

Audit Rights:

AUTHOR shall have the right to verify, not more frequently than twice per year and upon not less than the ten (10) business days prior written notice to PUBLISHER, the accuracy of the Royalty Statements provided by PUBLISHER hereunder, through inspection at AUTHOR's expense of PUBLISHER's pertinent records and books of accounts maintained in the ordinary course of business by a certified public accountant (a "CPA"). Such CPA must agree to sign PUBLISHER's standard form of non-disclosure agreement requiring that PUBLISHER's books and records of accounts shall be held in strict confidence except as may be necessary to report to AUTHOR concerning the accuracy of PUBLISHER's Royalty Statements and except as necessary in any litigation related thereto. PUBLISHER shall promptly pay AUTHOR any unpaid royalties as identified by the inspection. In addition, in the event that the inspection reveals under reporting by PUBLISHER in excess of ten percent (10%) of the royalties actual owing, PUBLISHER shall pay AUTHOR the cost of the inspection and interest on the unpaid royalties from the date such royalties were due until such royalties are paid at the lesser of eighteen percent (18%) per annum or the maximum rate permitted by law.

Proprietary Notices:

In order to protect AUTHOR's copyright and other ownership interests in the Program, PUBLISHER agrees that as a condition of its rights hereunder, each copy of the Licensed Products shall contain the same proprietary notices which appear on or in the Program delivered by AUTHOR to PUBLISHER and as otherwise reasonably required by AUTHOR. More specifically, PUBLISHER agrees that a valid AUTHOR copyright notice for the Program will appear on the media for the Licensed Products and or any consumer packaging materials associated therein.

Restricted Rights:

PUBLISHER will (a) identify and license the Licensed Products and related documentation in all proposals and agreements with the United States Government or any contractor therefor; and (b) legend or mark the Licensed Products and related documentation provided pursuant to any agreement with the United States Government or any contractor therefor, as follows:

(i) For acquisition by or on behalf of civilian agencies, as necessary to obtain protection substantially equivalent to that afforded to restricted computer software and related documentation developed at private expense and which is existing computer software no part of which was developed with government funds and provided with Restricted Rights in accordance with subparagraphs (a) through (d) of the "Commercial Computer Software - Restricted Rights" clause at 48 C.F.R. 52.227-19 of the Federal Acquisition Regulations and its successors; [double-check code references]

(ii) For acquisition by or on behalf of units of the Department of Defense ("DoD") as necessary to obtain protection substantially equivalent to that afforded to commercial computer software and related documentation developed at private expense and provided with Restricted Rights as defined in DoD FAR Supplement 48 C.F.R. 52.227- 7013(c)(1)(ii) and its successors in effect for all solicitations and resulting contracts issued on or after May 18, 1987. [double-check code references]

Foreign Government Agreements:

PUBLISHER will take all reasonable steps in making proposals and agreements with foreign governments other than the United States which involve the Licensed Products and related documentation to ensure that AUTHOR's proprietary rights in such Licensed Products and related documentation receive the maximum protection available from such foreign government for commercial computer software and related documentation developed at private expense.

Escrow of Technology:

AUTHOR agrees to deposit in escrow within sixty (60) days from the date of this Agreement, or such other time as AUTHOR and PUBLISHER may agree, with _____ (the "Escrow Agent") of _____, the source code for the Program in both human readable and machine readable form, together with all related materials reasonably necessary to utilize such source code to produce the Program and thereafter all updates and revisions thereof within thirty (30) days of the incorporation of the same in the Program. PUBLISHER shall have the right to review the source code prior to it being placed in escrow in order to insure its validity and accuracy. All expenses related to the deposit in escrow shall be paid by PUBLISHER. In the event of any failure by AUTHOR to (a) notify PUBLISHER of his intent to cure a material breach within ten (10) days of receiving notice of such breach; or (b) cure a material breach of this Agreement within thirty (30) days of receiving notice of such breach, or in the event of bankruptcy or other insolvency proceedings against AUTHOR and the election by PUBLISHER to continue this Agreement as provided for in Subsection __, PUBLISHER shall be entitled to possession of the source code for the Program from the Escrow Agent for the sole purpose of providing the "Services" as defined in Section __ of this Agreement. In such event, PUBLISHER will treat the source code as "Proprietary Information" pursuant to the provisions of Section __ of this Agreement.

Confidential Information:

1.1 Each of the parties acknowledges and agrees that certain information which it may receive from the other party shall be proprietary to the disclosing party. Such information includes, without limitation: (i) the

fact that the disclosing party intends to develop or market any particular hardware or software product; (ii) the designs, schematics, specifications, and

all other technical information of or concerning the Licensed Products; (iii) non-public information concerning the business or finances of the disclosing party; and (iv) any other information the disclosure of which might harm or destroy a competitive advantage of the disclosing party (all of (i) through (iv) shall be referred to collectively hereinafter as "Proprietary Information").

1.2 Each of the parties agrees that it shall not, directly or indirectly, either during or subsequent to the term of this Agreement: (i) disclose any Proprietary Information of the other party, other than to its own employees who participate directly in the performance of either party's respective obligations under this Agreement; (ii) copy or use any Proprietary information of the other party except for the purpose of fulfilling its respective obligations hereunder; or (iii) publish any Proprietary Information of the other party without the prior written consent of such party. The degree of care employed by each of the parties to protect and safeguard the Proprietary Information of the other party shall be no less protective than the degree of care used by such party to protect its own confidential information of like importance, and no less than reasonable care.

