

CERTIFIED DEALER AGREEMENT

1) INTRODUCTION

This is an agreement for DDDDDD, Inc. (hereinafter "Supplier") to supply software products to the party listed below (hereinafter "Dealer,") and to permit Dealer to license DDDDDD's software products to Customers as defined below.

Company: NNNNNN
Contact: BBBB
Address: 1234 Main Street
Anytown, CA 90000
Phone: (800) 555-1212
Fax: (800) 555-1212

2) DEFINITIONS

- a) "Product" or "Products" shall consist of Supplier's computer software products called "XXXXXX," "YYYYYY" (and all optional modules and future versions thereof), which employ Microsoft Access as the database on which data is stored. .
- b) "Customer" or "Customers" shall mean persons or entities that license Products from Dealer for their own business, commercial or personal use, but not for remarketing or reselling.
- c) "Non-exclusive" shall mean that, subject to the terms and conditions of this Agreement: Dealer is free to sell, market, distribute, promote or recommend (either directly or indirectly) any product that competes with DDDDDD's Products to prospective customers; and that DDDDDD is free to sell, market, distribute, promote or recommend (either directly or indirectly) any product or service in the Dealer's Assigned Territory.

Notwithstanding the foregoing, Dealer shall not, without advance written authorization from DDDDDD, sell, market, distribute, promote or recommend (either directly or indirectly) any product that competes with, or is substantially similar to, DDDDDD's Products to Customers. Violation of this section of the Agreement by Dealer shall constitute a material breach of this Agreement.

- d) "Assigned Territory" shall mean the State of California, excluding the County of San Diego.
- e) "Discount Rate" shall mean the percentage discount Dealer shall receive off the Supplier's published list prices for its products and services.
- f) "Effective Date" shall mean the date upon which both parties have signed this Agreement.
- g) "Good Credit Rating" shall mean payment of all invoices within 30 days after issuance of such invoice by DDDDDD.

3) FINANCIAL QUALIFICATION OF DEALER

Dealer shall at all times maintain a Good Credit Rating with DDDDDD. Failure to comply with this provision shall be a material breach of the Agreement that shall be grounds for termination, or temporary suspension of products and services, at DDDDDD's discretion

4) GRANT OF LICENSE

- a) During the term of this Agreement, Supplier grants to Dealer a non-exclusive license solely to distribute and license the Products in unaltered form to Customers within the Assigned Territory. Supplier may, at its sole discretion, allow Dealer the non-exclusive right to distribute and license the Products in unaltered form to

Customers outside the Assigned Territory, provided DDDDDD grants such a right in advance, in writing, on a case-by-case basis.

- b) Dealer shall have the right to set all prices charged to Customers for Products licensed to Customer via Dealer, or for services Dealer provides to Customer.
- c) Supplier grants to Dealer a non-exclusive right and license to use its trademarks and copyrighted materials for the purpose of marketing the Products. Dealer shall include all appropriate trademark and copyright notices for the Products on printed and electronic materials Dealer uses to market the Products.
- d) No ownership right is granted to any intellectual property relating to the Products. No right is granted for Dealer to replicate, produce, copy, or alter the Products. No right is granted for Dealer to use, distribute, rent, lease, lend, supply, or market the Products, except as expressly provided for in this Agreement. Dealer may not decompile, disassemble, or reverse engineer the Products.

5) INITIAL FEE

- a) In consideration of the license granted by this Agreement, as well as the materials and services provided to Dealer by DDDDDD as described in the Schedules to this Agreement, Dealer agrees to pay to Supplier an initial non-refundable fee described in Schedule A attached to this Agreement.

6) SALES QUOTA

During each three-month period of this Agreement, Dealer shall order, accept, and pay the amount due for at least \$17,500 (net of Dealer's Discount, and exclusive of Software Maintenance Contracts, data conversions, and custom programming fees) of Products in the Assigned Territory ("Required Quarterly Quota of Products"). Failure of Dealer to order, accept, and pay the amount due for the Required Quarterly Quota of Products shall be grounds for Supplier to terminate this Agreement, pursuant to the provisions on Termination.

7) DEALER'S PAYMENTS FOR PRODUCT LICENSES

- a) For all Products, Dealer shall pay the amount of Supplier's listed License Fee for the Products stated on Supplier's Retail License Fee List, as it may be published by Supplier from time to time, less the applicable Discount Rate. Supplier's current Retail License Fee List is attached to this Agreement as Schedule B.
- b) Orders submitted by Dealer that do not comply with DDDDDD's price list, or other terms and conditions, shall be null and void and, and shall not be accepted by DDDDDD, unless an executive of DDDDDD grants Dealer, in writing and in advance of Dealer's submitting such an order, authorization to deviate from standard prices, terms and/or conditions.
- c) DDDDDD shall, at its sole discretion, determine the manner in which shipments are made to Dealer, or "drop-shipped" to Customer if requested by Supplier. Shipment of orders via DDDDDD's standard shipping methods shall be fulfilled at DDDDDD's cost; Supplier may request expedited processing and shipping which shall be billed at DDDDDD's then-current expedited processing/shipping rates to Dealer's account.
- d) Supplier may, at its discretion, establish a Credit Line for the Dealer. The amount and terms of such a Credit Line, if granted, would be described in a separate document. DDDDDD may, at any time, for any reason, modify Supplier's Credit Line.
- e) DDDDDD shall, for each order processed and shipped to Dealer or Customer, include an itemized invoice. Such invoices shall be deemed to be accurate and accepted by both parties if either party does not dispute, in writing, the contents of the invoice within 10 days of the invoice date.

