

## VALUE ADDED RESELLER AGREEMENT

This Value Added Reseller Agreement ("Agreement") is made and effective this \_\_\_\_\_ (Date), by and between \_\_\_\_\_ ("VAR") and ("Developer").

Developer has developed certain software, which it markets directly to end-users and also markets through intermediaries such as VARs.

VAR is in the business of creating and adding value to existing software and technology products and remarketing the value-added products to end-users.

VAR desires to take a license in certain of Developer's products as identified on Exhibit A ("Products") attached, and to add value to same and remarket the value-added products, all pursuant to this Agreement.

Therefore the parties agree as follow:

### 1. Nonexclusive Appointment.

VAR is hereby appointed a nonexclusive value-added reseller of the Products for sale in the Territory as it appears in Exhibit B ("Territory"), pursuant to this Agreement. VAR accepts such appointment and agrees to serve as a value-added reseller of the Products to end users as provided herein. This Agreement is not exclusive to VAR, and Developer reserves the unrestricted right to sell, license, market and distribute or to grant to others the right to sell, license, market and distribute the Products and value added versions thereof anywhere in the world.

### 2. Price, Terms, and Discounts.

Prices, discounts, and other terms for the Products are set forth in Exhibit A. and are subject to change at any time, to take effect no sooner than the end of the Initial Term of this Agreement and following at least 30 Days prior written notice by Developer to VAR.

### 3. Product Changes Including Upgrades.

VAR acknowledges that customers generally desire and expect Product changes in VAR's marketplace. Therefore, VAR encourages Developer to modify, alter, amend or delete from the Products at any time at its discretion. Any formal upgrades require at least 30 Days written notice from Developer to VAR. VAR agrees never to remove from the Products any copyright notice included in them.

### 4. Ordering, Delivery, and Shipment.

A. Purchases of Product pursuant to this Agreement shall be made by VAR using VAR's regular purchase order form; provided, however, additional, modified or conflicting terms and conditions on VAR's purchase order form shall not modify or amend this Agreement unless expressly agreed to in writing by Developer.

B. All orders must specify the Product or Products to be purchased; the appropriate purchase price; the requested ship date; and, if applicable, state the appropriate tax exemption

certificate number, or include a blanket tax exemption certificate form for Developer's files when examined by tax authorities.

- C. Shipment of the Products purchased by VAR shall be made prepaid to the VAR. Developer shall have the right to make partial shipments, and each shipment shall be deemed a separate order and payment therefore shall become due in accordance with the terms of shipment. VAR shall take the license to the Products upon receipt and all risks of loss and expenses in connection with the Products shall thereafter be the responsibility of VAR; provided, however that Developer retains all applicable rights to the intellectual property contained in the Products as set forth in this Agreement.
- D. Products ordered will be deemed accepted by VAR upon shipment by Developer. VAR shall have thirty (30) days after receipt of the Products at VAR's facilities ("Test Period"), but prior to reshipment of the Products to VAR's customers, to inspect and test the Products. If VAR discovers any defect in a Product and reports such defect in or within the Test Period, Developer will, at its option, either repair, replace or accept return of the Product or credit VAR for the applicable purchase price.
- E. All purchase orders and amendments received by Developer after this date shall be part of this Agreement and are subject to acceptance by Developer. Payment shall be made by VAR within 30 days after the date of Developer's invoice. VARs shall be responsible to pay, or reimburse Developer, as appropriate, for any sales, use, excise or similar tax levied on the transactions hereunder, or any personal property tax attributable to the license granted VAR.

#### 5. Changes and Cancellations.

VAR may cancel an order prior to shipment upon payment of a cancellation fee equal to 25% of the original order, and provided that Developer receives notice of the cancellation not more than 5 Days following the original order. Cancellation of any order after the last day for cancellation, or in the event that Developer has already shipped the Product, shall require VAR to pay in full. The parties agree that these charges are a reasonable method for determining Developer's expenses and damages arising out of cancellation or refusal to accept shipment.

