

INDEPENDENT AGENT REP AGREEMENT (Defin

THIS MARKETING AGREEMENT (this "Agreement"), made and entered into on _____ day of _____, 20____ by and between _____ ("Principal"), a corporation duly organized and existing under the laws of the State of _____ (hereinafter "Agent"), a corporation duly organized under the laws of the State of _____.

RECITALS

WHEREAS, Principal is a proprietor of certain computer programming, software, and related end-user documentation, which are referred to herein as the Products;

WHEREAS, Agent has special knowledge and expertise relating to the identification and promotion of the Products in the Territory; and

WHEREAS, on the terms and subject to the conditions set forth in this Agreement, Principal desires to engage Agent, and Agent desires to be so engaged, to perform certain services;

NOW, THEREFORE, in consideration of the premises hereof and of the mutual covenants and agreements contained herein, the parties hereto, intending to be legally bound, do hereby agree as follows:

Article 1

DEFINITIONS

- 1.1 **"Assignment."** Each and every separate assignment or undertaking in which Agent or its Personnel (as hereinafter defined) contact or approach potential or existing customers to promote, procure, solicit, or arrange the origination or renewal of any Contract (as hereinafter defined) involving Principal Products (as hereinafter defined).
- 1.2 **"Contract."** Any agreement or contract (whether original or renewed) that Agent or its Personnel (as hereinafter defined) have promoted, procured, solicited, or arranged for Principal pursuant to this Agreement and that Principal has approved, accepted, or provided for the lease, license, sale, or other distribution or transfer by or through Agent or its Personnel of a software program known as *[program]* (together with all modifications, updates, and further releases of such program) and related support services and activities.
- 1.3 **"Agent Personnel."** Any officer, director, employee, agent, or contractor of Agent.
- 1.4 **"Agent Products."** Any computer programming packages, which may include source code, coding and related end-user documentation that Agent or any person or entity (other than Principal) may conceive or develop at any time or that Agent may acquire from any person or entity other than Principal at any time.
- 1.5 **"Principal Products."** Any computer programming packages, which may include source code, software coding and related end-user documentation that Principal or any person or entity affiliated with Principal (other than Agent and Agent Personnel) may conceive or develop at any time.

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Article 2

APPOINTMENT DESCRIPTION

- 2.1** Principal hereby appoints and engages Agent as marketing representative of Principal to promote, solicit, and arrange Contracts involving Principal Products from the date of appointment of Agent under this Agreement is non-exclusive and shall not prevent Principal to appoint or engage other persons to conduct business activities on behalf of Principal.
- 2.2** Principal acknowledges that Agent may choose at any time to engage in business activities that may compete directly or indirectly with the business activities generally conducted by Principal, including the development and distribution of software programs and related services and activities. Principal further acknowledges that, in the course of its representation of Principal under this Agreement and its contacts with potential and existing customers of Principal, Agent and Agent Personnel may conduct discussions of Agent Products and promote such products, which may lead to independent business arrangements between Agent and such customers of Principal, and that it may claim no interest in the business opportunities that Agent may encounter. Principal has no right to restrict any business arrangements that Agent may enter into with such customers, whether as a consequence of Agent's representation of Principal or otherwise. The provisions of this Agreement should not be construed to limit in any way the type and extent of business activities that Agent may choose to conduct in its own behalf.

Article 3

AGENT DUTIES

- 3.1** **General.** Agent agrees to devote its good-faith effort to perform any number of Assignments in accordance with the terms and conditions of this Agreement, so as to produce and secure the origination and renewal of Contracts and other arrangements for the sale of Principal Products generally by potential and existing customers of Principal. For each Assignment that Principal desires Agent to perform, Principal shall furnish Agent with a written Assignment Order describing in detail (1) the potential or existing customers that Agent should solicit; (2) the business location of such customers; (3) the exact nature of activity that Agent should perform with respect to such customers; and (4) an approximation of the time period for which Agent will commit. Agent may, in its sole discretion, accept or decline performance of any Assignment described in the Assignment Order by written notice to Principal as required in the Assignment Order. Agent shall advise Principal within 14 days of the date of such Assignment Order whether it will accept or reject same.

For each Assignment that Agent elects to perform, it shall, in furtherance of such Assignment, perform the following duties:

- a.** Explore the possibility that the potential or existing customers are interested in entering into Contracts (whether original or renewed) or other arrangements for the sale of Principal Products;
- b.** Deliver written communications to such customers from Principal, including proposals and counteroffers;
- c.** Become familiar with the technical and operational characteristics and features of Principal Products;

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- d. Coordinate and cooperate with the agents and employees of Principal to promote, solicit, and arrange the origination or renewal of Contracts and for the acquisition of Principal Products;
- e. Visit potential or existing customers of Principal at their business location;
- f. Conduct demonstrations and performance benchmarks of the Products; and
- g. Submit to Principal reports of the activities conducted by Agent on behalf of Principal.

3.2 Administrative Direction. Unless otherwise informed in writing by Principal, Agent shall conduct all of its activities under the direction of the Vice-President in charge of _____ (or any officer of Principal superior in authority to such person).

3.3 Limitation on Authority. Agent shall have no authority to accept on behalf of Principal any Contract or other arrangement for the acquisition of potential customers of Principal or to formalize any other transaction on behalf of Principal, except under the approval of Principal. Agent and Agent Personnel shall hold themselves out to potential customers of Principal only as the marketing representative of Principal.

Article 4

COMPENSATION

4.1 Compensation. Agent shall receive as compensation for the services rendered to Principal hereunder the sum of the following:

- a. Hourly fees calculated at the rate of \$_____ per hour of time spent by Agent Personnel in the course of rendering services to, or on behalf of, Principal, (including any time spent on Assignments in transit to customers or on Assignments to Principal, and any time during regular business hours in which Agent Personnel are occupied with other business activities while out of town on Assignments).
- b. Periodic commissions calculated at the rate of _____ percent during the consummation of the transaction, and _____ percent, thereafter, of the net proceeds from implementation, licensing, and time-sharing with respect to the software program as [program] generated over time by all Contracts (including all subsequent Assignments) regardless of whether Agent actually provides any effort to obtain renewal of such Contracts. Agent Personnel during the Term hereof have significantly helped obtain renewal of such Customer billings shall be deemed to include proceeds to Principal, with the exception of reimbursements received by Principal from customers for reimbursement of expenses directly incurred by Principal in providing materials or services to customers and actually paid by Principal to third parties other than the personnel of Principal.
- c. A finder's fee of \$_____ for each transaction involving Principal in which Agent or Agent Personnel have significantly helped originate or renew the software program known as _____ that in Principal's good faith belief Agent or Agent Personnel have significantly helped originate or renew.

Within seven days after the close of each month (during and after the Term hereof), Principal shall provide Agent with continuous information concerning the origination or renewal of all Contracts that Agent or Agent Personnel have in any way helped originate or renew. Agent shall send Principal monthly billing statements of the total compensation that accrued to Agent each calendar month, and (unless Agent discloses that the obligation of Principal has been

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