8) DEALER'S OBLIGATIONS

- a) Dealer shall use its best efforts to promote and market the Products. Under this agreement, Dealer may represent that it is an authorized dealer of DDDDDDD Products in the Assigned Territory. Dealer agrees not to in any way misrepresent, or cause to be ambiguous (especially with respect to prospective customers, journalists, market analysts, etc.) the perception of Dealer duties as specified in this Agreement, the features of DDDDDDD Products including any technical specifications, suggested retail pricing, expected benefits of use, and the origin of DDDDDDD Products. In particular, Dealer may not represent itself as an exclusive agent, reseller or dealer of DDDDDDD Products or as the developer or manufacturer of DDDDDDD Products, or as DDDDDDD itself. Violation of this section of the Agreement by Dealer shall constitute a material breach of this Agreement.

Dealer shall provide sufficient qualified staff to carry out its obligation to market, sell and support the Products. Dealer shall pursue any marketing leads and promote only Supplier's Products (i.e., not competing or similar products) in the Assigned Territory received from Supplier. Violation of this section of the Agreement by Dealer shall constitute a material breach of this Agreement.

- b) Dealer shall require, prior to shipment of the Products to any Customer, that the Customer execute DDDDDDD's licensing agreement or an agreement with terms and conditions that are substantially similar to those in DDDDDDD's license agreement.
- c) For each Customer, Dealer shall provide (at a minimum) the following assistance:
- i) Install the Product(s), according to DDDDDDD's installation instructions, on Customer's stand-alone computers or a local area network (LAN) which complies with DDDDDDD's published System Requirements.
 - ii) Deliver at least 8 hours (but ideally 16 hours) of product training for Customer's staff, within 45 days of the effective date of the Customer's license agreement for the Product(s).
 - iii) Make available a Help Desk telephone line for Customers to request assistance in the operation of the Products, and to report program bugs or errors as they arise. Dealer's Help Desk line shall be available, at a minimum, from 9:00 am to 5:00 pm Monday through Friday (Dealer's local time) excluding legal holidays.
 - iv) Work with DDDDDDD to address and satisfy customer issues, technical problems, and the like, including but not limited to immediately reporting program bugs or errors as they arise, and helping clients install software patches, fixes, updates and upgrades.
- d) Dealer shall offer annual, renewable Software Maintenance Contracts to its Customers, as follows:
- i) Contract shall include Help Desk services to be provided by Dealer, as described elsewhere in this section of the Agreement.
 - ii) Contract shall include semi-annual updates/upgrades to be provided by DDDDDDD, as described in "Supplier's Obligations," below.
 - iii) Dealer shall notify DDDDDDD of the effective and expiration dates of each Software Maintenance Contract, prior to the effective date of the Contract.
 - iv) Dealer shall remit payment in full (equal to the Supplier's List Price for the applicable Software Maintenance Contract less the Discount Rate) on or before the effective date of such Software Maintenance Contract.
- e) Dealer shall take all reasonable steps to ensure that Customers do not contact DDDDDDD directly for technical support, help desk or related customer satisfaction issues. DDDDDDD shall not provide direct customer support; all support shall be handled through the Dealer to the Customer.
- f) Although DDDDDDD and its agents may not solicit renewable Software Maintenance Contracts to Dealer's Customers, DDDDDDD may provide a renewable Software Maintenance Contract to a Customer if:

SCENARIO #1:

- i) The Customer does not wish to continue Support with the Dealer due to avoidable shortcomings in Support expressed in writing by the Customer; and
- ii) Dealer has been given a reasonable opportunity to remedy the situation about which the Customer complained.

OR

SCENARIO #2:

The Customer upgrades or converts to a product offered by DDDDDD that is not supported by Dealer, including but not limited to a product that uses the SQL Server/MSDE database engine.

OR

SCENARIO #3:

This Agreement is terminated as provided for in this Agreement.

If a Customer transfers their Software Maintenance Contract from Dealer to DDDDDD for any reason, then Dealer shall immediately pay DDDDDD any unearned software maintenance revenue associated with the Customer's Software Maintenance Contract that has been pre-paid by Customer. For example, if a Customer were to transfer their Software Maintenance Contract from Dealer to DDDDDD with four months remaining on the contract, then Dealer shall immediately pay DDDDDD as follows: $4/12\text{ths} \times \text{Suggested List Price for Software Support} \times \text{Discount Rate}$.

