

E-COMMERCE AGREEMENT

This E-Commerce Agreement ("Agreement") is made and entered into on the ____ day of _____, 200__ ("Effective Date"), by and between: (a) _____, a corporation, with offices at _____ ("Vendor"); and (b), a _____ corporation, with offices at _____ ("Company"). Vendor and Company are collectively referred to as the "parties."

WHEREAS, Company is engaged in marketing, distributing and licensing products from custom-designed sites on the Internet; and

WHEREAS, Vendor desires Company to market, promote and license Vendor's products from and via a custom-designed site and through which persons having access to the site will be able to order Vendor's products.

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties, intending to be legally bound, agree as follows:

1. Appointment and License

a. *Appointment.* Vendor appoints Company as Vendor's non-exclusive worldwide distributor, during the term of this Agreement and subject to all terms and conditions of this Agreement, to: (i) market and promote Vendor's software products identified at Exhibit B ("Products") only from and via the custom designed internet website as identified at Exhibit A ("Site") to persons accessing the Site by means of an Internet connection ("Users"); and (ii) license the Products, in object code form only, to Users who have electronically accepted Vendor's approved click-wrap license agreement at Exhibit F and paid License Fees and Taxes to Company ("Licensees").

b. *Licenses.* Vendor grants to Company a non-exclusive, non-transferrable license, during the term of this Agreement and subject to all terms and conditions of this Agreement, to: (i) copy, market and license the Products, in object code form only, to Licensees only on and via the Site; (ii) copy, use, publicly display and transmit Vendor's marketing materials, literature, warranty disclaimers, descriptions and images or packaging of Products as identified at Exhibit B ("Works") from and/or via the Site to Users and Licensees; (iii) copy, use, publicly display and transmit the graphical image file, text, animation and links of Vendor as identified at Exhibit C ("Icon") only from and via the Site to Users and/or Licensees; and (iv) use and display Vendor's trade name, trademarks and/or service marks identified at Exhibit B ("Marks") of or relating to the Products only from and via the Site to Users and Licensees in connection with Company's marketing, promotion and licensing of the Products.

c. *No Modification or Reverse Engineering.* Company will not modify, enhance, create derivative works, reverse engineer or decompile any Products without Vendor's prior written consent. Vendor shall own all proprietary rights in any such modifications, enhancements or derivative work and Company hereby transfers and assigns to Vendor all proprietary rights, including copyright, patent, and trade secret rights, to any such modifications, enhancements or derivative works.

2. Company's Obligations

a. *Site and Pages.* Company agrees to: (i) develop, implement and maintain the Site in substantial conformance with the specifications at Exhibit A; (ii) author, develop and display pages to market the Products in substantial conformance with the specifications at Exhibit C ("Pages"); (iii) incorporate and display the Icon on and within the Site and Pages as described at Exhibit C; (iv) submit the Pages to Vendor for Vendor's review; (v) revise any such Pages upon request by Vendor;

and (vi) upon Vendor's written approval, integrate the Pages within the Site and cause such Pages to be displayed to Users on and via the Site on a continuous twenty-four (24) hour a day, seven (7) day a week basis.

b. *Promotion and Marketing.* Company shall use its best efforts to: (i) market and promote the Products on and via the Site to Users in accordance with the Company's promotional and marketing obligations as specified and pursuant to Exhibit D; (ii) undertake all translation, nationalization and adaptation of all approved Pages into Italian, Spanish, French, Japanese and German language versions, which shall be resubmitted to Vendor for review and approval and displayed to Users from appropriate national flag icons on the Site following Vendor's written approval; (iii) promote the Products on the Site and the Pages by updating metatags, registration and re-registration with search engines; and (iv) cooperate and negotiate in good faith with Vendor to develop and implement such further promotional and marketing activities as Vendor may request from time-to-time to support and stimulate the marketing of Products to Users.

