

SOFTWARE PUBLISHING AGREEMENT

THIS AGREEMENT made effective as of the ____ day of _____, _____. (the "Agreement")

BETWEEN:

(the "Publisher")

-AND-

(the "Author")

This Software Publishing Agreement concerns the software product described in Exhibit "A" attached 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 _____; (insert date) 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 United States 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 _____ (*insert number in words*) percent (____%) (*insert number*) 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.

4. **Grant of Rights**

- a. *Copyright and Other Rights.* The Author hereby grants and conveys to the Publisher exclusively, for and throughout the entire World and in and for all languages, including all computer languages, now or hereafter developed, all rights in and to the Work, and all versions thereof for any and all computers, devices and equipment and all other media of every nature, now or hereafter developed, in or by means of which the Work or any version thereof may be capable of being embodied, shown, expressed, communicated or utilized, including all the exclusive rights of the Author under copyright laws to and to authorize others to prepare derivative works based on the Work, reproduce the Work and all such derivative works in copies and _____ (*insert forms of media*), distribute the Work and all such derivative works in copies and _____ (*insert forms of media*) to the public by any and all means, including sale or other transfer of ownership, rental, lease, lending and licensing thereof, and publicly perform and display the Work and all such derivative works. The grant of rights includes the exclusive rights to and to authorize others to do any and all of the foregoing with respect to the Work, all parts thereof, all such derivative works, and all parts thereof, to do so separately, in combination with any other works, and in and as part of any collective works, and to do so in any and all forms, including magnetic tapes, hard and floppy disks, and solid state forms such as ROM chips and printed circuitry, and to do so by all means in and for all media, including all computers, peripheral equipment, computer systems, dedicated machines, equipment and devices, and all print media including books and magazines, and in motion pictures, radio, broadcast, and cable television, videotape, and all broadcast, wire or cable data transmission system and networks.
- b. *Trademark Rights.* The Author also grants and conveys to the Publisher exclusively all rights, including any trademark rights of the Author, to the title to or name of the Work set forth above and all variations thereof. The Author agrees not to use such title or name or any variation thereof, or any title or name that could be confused therewith, for any other computer program,

other product or services of any nature, or to authorize any third persons to do so, without the Publisher's prior written consent.

- c. *Rights in Audiovisual Work.* If the Work, when used in conjunction with a computer for which designed, produces, demonstrates, or shows any audiovisual work, the Author hereby also grants and conveys to the Publisher exclusively all of the Author's aforesaid rights in and to such audiovisual work. If such an audiovisual work incorporates any fictional characters, places or devices, this grant includes all of the Author's rights in and to all such characters, places or devices, including all merchandising and licensing rights thereto for toys, apparel, posters, greeting cards, and other products of every nature and for media including motion pictures, television, video game devices, books and magazines.

THIS IS A 9-PAGE DOCUMENT.