#### 6. License.

A. Developer grants and VAR accepts a limited, nonexclusive license to the Products as provided in this Agreement. The license granted herein shall permit VAR to combine or include the Products with VAR's other software or hardware for the purpose of adding to or increasing the value, functionality or utility of such software or hardware for VAR's end user customers. VAR shall not be permitted to use the Products for its internal business. VAR may not copy any of the Products or distribute or transfer the Products except as provided herein.

B. Developer hereby grants VAR a limited, nonexclusive license to grant sublicenses of the Product to VAR's end user customers in the normal course of business. Any sublicense of the product by VAR shall be pursuant to a written license agreement, approved in advance by Developer as to form and substance that shall include at least the following:

- (i) VAR's sub licensee shall have no right to copy, modify, reproduce, publish or convey any part of any Product.

- (ii) VAR's sub licensee shall acquire no ownership in the Product.
- (iii) VAR's sub licensee shall look solely to VAR in the event of any defect, damage or inoperability of the product or part thereof.

C. If VAR's sub licensee fails to perform any material obligation with respect to Product pursuant to its written sublicense agreement with VAR, then VAR shall be required to cooperate with Developer to protect and enforce Developer's rights and title with respect to the Products. VAR may use this Agreement to show to sub licensee that they are required by Agreement to enforce these terms and conditions.

## 7. Confidentiality.

In the performance of this Agreement, each party may have access to confidential, proprietary or trade secret information owned or provided by the other party relating to software computer programs, object code, source code, marketing plans, business plans, financial information, specifications, flow charts and other data ("Confidential Information"). All Confidential Information supplied by one party to another pursuant to this Agreement shall remain the exclusive property of the disclosing party. The receiving party shall use such Confidential Information only for the purposes of this Agreement and shall not copy, disclose, convey or transfer any of the Confidential Information or any part thereof to any third party, except that VAR may sublicense the Products as set forth in this Agreement. Neither party shall have any obligation with respect to Confidential Information which: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party; (ii) was previously known to the a receiving party or rightly received by a receiving party from a third party; or (iii) is independently developed by or a the receiving party.

## 8. VAR Sales Organization and Activities.

In connection with the performance of its obligations in this Agreement in a professional and businesslike manner, VAR agrees to:

- A. Hire, train and employ at its place or places of business competent, professional and ethical sales, technical and support personnel to sell and support the products.
- B. Stay current with respect to information concerning the Products and, where appropriate, attend Developer's training with respect to the Products.
- C. Maintain adequate human resource and other facilities to assure prompt handling of all customer inquiries, orders, shipments and after sale support for the Products.
- D. Maintain, for demonstration purposes adequate equipment and other resources to properly demonstrate the Products.
- E. Provide prompt, reliable and competent technical and other assistance to VAR's end user customers with respect to the Products.
- F. Conduct its business in a professional manner that will reflect favorably on Developer and the Products, and not engage in deceptive, fraudulent, misleading, illegal or unethical business practices, whether with respect to the Products or otherwise.

G. Permit Developer the right of reasonable entry to visit and inspect VAR's place of business for the purpose of verifying, to the satisfaction of Developer, that VAR is performing its obligations under this Agreement.

9. Developer Sales Assistance Responsibilities.

Developer will provide commercial and technical assistance to VAR as may be necessary and appropriate to assist VAR in effectively carrying out its obligations under this Agreement and in the promotion and sale of the Products to VAR's end user customers. Developer will subject to availability provide VAR and its agents sales promotion materials, technical manuals, sales aides and other materials helpful in the promotion or sales of the Products.

10. Limited Warranties.

A. Developer warrants that it is the owner of or otherwise has the right to license the Products and otherwise perform its obligations set forth herein.

B. Developer warrants that the media upon which the Products are included shall be free from defects in materials and workmanship for a period of following the date of shipment. In the event any breach of warranty set forth in this Section 10. B., VAR's sole remedy and Developer's sole liability shall be for Developer to replace the defective media.

