

SOFTWARE DISTRIBUTION AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, _____ by and between [NAME OF DEVELOPER] (“Developer”), a company incorporated under English law under registered number _____, with a registered office at _____, and [NAME OF PUBLISHER] (“Distributor”), a company incorporated under English law under registered number _____, with a registered office at _____.

Distributor and Developer being hereinafter individually referred to as “Party” or jointly referred to as the “Parties”.

RECITALS

- A. Distributor is engaged in the business of publishing and distributing _____ [describe type(s) of software published] software in the “Territory” (as hereinafter defined).
- B. Developer is engaged in the business of development and production of _____ [describe type(s) of software developed] software for various platforms.
- C. Developer wishes to appoint Distributor, and Distributor wishes to act, on the terms and conditions set forth in this Agreement, as the exclusive distributor of Developer's Products within the Territory.

NOW THEREFORE, in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the parties hereto agree as follows:

1. DEFINITIONS

In this Agreement, the following terms shall have the following meanings:

1.1 “Distribution Channels” shall mean retail distribution channels in the Territory, including, without limitation distribution to retailers, directly to end-users, to electronic retailers and through B-to-B opportunities. Products may be sold or marketed via the Internet but not transmitted, distributed or made available to download via the Internet.

1.2 “Format” shall include without limitation _____ [list].

1.3 “Gross Revenues” shall mean 100% of all amounts invoiced by Distributor to customers or end users or otherwise directly or indirectly payable or credited to or receivable by Distributor and its affiliates from customers or end users for sales of the Products and the exploitation by Distributor and its affiliates of any of the rights granted to it hereunder, less VAT and custom duties included in such amounts.

1.4 “Net Revenues” shall mean 100% of Gross Revenues less (i) all returns, mark-downs and price protections actually credited, and (ii) customary and usual trade discounts actually granted by Distributor to its customers.

1.5 “Products” shall mean all software published by Developer in any language of the Territory including without limitation the Products listed in Schedule A and any other software published or to be published by Developer in any of the Formats during the Term, provided that (notwithstanding anything in this Agreement to the contrary) no program shall constitute a Product unless or until Developer has (at its absolute discretion) selected and designated both it and the appropriate format as such and notified Distributor of such designation. In the event Developer does not select any of its software for inclusion into the Products, Developer shall not be entitled to distribute directly or indirectly such software in the Territory during the Term.

Within ____ Working Days after the date of notification to Distributor as referred to in the foregoing paragraph, Distributor may reject at its absolute discretion any new software added by Developer to the

Products and serve notice of such rejection to Developer pursuant to Clause 13.1; provided however that in this event, Developer shall be free to distribute, directly or indirectly, such software in the Territory.

1.6 “**Promotional Materials**” shall mean any documents and materials in any language of the Territory including advertising, promotional display and/or other such marketing materials of or concerning the Products, furnished and/or approved in writing by Developer pursuant to Clause 10.11 and which Distributor may use in conjunction with the distribution of the Products and for promotional purposes.

1.7 “**Right Price**” shall mean that the Product is considered to be so sold if the retail price falls below ___% of the original retail price at release.

1.8 “**Signature Date**” shall mean the date of signature of this Agreement or (if signed by the Parties on different dates) the later of such dates.

1.9 “**Term**” shall mean the period from the Signature Date to the date of expiration or termination of this Agreement (howsoever caused) (“Termination Date”).

1.10 “**Territory**” shall mean the countries set out in Schedule B.

1.11 “**Working Day**” shall mean ___ AM to ___ PM, Monday to Friday, excluding bank and public holidays in England.

All references to Clauses and Schedules are to Clauses, Sub-clauses and Schedules of this Agreement. Words importing the singular shall include the plural and vice versa; words importing the masculine gender shall include the feminine; and words importing persons shall include corporations.

2. GRANT OF RIGHTS

2.1 Developer hereby grants Distributor the exclusive right during the Term on the terms and conditions set forth in this Agreement and as follows:

- (a) To distribute, market and sell the Products, directly or indirectly through third party distributors, at full price and Budget Price, through any Distribution Channels throughout the Territory.
- (b) To manufacture, distribute, market and sell the Promotional Materials in connection with the distribution of the Products throughout the Territory.

2.2 Developer hereby grants Distributor a non-exclusive and non-transferable right during the Term on the terms and conditions set forth in this Agreement to use Developer's trade marks as indicated in Schedule C, in connection with the distribution, promotion and sale of the Products and Promotional Materials.

2.3 Developer hereby appoints Distributor as its exclusive distributor of the Products in the Territory during the Term pursuant to the terms and conditions of this Agreement.

2.4 Only those rights with respect to the right to distribute, market and sell the Products in the Territory expressly granted in Sub-Clause 2.1 are licensed by Developer to Distributor. All rights (including without limitation all rights outside the Territory and all and any electronic transaction rights (including without limitation cable, Internet and any on-line services) are retained and reserved by Developer exclusively worldwide.

3. DELIVERY OF THE PRODUCTS BY DEVELOPER

3.1 The Parties shall, during the Term, discuss in good faith the proposed release dates of any Product and the expected levels of customer orders or customer demand for each of the Products available or to be released for the ensuing ___ month period (“Expected Sales Level”). Developer shall provide Distributor during the Term with any information which Developer reasonably considers relevant to the Products, for the purpose of discussing the Expected Sales Levels as set forth in this Clause

3.1. Distributor shall, however, have no obligation to place orders of Products at such Expected Sales Level.

3.2 Developer shall (subject always to Clause 13.2) use its commercially reasonable endeavours to comply with Distributor's initial order and shall deliver the number of units of Products ordered within ____ days after the service on it of any such order of Products.