

SOFTWARE PUBLISHING AGREEMENT

This Software Publishing Agreement ("Agreement") is made this ___ day of _____, _____, between _____ ("Publisher"), whose address is _____, and _____ ("Author"), whose address is _____, concerning the software product described in Exhibit A hereto, including all versions thereof for any computers, devices or equipment, the program documentation therefor, and documentation for use thereof in conjunction with any computers, devices or equipment for which designed (the "Work").

1. Publisher's Representation

The Publisher represents and warrants to the Author that the Publisher has full power and authority to make this Agreement and perform its obligations under it.

2. Author's Warranties

The Author represents and warrants to the Publisher that:

- a. Authority. The Author has full power and authority to make this Agreement and the grant of rights made hereby and to perform the Author's obligations under this Agreement.
- b. Original Work. The Work is a wholly original work, solely originated and created by the Author after _____; if any persons other than the Author personally participated in the preparation of the Work, they did so only for hire as employees of the Author within the scope of employment thereby, and never had and do not have any rights or interest in and to the Work; the Work was not prepared for or pursuant to any agreement for its preparation with any third persons.
- c. Sole Owner. The Author is the sole owner of the Work and of all rights therein, including all copyrights in and obtainable in and to the work, and has not mortgaged or otherwise encumbered or permitted encumbrance of the Work or of any rights therein, or granted or licensed any rights in the Work or in or under any such copyright to, or entered into any option or other agreements respecting any such rights, with any third persons.
- d. No Publication. The Work has not heretofore been published in any form or manner anywhere; the Work is not in the public domain, and does not infringe any copyright or violate any patent, trade secret or other property, proprietary or personal rights of any third persons and does not contain any materials which it was in any way unlawful to have included therein.
- e. No Other Versions. The Author has not prepared any versions of the work other than those to be delivered to the Publisher hereunder.
- f. No Copyright Filing. No claim of copyright relating to the Work has been submitted to, filed or registered with the _____ Copyright office or any similar public office in any other country.
- g. No Trademark Filing. The Author has not filed or registered any trademark or claim of trademark rights in any public office with respect to, and has made no agreement with any third persons with respect to the title of or name for the Work indicated in this Agreement or any similar title or name.
- h. No Adverse Agreements or Conduct. The Author has not made and will not hereafter make any agreement with any third persons, or voluntarily engage in any conduct, adversely affecting the

Work or the rights granted hereby or the value thereof or which would impair the Author's ability to perform its obligations under this Agreement.

3. Indemnity

The Author agrees to indemnify the Publisher from and hold it harmless against any losses caused to the Publisher by reason of any breach of any of the Author's representations or warranties set forth in this Agreement, inclusive of losses arising from claims, demands, actions or suits against the Publisher by third persons which, if true, would mean that a breach thereof had occurred. However, in the event that the Publisher shall settle any such claims, demands, actions or suits against it prior to adjudication, the Author's obligations hereunder to indemnify the Publisher shall be limited to an amount equal to _____ percent (___%) of the Publisher's said losses and shall be payable by the Author only by charge against and deduction from the royalties otherwise payable to the Author hereunder. The Publisher shall give the Author prompt written notice of any such third party claims, demands, actions or suits, and the Author agrees to fully cooperate with the Publisher in its defense thereof. The Author is responsible for its own costs of providing such cooperation. The Publisher agrees not to settle any such claims, demands, actions or suits against it without first consulting with the Author if the Author shall be reasonably available for such consultation. In the event of any such third-party claim, demand, or action, the Publisher shall be entitled to withhold reasonable sums from payments otherwise due or thereafter due to the Author under this Agreement as security for the Author's performance of the Author's obligations under this Section pending resolution thereof and, upon resolution thereof, to apply amounts so withheld towards satisfaction of such obligations.