C. Developer warrants that for a period of 90 Days following shipment of the Products, each Product will perform the functions substantially according to Developer's regular specifications document with respect to such Product. In the event of any breach the warranty set forth in this section 10.C., VAR's sole remedy, and Developer's sole liability, will be that Developer must promptly repair the Products so as to conform to the warranty or, at Developer's election, refund the purchase price.

11. Developer Disclaimer.

THE WARRANTIES OF DEVELOPER SET FORTH IN SECTION IO ABOVE ARE EXCLUSIVE AND EXPRESSLY IN PLACE OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL DEVELOPER BE LIABLE TO VAR FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES INCLUDING, WITHOUT LIMITATION, LOSS OF DATA OR PROFITS, WITH A CLAIM BY REASON OF BREACH OF WARRANTY OR BASED ON CONTRACT, STRICT LIABILITY OR OTHERWISE, REGARDLESS OF WHETHER DEVELOPER HAS BEEN ADVISED OF THE RISK OF SUCH DAMAGES IN ADVANCE.

12. Indemnification.

A. VAR agrees to indemnify and hold harmless Developer from and against loss, suit, damage or claim including reasonable attorney's fees and costs, arising out of or connecting with the sale, sublicense or use of any of the Products that have been modified by VAR or anyone else.

B. Developer shall, at its own expense, defend any suit that may be instituted against VAR or any end user customer of VAR for any alleged infringement of any US patent, trademark or copyright related to the Product as provided by Developer hereunder, provided that:

1. Such alleged infringement consists only of the use of the Product in the manner for which the Product was designed by itself, and does not relate to any modification or alteration or combination with other works.
2. VAR gives Developer immediate notice in writing of any such suit and permits Developer, with counsel of its choice, to defend such suits. Immediate is defined as less than 5 Days after the suit was filed upon VAR or its representatives.
3. VAR provides Developer all of the necessary information, assistance and authority, to enable Developer to defend such suit, and similarly uses its best efforts to get all VAR's end user customers to similarly provide all needed information, assistance and authority, all at VAR's expense.
4. Developer's indemnity shall not apply with respect to any claim arising out of or based upon any modification or alteration of the Products created by or for Developer or an End-User customer.

### 13. Relationship of the Parties.

It is expressly understood and agreed that the relationship between the parties is solely that of "seller" and "buyer". VAR is not, and shall not be, a partner, agent, representative or joint venturer of Developer. VAR has no authority to assume or create any obligation for or on behalf of Developer, express or implied, with respect to the Products or otherwise.

### 14. Developer's Marks.

- A. Developer hereby grants to VAR a limited, nonexclusive right to use Developer's regular trade names, trademarks, titles and logos (the "Licensed Marks") in the advertising, promotion and sale of the Products. VAR shall not make or permit alteration or removal of tags, labels, or identifying marks placed by Developer on or within the Software program of any product. VAR will not use Developer's trade names or abbreviations (with the exception of a logo or mark or graphic design provided by Developer which indicates VAR is an authorized reseller of Developer) in VAR's corporate title, or name or in any way that might result in confusion as to separate and distinct identities of Developer and VAR. Upon the expiration or earlier termination of this Agreement, the license granted to VAR in the Licensed Marks shall immediately terminate and VAR shall immediately cease and desist all use of the Licensed Marks.
- B. VAR recognizes and acknowledges Developer's ownership and title to the Licensed Marks and the goodwill related thereto and agrees that any goodwill which accrues because of VAR's use of such marks shall become the property of Developer. VAR further agrees not to contest or take any action in opposition to any trademark, serviceman, trade name or logo of Developer or to use, employ or attempt to register any mark or trade name, which is similar to any mark or name of Developer.
- C. VAR shall apply the Licensed Marks only to products which have been manufactured in accordance with the standards of quality in materials, design, workmanship, use, advertising and promotion set forth in Developer's trademark use specifications and product control specifications ("Control Specifications"), copies of which will be furnished to VAR in confidence pursuant to Section 7 of this Agreement.

