted hereunder. If the Monarch Table File is not accepted within forty-five (45) business days after the initial delivery, Customer shall have the right and option to terminate this Agreement under the terms specified in Section 7, "Termination".

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6. No Modification or Enhancements.

Upon acceptance of the Monarch Table File, Datawatch shall have no obligation to Customer to make any modification or enhancement to the Monarch Model File for any reason. If Customer desires any modification or enhancement, Customer and Datawatch may enter into a separate, mutually agreeable contract relating to such modifications or enhancements, for an additional fee.

7. Termination

- A. Termination by Customer. Customer may, for any reason, terminate this Agreement at any time effective upon Datawatch's receipt of written notice thereof. In the event of termination, Datawatch will deliver to Customer copies of its work product completed to that date. Except in connection with a termination pursuant to Section 5C hereof, Datawatch will have no obligation to refund any payment made hereunder.
- B. Termination by Datawatch. Datawatch may, for any reason, terminate this Agreement at any time effective upon Customer's receipt of written notice thereof. In the event of termination by Datawatch, Datawatch agrees that Customer shall not be liable for any payment and Customer shall receive a full refund for any sums paid to Datawatch hereunder for any unfinished or unaccepted model(s). Datawatch shall have no further obligations to Customer hereunder except as provided in Section 3B.

8. Disclaimer of Warranty

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, DATAWATCH MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED TO CUSTOMER WITH RESPECT TO THE MONARCH MODEL FILES, INCLUDING ANY WARRANTY THAT THE MONARCH MODEL FILES ARE FIT FOR ANY PARTICULAR PURPOSE. ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR AGAINST INFRINGEMENT ARE EXPRESSLY AND SPECIFICALLY DISCLAIMED. DATAWATCH WILL NOT BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, SPECIAL OR OTHER SIMILAR DAMAGES, EVEN IF DATAWATCH OR IT'S AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES INCLUDING DAMAGES OR COSTS INCURRED AS A RESULT OF LOSS OF TIME, LOSS OF DATA, LOSS OF PROFITS OR REVENUE, OR LOSS OF THE USE OF THE MONARCH MODEL FILES, OR ANY LOSSES WHATSOEVER.

9. Limitation of Liability

IN NO EVENT WILL DATAWATCH'S LIABILITY ARISING UNDER THIS AGREEMENT FOR DAMAGES TO CUSTOMER, INCLUDING ANY LIABILITY FOR DIRECT DAMAGES, EVER EXCEED THE PRICE PAID BY CUSTOMER HEREUNDER, REGARDLESS OF THE FORM OF THE CLAIM OR THE CAUSE OF ACTION ASSERTED. THIS LIMITATION WILL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

10. Indemnification

Customer will defend, indemnify, and hold Datawatch harmless from and against any and all liabilities, losses, damages, costs, and expenses (including legal fees) associated with any claim or action brought against Datawatch for infringement of any copyright, trade secret, or other property right based upon the Customer's ownership of the Report Files, or Datawatch's duplication or use of the Report File(s) in accordance with this Agreement.

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11. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Massachusetts covering agreements made and to be performed in that state.

In witness thereof, Datawatch and Customer each has caused this Agreement to be executed on its behalf by its duly authorized agent.

Datawatch Signature

Customer Signature

Type or Print Name

Type or Print Name

Date

Date