

DIRECT MARKETING AGREEMENT

THIS DIRECT MARKETING AGREEMENT (this "Agreement"), dated _____, 20____ is made and entered into by and between _____ (hereinafter referred to as "Vendor"), and _____ (hereinafter referred to as

Owner and Vendor hereby agree as follows:

Article 1

PURPOSE

1.1 This Agreement sets forth the terms and conditions under which Vendor shall receive, assistance in marketing the Program Offerings.

1.2 The Program Offerings consist of programs in executable or usable form as described in Attachment I hereto. The Program Offerings consist of [Select

[Option 1] Package Materials, which consist of "shrink-wrap" package documentation, provided to Vendor in deliverable form, and covered by a in the form of a notice of terms contained in the same package.

[Option 2] Copyable Materials, which consist of a custom set of program provided to Vendor in copyable form for Vendor to copy for each End User End-User Agreement requiring execution by the End User [and Owner] effect.

[1.3 is applicable if there are publications.]

1.3 Publications, which consist of books, periodicals, audio and visual publications materials, other than documentation included in the [Package Materials offered by Owner to End Users of the Program to aid or enhance their Materials/Copyable Materials], whether provided to Vendor in preprinted, the form of master media for Vendor to use to prepare copies directly for End

Article 2

SCOPE

[Pick an option.]

2.1 [For package materials:] Subject to the terms and conditions of this Agreement appoints and authorizes Vendor to act as its non-exclusive agent for the sale of the Package Materials to End Users in the Territory. As Owner's agent, Vendor provide End Users with the Package Materials out of the inventory of Package Materials by Owner to Vendor for such purpose, and to contract with End Users for the support of the Package Materials. Vendor shall have the right to use the demonstration, training, support and maintenance purposes.

2.1 [For copyable materials:] Owner hereby grants Vendor a non-exclusive right to execute, reproduce, display, perform, market, and otherwise distribute (both for End Users) copies of, and prepare derivative works of, the Copyable Material

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works thereof). The foregoing includes all rights necessary for (C) Copyable Materials for purposes of the sale, lease, or license to End Users demonstration or training activities in support of such distribution, and maintenance of End Users.

[2.2 is applicable if there are options.]

2.2 With respect to any Publications, Owner (1) appoints and authorizes Vendor as exclusive agent for the sale, lease, or license of any Publications, out of the inventory of copies of the Publications provided by Owner to Vendor for such purpose, and (2) grants a non-exclusive right and license to use, execute, reproduce, display, perform, distribute (both internally and to End Users) copies of, and prepare derivative works of Publications (including derivative works thereof) provided to Vendor in the future.

[In all cases, include the following.]

2.3 Vendor may assign its rights and responsibilities under this Agreement to its subsidiaries or affiliates, in whole or in part, and may appoint or engage independent contractors, dealers and/or agents to provide additional marketing assistance and/or support.

Article 3

END-USER AGREEMENT

3.1 Form of Agreement. Vendor shall cause each End User to receive an agreement covering the Program Offerings it is provided. The End-User Agreement shall be in the form of the sample agreement set forth in Attachment II hereto (to be modified by user) which Owner currently uses as its standard domestic End-User Agreement. The End-User Agreement shall be modified by Owner to indicate that (1) Vendor is responsible for establishing and collecting fees and charges there under, (2) Owner shall provide the types of maintenance and support set forth in Attachment III hereto (to be modified by user), (3) Vendor may offer services with respect to the Program Offerings set forth in Attachment IV hereto (to be created by document user), and (4) Vendor may be responsible for End Users in submitting warranty claims for which Owner may be responsible.

[Alternative depends on the nature of the relationship.]

3.2 [Alternative 1:] Vendor shall forward the executed End-User Agreement to Owner for review and execution before the Program Offerings are put in productive use by the End User.

3.2 [Alternative 2:] The End-User Agreement shall be either pre-executed by Vendor for execution by each End User without any requirement of execution by Vendor. It becomes effective upon execution by the End User. Vendor shall periodically forward a copy of the fully executed copy to Owner for its records.

3.2 [Alternative 3:] Vendor shall have the authority to accept and execute the End-User Agreement on behalf of Owner and shall periodically forward a copy of the fully executed copy to Owner for its records.

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Article 4

OBLIGATIONS

- 4.1 Custom Modifications.** If Vendor determines that the modification of computer text material in the Program Offerings, including screen displays, output materials, to comply with industry business practices or End User requirements, the effective distribution of the Program Offerings, it shall so notify Owner. Vendor shall take all reasonable and available steps to produce the requested modifications on a prompt timetable. Articles 4 and 5 of Attachment I set forth the initial modifications for the Program Offerings. In the event Owner declines or fails to produce the requested modifications, Vendor may, at its sole option, (i) attempt to distribute the Program Offerings in the form, (ii) at its own expense but with Owner's cooperation and assistance, or (iii) decline to distribute the Program Offerings.
- 4.2 Direct Services.** Owner shall make available and provide to End Users the maintenance and support set forth in Attachment III hereto (to be created by document user) and authorized to provide any further types of maintenance and support for the benefit of End Users at its own expense through the use of its own resources, including the types of maintenance and support set forth in Attachment IV hereto (to be created by document user).
- 4.3 Marketing Support.** Owner shall provide sales phone support, promotional materials, training, and participate in trade shows, industry events, and joint marketing activities set forth in Attachment V hereto (to be created by document user).
- 4.4 Updated Versions.** Owner shall make, introduce, and provide to Vendor for its use the updated versions of the Program Offerings including fixes, enhancements, and new releases of the same nature and on the same timetable as the updated versions made available by Owner respect to the Owner's other versions of the Program Offerings (if any). Vendor shall provide at least 90 days before such updated versions are introduced and shall provide notice specifications of the updated versions in any form reasonably available to End Users.

Article 5

PROCEDURES

- 5.1 Demonstration Copies.** Owner shall promptly provide Vendor, at no cost, copies of the Program Offerings in executable or usable form, accompanied by demonstration materials for Vendor's use in marketing, demonstration, training, maintenance, and support.
- 5.2 Internal Use License.** To the extent Vendor wishes to acquire copies of the Program Offerings for productive use by Vendor, its subsidiaries, or affiliates, Vendor may do so for its internal use only. If the Program Offerings were sold, leased, or licensed to End Users, Owner shall provide a copy of the Program Offerings to Vendor.

[Include only the following for publications.]

- 5.3 Order Procedure.** Owner shall accept and fill Purchase Orders (submitted in accordance with reference to this Agreement) on the timetables and in accordance with the terms specified by Vendor from time to time. In the event Owner is unable for any reason to fill a Purchase Order for Program Offerings in the quantities and on the dates specified in any Purchase Order, Owner shall so notify Vendor within _____ days after receipt of the Purchase Order and shall provide an alternative delivery schedule in closest compliance with the terms requested by Vendor.

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