D. Developer shall have the right at any time to conduct during regular business hours an examination of products manufactured by VAR (including those assembled or tested) at VAR's facilities to determine compliance of such products with the applicable Control Specifications. If at any time such products shall, in the sole opinion of Developer, fail to conform with the standards of quality in materials, design, workmanship, use, advertising, and promotion set forth in such Control Specifications, Developer shall so notify VAR. Upon such notification, VAR shall promptly cease to use the Licensed Marks on such products and shall not sell such nonconforming products until the standards of quality contained in the applicable Control Specifications have been met to the satisfaction of Developer.

15. Term and Termination.

A. This Agreement shall commence on the Date of this Agreement and continue for a Term ending in 2 years. Thereafter, this Agreement shall continue until a party shall give notice to the other party of its desire to terminate this Agreement upon at least ninety (90) days prior written notice.

B. In the event that VAR has failed to pay any amount when due or is in breach or default of any other material obligation set forth in this Agreement, then Developer may notify VAR and if VAR has not paid the entire amount due or cured its other breach or default within 30 Days following such written notice, then Developer may elect to terminate this Agreement unilaterally without protest from the VAR.

C. In the event of any other breach or default of any material obligation owed by Developer in this Agreement, then the VAR may provide notice to Developer and if such breach or default is not cured within 30 Days following such notice, the Agreement may be terminated by the VAR unilaterally without protest from the Developer.

16. Notices.

Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or a recognized over night delivery service such as FedEx.

If to the Developer: \_\_\_\_\_.

If to the VAR: \_\_\_\_\_.

17. No Waiver.

The waiver or failure of either party to exercise in any respect any right provided in this agreement shall not be deemed a waiver of any other right or remedy to which the party may be entitled.

18. Entirety of Agreement.

The terms and conditions set forth herein constitute the entire agreement between the parties and supersede any communications or previous agreements with respect to the subject matter of this Agreement. There are no written or oral understandings directly or indirectly related to

this Agreement that are not set forth herein. No change can be made to this Agreement other than in writing and signed by both parties.

19. Governing Law.

This Agreement shall be construed and enforced according to the laws of the State of \_\_\_\_\_ and any dispute under this Agreement must be brought in this venue and no other.

20. Headings in this Agreement

The headings in this Agreement are for convenience only, confirm no rights or obligations in either party, and do not alter any terms of this Agreement.

21. Severability.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

In Witness whereof, the parties have executed this Agreement as of the date first written above.

\_\_\_\_\_  
Developer

\_\_\_\_\_  
VAR

\_\_\_\_\_  
Date

Exhibit A: VAR Price, Products, and Terms Schedule



Exhibit B: VAR Territory and Accounts Specific Customers

## Value-Added Reseller Agreement Review List

This review list is provided to help you prepare the VAR Agreement and negotiate the terms appropriate for your business. Certain terms and conditions have been imbedded in the text that require your careful examination. Among them are prepaid freight due to the almost universal requirement of this by VARs and its relatively low cost as a percentage of sales in this business for the Developer. The initial term is specified as 2 years because that has usually been enough time for both parties to recoup their investment in the relationship but not too long to encourage sloth on the job. An exclusive VAR document has not been prepared because few are used and they tend to be deadly for Developer if they are done.

1. The Value-Added Reseller Agreement provides for a software developer to sell its programs to a reseller, who then may combine the programs with other software or hardware. The combinations are then marketed as "value-added" products. Many VARs call themselves by that name but are really just resellers. Therefore the agreement has provided for that option. Make sure these terms are appropriate for your situation.
2. Laws vary from state to state and change over time, especially with regards to distribution agreements such as these. Having a fixed two-year term, however, provides a termination point and avoids a flexible date that can be attacked in Court. One can lose anytime you go up the people in the black robes, but this fixed term date tends to limit your liability. If you are unduly concerned about the possibility for litigation with a potential VAR, either don't do business with them or have an "As is" per order agreement, as opposed to a territory or larger agreement.
3. Print at least two copies so both parties retain an original. Make an extra copy for the your sales file and keep a master file of these sales agreements.