

# MARKETING AGREEMENT

THIS MARKETING AGREEMENT (this "Agreement"), made and entered into on \_\_\_\_\_, 20\_\_\_\_ by and between \_\_\_\_\_ ("Software Company"), a corporation duly authorized and existing under the laws of the State of \_\_\_\_\_; and \_\_\_\_\_ (hereinafter "Marketing Company"), a corporation duly authorized and existing under the laws of the State of \_\_\_\_\_

## RECITALS

WHEREAS, Software Company is the owner of a certain computer program under the name \_\_\_\_\_ (hereinafter referred to as the "Product");

WHEREAS, Marketing Company has an organization for the advertising, distribution of computer programs throughout the United States;

WHEREAS, Software Company has granted to Marketing Company the non-exclusive license to copy, distribute, support, and prepare derivative works of the Product pursuant to the license agreement dated \_\_\_\_\_, 20\_\_\_\_ (the "License Agreement"), and Marketing Company has agreed to the payment of royalties set forth in the License Agreement; and

WHEREAS, Marketing Company wishes the exclusive right to market the Product in the United States, and Software Company is willing to grant such exclusive marketing rights on the conditions of this Agreement;

NOW, THEREFORE, the parties hereto, intending to be bound hereby, hereby agree to the following terms:

## Article 1

### MARKETING COMMITMENTS

- 1.1 Level of Effort.** Marketing Company hereby undertakes to use its best efforts to promote the distribution, leasing, and/or sublicensing of the Product during the Period defined in Article 3 hereof.
- 1.2 Specific Commitments.** As part of such efforts, Marketing Company agrees to:
  - a.** Announce the Product as an offering of Marketing Company under Marketing Company's trademark.
  - b.** Create and distribute to all Marketing Company sales offices, the current materials set forth in Exhibit A hereto *[to be completed by document user]* the following materials:
    - I.** A marketing brochure describing the functional nature of the Product and its advantages.
    - II.** A demonstration version of the Product.
    - III.** An educational package for use in training users in accordance with the materials set forth in Exhibit B hereto *[to be completed by document user]*.

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- c. Advertise (full page) at least twice a year in the publications \_\_\_\_\_ or publications of similar focus and circulation \_\_\_\_\_
- d. Train at least \_\_\_\_\_ [number] salesmen and customer support personnel with the necessary knowledge, skills, and characteristics and use of the Product.
- e. Establish an incentive sales plan, including provision for the commission structure set forth in Exhibit C hereto [to be completed by document user].
- f. Establish marketing centers in the cities of \_\_\_\_\_ and \_\_\_\_\_ with demonstration capability and technical personnel trained to support and answer questions from customers concerning the use and functions of the Product. Each marketing center shall offer training courses for customers at reasonable rates in accordance with the scheduled training courses listed in Exhibit D hereto [to be completed by document user].

**1.3 Maintenance and Support.** Marketing Company shall establish a maintenance and support program of not less than \_\_\_\_\_ [number] trained software engineers to provide maintenance and enhancements for the Product. Throughout the Period of Exclusivity, Marketing Company shall offer a service agreement, providing for a reasonable level of maintenance and enhancements, to customers at a reasonable charge.

## Article 2

### SOFTWARE COMPANY REQUIREMENTS

- 2.1 Provision of Error Corrections and Improvements.** Software Company shall provide error corrections and improvements that it makes to the Product or to the code on which the Product is based, to Marketing Company for incorporation into the Product and distribution to such of Marketing Company's customers as enter into the service.
- 2.2 Technical Consultation.** Software Company agrees to provide technical assistance to Marketing Company's principal architects and qualified software engineers, in the amount of \_\_\_\_\_ hours per year, at no additional charge, for purposes of supporting Marketing Company's marketing, maintenance, and support activities.

## Article 3

### MARKETING RIGHTS

- 3.1** In consideration of the payment of the minimum monthly amounts set forth in Section 1.2, Software Company hereby grants to Marketing Company, for a period of three (3) years from the date of this Agreement, unless sooner terminated in accordance with the terms hereof (the "Period of Exclusivity"), and Marketing Company hereby accepts, the exclusive right, in the United States and Puerto Rico, to market, distribute, sell, sublicense, and supply (1) the Product and other products that are versions of compilations of the source code of the Product and the works thereof, and are designed for operation on, or can be loaded and executed on, computer systems consisting of, or compatible with, the computer systems listed in Exhibit E hereto [to be completed by document user]' and (2) support services (exclusive of consulting services) that Software Company shall be entitled to continue to offer to customers related to the Product. For purposes of this Agreement, computers compatible with the listed computers marketed as capable of loading and executing programs for operation on the listed computers with little or no modification, and without the use of added or

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emulation programs.

## Article 4

### SOFTWARE COMPANY MARKETING RIGHTS

- 4.1 Other Computer Systems.** Notwithstanding Article 3 hereof, Software Company may market, distribute, sell, sublicense, and supply programming products and other programming products, whether or not such programming products are derived from the source code of the Product, provided that such programming products are designed to run on a computer system or other device that is not one of, and is not compatible with, the systems listed in Exhibit D hereto *[to be completed by document user]*.
- 4.2 Territories Outside the United States and Puerto Rico.** Software Company may market, distribute, sell, sublicense, and supply any and all products and services outside the world other than the United States and Puerto Rico.

## Article 5

### PAYMENTS

- 5.1 Confirmation of Existing Obligations.** Marketing Company hereby confirms that it will pay royalties with respect to certain revenues collected by Marketing Company from the Product, under the terms and conditions set forth in the License Agreement.
- 5.2 Guarantee of Minimum Payment.** In consideration of the exclusive rights granted hereof, Marketing Company agrees that, if the royalties accruing under this Article during each calendar quarter (ending on March 31, June 30, September 30) during the Period of Exclusivity do not equal or exceed the following minimum amount, Marketing Company shall pay the difference to Software Company as an additional royalty:
- \$ \_\_\_\_\_ per quarter during the first year of the Period of Exclusivity
  - \$ \_\_\_\_\_ per quarter during the second year of the Period of Exclusivity
  - \$ \_\_\_\_\_ per quarter during the third year of the Period of Exclusivity
- 5.3 Payment.** Any additional royalty amount so accruing under Article 5.2 hereof shall be paid by Marketing Company within 30 days after the end of each calendar quarter.

## Article 6

### TERMINATION

- 6.1 Termination Upon Default of Marketing Company.** Software Company may terminate this Agreement (and the exclusive rights granted hereby) in the event of a material breach by Marketing Company, by giving Marketing Company 90 days' written notice. The notice shall include a summary of the default upon which termination is based. In the event Marketing Company cures the stated default prior to the expiration of the 90-day period, the terms of this Agreement remain in effect, and the notice of termination shall be deemed void.
- 6.2 Termination Without Cause by Marketing Company.** Marketing Company may terminate this Agreement and the Period of Exclusivity, for any reason, by giving Software Company 90 days' written notice. In the event of such termination by Marketing Company,

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