c. *Distribution.* Company shall: (i) display Vendor's approved click-wrap license agreement at Exhibit F for electronic acceptance by Users; (ii) confirm and maintain records of each Licensee's acceptance of Vendor's approved click-wrap license agreement, electronic signature and list of Products ordered from the Site; and (iii) license the Products only after User's electronic acceptance of Vendor's approved click-wrap license agreement and payment of Licensee Fees and Taxes for Products by credit card, wire transfer or check is processed, approved and collected from such User to become a Licensee. Company is responsible for collection of all License Fees and Taxes from each Licensee.

d. *Back-Up and Security Measures.* Company shall be solely responsible for all expenses, costs and fees of the creation, revision, display, hosting and transmission of the Pages, back-up and mirror servers and contingency and disaster recovery planning, services and equipment. In addition, Company shall undertake commercially reasonable security measures to prevent unauthorized use and ensure the security, confidentiality and integrity of the Products on and within the Site, including, without limitation: (i) password access and firewall protection; (ii) maintenance of independent archival and backup copies of the Pages; and (iii) protection from any network attack or other malicious harmful or disabling data, work, code or program.

3. Vendor Obligations

a. *Delivery.* Vendor shall promptly provide to Company one (1) copy each of the Product in object code form, the Works and Marks as identified in Exhibit B, and the Icon as identified at Exhibit C.

b. *Updates.* During the term of this Agreement, Vendor agrees to deliver to Company, for transmission to Licensees by Company, such copies of updates, enhancements, bug-fixes and corrections to or of the Products, in object code form, that Vendor may make available from time to time in Vendor's sole discretion. Company agrees that Vendor will only provide any such updates, enhancements, bug-fixes and corrections only for the current version(s) of the Products as released by Vendor.

4. Ownership and Proprietary Rights

a. *Vendor Ownership.* Company agrees that, exclusive of the licenses granted at Section 1 herein, all right, title and interest (including copyright and other proprietary or intellectual property rights) in and to the Products, Works, Marks and Icon and all legally protectable elements, contributions, collective works thereof or derivative works thereto shall remain vested in the Vendor and that this Agreement does not transfer ownership of any of these rights. Company agrees that all

Pages are and shall be works made for hire and the property of Vendor. Vendor shall own all right, title and interest (including copyright and other proprietary or intellectual property rights) in the Pages and all legally protectable elements, contributions, collective works thereof or derivative works thereto.

To the extent that ownership of any Pages or portion thereof does not automatically vest in Vendor by virtue of this Agreement or otherwise, Company irrevocably transfers and assigns to Vendor all rights, title and interest in the Pages and protectable elements or derivative works thereof.

b. *Company Ownership.* Vendor agrees that, except as expressly provided at Section 4(a), all right, title and interest (including copyright and other proprietary or intellectual property rights) in and to the Site and all legally protectable elements, contributions, collective works thereof or derivative works thereto (exclusive of the Products, Works, Marks and Icon) shall remain vested in Company and that this Agreement does not transfer ownership of any of these rights.

c. *Limitation on Use of Information.* Company shall use all Confidential Information disclosed or delivered to Company by Vendor solely for the purpose of performing under this Agreement and shall not use or disclose any Confidential Information except as expressly authorized by this Agreement.

5. Royalties, Reports, Payment and Quota

a. *Royalties.* Company shall pay Vendor royalties for license of each of the Products to Licensees in the amounts calculated pursuant to the formulae set forth at Exhibit E ("Royalties"), due and payable within thirty (30) days following the end of each calendar quarter, together with a detailed written statement providing information concerning each Licensee, Products licensed and the basis and determination of such Royalties ("Report").

b. *Quota.* Company agrees that during each successive twelve (12) month period after the effective date of this Agreement it will achieve the Quota for Royalties paid to Vendor from Company's licensing of the Products to Licensees from or via the Site. The term "Quota" means all Royalties actually paid to Company during the twelve (12) month period attributable to licenses of Products to Licensees obtained by Company's efforts on or via the Site in an amount established in accordance with this Section. The initial Quota will be dollars (\$_____). The Quota for subsequent twelve (12) month periods will be set by the Vendor upon ninety (90) days prior written notice and will not be subject to negotiation. In case of failure of the Vendor to otherwise notify the Company, the Quota will be equal to one hundred and fifteen percent (115%) of the Quota during the previous twelve (12) month period. If Company fails to achieve the Quota in any twelve (12) month period, Vendor may terminate this Agreement upon ninety (90) days prior written notice to Vendor.