1.3 The obligations set forth in this Section 1 shall not be applicable to any information which: (i) the receiving party is authorized by the disclosing party in writing to disclose; (ii) is generally known or becomes part of the public domain through no fault of the receiving party; (iii) is disclosed by the disclosing party to third parties without restriction on subsequent disclosure; (iv) is provided to the receiving party by a third party without breach of any separate non-disclosure agreement; or (v) is required to be disclosed in the context of any administrative or judicial proceeding.

AUTHOR's Representations and Warranties:

1.1 AUTHOR represents and warrants that:

(A) The Program herein licensed to PUBLISHER is original to and the sole property of AUTHOR (except for material licensed to AUTHOR with a right to sublicense).

(B) The performance of the terms of this Agreement and the performance of AUTHOR's obligations hereunder shall not breach any separate agreement by which AUTHOR is bound.

(C) So long as this Agreement remains in effect, AUTHOR shall not write or participate in writing _____ program or other program competitive with the Program or the Licensed Products, provided, however, that: AUTHOR may use and embody any and all string routines, styles, input/output routines and code fragments contained in the Program in any other program which is not competitive with the Program or the Licensed Products.

(D) AUTHOR possesses the full power and authority to enter into this Agreement, to fulfill its obligations hereunder, and to grant the license and related rights concerning the Program herein granted to PUBLISHER.

1.2 AUTHOR agrees to indemnify and hold PUBLISHER harmless from and against any and all claims, losses, liabilities, damages, expenses and costs (including reasonable fees for attorneys and litigation expenses) which result from a breach of any of the warranties contained in this Section 1, or incurred in the settlement or avoidance of any such claim; provided, however, that AUTHOR shall have been provided with prompt written notice of the assertion of any such claim and that AUTHOR shall have the authority and power to control the defense and/or settlement thereof, subject to the right of PUBLISHER to participate in any such proceeding at its own expense with counsel of its own choosing. PUBLISHER shall not agree to the settlement of any such claim, action or proceeding without the prior written consent of AUTHOR.

PUBLISHER's Representations and Warranties:

1.1 PUBLISHER represents and warrants that:

(A) PUBLISHER possesses full power and authority to enter into this Agreement and to fulfill its obligations hereunder.

(B) The performance of the terms of this Agreement and of PUBLISHER's obligations hereunder shall not breach any separate agreement by which PUBLISHER is bound.

(C) So long as this Agreement remains in effect, PUBLISHER shall not make or enter into any agreement with any third party related to the development or distribution of a _____ which is competitive with the Program.

1.2 PUBLISHER agrees to indemnify and hold AUTHOR harmless from and against any and all claims, losses, liabilities, damages, expenses and costs (including reasonable fees for attorneys and court costs) which result from a breach of any of the warranties contained in this Section 11, or incurred in the settlement or avoidance of any such claim; provided, however, that PUBLISHER shall have been provided with prompt written notice of the assertion of any such claim and that PUBLISHER shall have the authority and power to control the defense and/or settlement thereof, subject to the right of AUTHOR to participate in any such proceeding at his own expense with counsel of his own choosing. AUTHOR shall not agree to the settlement of any such claim, action or proceeding without the prior written consent of PUBLISHER.

Warranty:

AUTHOR MAKES NO WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, CONCERNING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. AUTHOR DOES NOT AND CANNOT WARRANT THAT THE PROGRAM IS FREE FROM DEFECTS (BUGS).

Limitation of Liability:

AUTHOR SHALL NOT BE LIABLE TO PUBLISHER OR ANY OTHER PARTY FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES. [IN EXCESS OF THE ROYALTIES HE RECEIVED UNDER THIS AGREEMENT] [NOT INCLUDING THE ROYALTY ADVANCE PROVIDED IN _____).]

Export:

PUBLISHER acknowledges that the laws and regulations of the United States restrict the export and re-export of commodities and technical data of United States origin, including the Program and the Licensed Products. PUBLISHER agrees that it will not export or re-export the Program or any Licensed Products, or any portion of the Program or any Licensed Products, in any form without the appropriate United States and foreign government licenses.

Force Majeure:

Neither of the parties shall be deemed in default of this Agreement (other than its obligation to pay monies due under this Agreement) to the extent that performance of its respective obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, act of government, shortage of materials or supplies, or any other cause beyond the reasonable control of such party; provided, that the party interfered with gives the other party written notice thereof within ten (10) working days of any such event or occurrence. No such delay or prevention shall excuse performance for more than ninety (90) days.

Assignment:

Neither PUBLISHER nor AUTHOR shall be entitled to assign its or his respective rights or responsibilities hereunder without the prior written consent of the other party. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. Notwithstanding the foregoing, PUBLISHER may, without AUTHOR's prior consent, assign the rights hereunder to PUBLISHER's parent, to a subsidiary or affiliate of such parent or of PUBLISHER, or to a successor to or purchaser of the portion of PUBLISHER's assets or business to which the subject matter of this Agreement pertains, provided that such assignee agrees to comply with all the applicable provisions of this Agreement and AUTHOR is given written notice of such assignment signed by both PUBLISHER and the assignee.