- g) Dealer shall perform its duties in compliance with all applicable laws and shall hold Supplier harmless from any claim, damage, liability, or expense, including attorneys fees, arising from any violation of law by Dealer.
- h) Dealer shall comply with all terms, regulations and policies in DDDDDD's Reseller Handbook, as it may be published from time to time, to the extent that such provisions do not conflict with this Agreement.
 - i) Violation of this section of the Agreement by Dealer shall constitute a material breach of this Agreement.
 - ii) Should any provision of DDDDDD's Reseller Handbook be held to be void, invalid, inoperative, or in conflict with this Agreement, this Agreement shall be controlling, but the remaining provisions of the Reseller Handbook shall not be affected and shall continue in effect as though such provisions were deleted.

9) SUPPLIER'S OBLIGATIONS

- a) Supplier will use its reasonable efforts to make the Products perform substantially in accordance with the product description set forth in the Documentation that accompanies the Product, as it may exist from time to time. However, Dealer acknowledges that inevitably some errors may exist in the Product, and the presence of such errors shall not be a breach of this provision.
- b) Supplier shall provide the following assistance to Dealer:
 - i) Deliver product training for Dealer's sales and support staff, as described in Schedule "A" to this Agreement.
 - ii) Provide technical support for Dealer's sales and support staff, to address product functionality issues, and to remedy program bugs and errors, if such matters cannot reasonably be addressed by Dealer without assistance from DDDDDD.
 - iii) Modify products and accompanying documentation, and provide product updates, enhancements and version upgrades, to address program bugs and errors and improve the overall functionality of the Products. Modifications, updates, enhancements and version upgrades shall be provided as they become available to Dealers for the term of this Agreement, and to Customers as long as they have a current maintenance agreement on file with Dealer and DDDDDD.

- c) Supplier shall provide the following assistance to Customers who have a valid Software Maintenance Contract that has been paid in full according to the Dealer's credit terms:
 - i) Upon request by Dealer and Customer, DDDDDDD may perform a database conversion for Customer. Database conversion would be offered at DDDDDDD's then-current fees; fees would be paid directly to DDDDDDD by client, and no commission would be earned on such fees by Dealer.
 - ii) Upon request by Dealer and Customer, DDDDDDD may deliver product training for Customer on Dealer's behalf. Training would be offered at DDDDDDD's then-current fees; fees would be paid directly to DDDDDDD by client, and no commission would be earned on such fees by Dealer.
 - iii) Send semi-annual updates to the Products to Customers.

DDDDDD shall not be obligated to provide direct customer support; all support shall be handled through the Dealer to the Customer.

- d) Supplier shall make reasonable efforts to aid Dealer in advertising and promotion of Products. Supplier shall reimburse Dealer for certain advertising, promotion and marketing expenses, according to its established Co-Op Marketing Program. DDDDDDD's current Co-Op Marketing Program, which is subject to change from time to time with 90 days written notice by DDDDDDD, is described in Schedule "C" of this Agreement.

10) SUPPLIER'S OPTION TO MODIFY OR DISCONTINUE PRODUCTS

- a) Supplier has the right, at any time, to make such modifications to the Products as it sees fit in the operation, performance, or functionality of the Products.
- b) Supplier has the right to discontinue distribution of any or all Products or versions of Products, to remove Supported Products or versions of Supported Products from Supplier's Supported Products List, or to discontinue support, maintenance, or the provision of new versions, updates, or corrections for any Product or for any version or for any hardware or software platform or operating system, with at least 90 days written notice to Dealer.

11) DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY

- a) THE REPRESENTATIONS AND WARRANTIES EXPRESSLY GRANTED IN THIS AGREEMENT ARE THE SOLE REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, MADE BY SUPPLIER. ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, ARE EXPRESSLY EXCLUDED AND DISCLAIMED.

12) CONFIDENTIALITY

- a) Each party acknowledges that it will receive Confidential Information from the other party relating to technical, marketing, product, and business affairs. Each party agrees that all Confidential Information of the other party shall be held in strict confidence and shall not be disclosed or used without express written consent of the other party.

13) TERM AND TERMINATION

- a) This Agreement shall take effect on the Effective Date. Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall be 1 year and shall be renewed successively for additional terms of 1 year unless either party gives written notice of termination no less than ninety (90) days prior to the expiration of the then-current term.
- b) In the event that Dealer fails to maintain a satisfactory credit rating with DDDDDDD, or if Dealer is unable to discharge its obligations hereunder, Supplier may terminate this Agreement upon thirty (30) days notice.
- c) In the event that Dealer fails to meet its Required Quarterly Quota of Products, Supplier may terminate this Agreement upon thirty (30) days notice. Upon the anniversary of the Effective Date, Supplier may, at its sole