c. *Taxes.* Company agrees to be responsible for and pay all sales, use, service, income or other taxes of any governmental authority (exclusive of taxes on Vendor's net income), howsoever levied, including interest and penalties thereon, if any, arising from or relating to: (i) the Products licensed by Company to Licensees; (ii) payment of the Royalties set forth at Exhibit E; and (iii) delivery of the Products to Company by Vendor (collectively "Taxes").

d. *Invoices.* Company agrees that thirty (30) days after the end of each calendar quarter, any unpaid Royalties shall accrue interest at one and one half percent (1.5%) per month and Company shall thereafter pay all such interest in addition to any Royalties due. Company shall pay all costs of collection, including reasonable attorney's fees and costs in the event any collection effort or action is required to collect the Royalties.

6. Tracking and Auditing

a. *Records.* Company shall maintain Site logs and business and financial records that contain information sufficient to verify the completeness and accuracy of all licenses of Products to Licensees, acceptance of Vendor's approved click-wrap license agreement at Exhibit F by all Licensees, payments of License Fees, Taxes, Royalties and Quotas and information in Reports ("Records") for a period of at least three (3) calendar years from the date such information relates.

b. *Auditing.* Throughout the term of this Agreement and for up to three (3) calendar years thereafter, Vendor shall have the right, at its own expense and on thirty (30) days advance written notice to Company, to have its auditors examine the Records for the sole purpose of certifying the accuracy of Reports, determining the amount of Royalties due, if any, to Vendor and/or verifying Licensees of any Products. In the event such auditing of the Records indicates any underpayment of Royalties paid to Vendor, Company shall pay Vendor the additional amount of Royalties due to Vendor pursuant to the audit, plus interest thereon under Section 5(e), and if the underpayment exceeds five percent (5%) of the actual Royalties due and payable to Vendor for any given calendar quarter, Company shall pay all costs and expenses of Vendor associated with such audit.

7. Company Warranty

Company represents and warrants to Vendor that: (i) Company has the right and authority to enter into and perform its obligations under this Agreement; (ii) Company shall perform its obligations under this Agreement in a commercially reasonable manner; (iii) the Site shall conform substantially to the Specifications; (iv) the Site and Pages (exclusive of the Products, Works, Marks and Icon) do not and shall not contain any content, materials, link, advertising or services that actually or potentially violate any applicable law or regulation or infringe any proprietary, intellectual property, contract or tort right of any person; and (v) Company owns the Site and all intellectual property rights therein, or has the right to copy, use and display such content on and within the Site.

8. Vendor Warranty and Disclaimer

a. *Warranty.* Vendor represents and warrants to Company that: (i) Vendor has the right and authority to enter into and perform its obligations under this Agreement; (ii) Vendor has the right to appoint Company as a distributor of the Products and to grant the licenses at Section 1 herein; (iii) the Products, Works, Marks and Icon do not and shall not contain any content, materials, link or advertising that violates any applicable law or regulation or infringes any proprietary, intellectual property, contract or tort right of any person; and (iv) Vendor owns the Products, Works, Marks and Icon and all intellectual property rights therein, or has the right to grant the licenses at Section 1 herein.

b. *Disclaimer.* EXCEPT AS EXPRESSLY STATED AT SECTION 8(a), VENDOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE, CONCERNING THE PRODUCTS, WORKS AND MARKS WHICH ARE THE SUBJECT MATTER OF THIS AGREEMENT.

9. Limitation of Liability

EXCLUSIVE OF LIABILITY UNDER SECTION 10 (INDEMNIFICATION), IN NO EVENT SHALL VENDOR BE LIABLE TO COMPANY, ANY LICENSEE OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF