

KOMODO EXCLUSIVE DISTRIBUTION AGREEMENT

This Exclusive Distribution Agreement ("Agreement"), effective as of _____ (the "Effective Date"), is entered into by and between Peakey Enterprise LLC, with its principal office located at PO Box 1831 Warsaw, IN 46581-1831, U.S.A. ("Licensor"), and _____, having offices at _____ ("Distributor").

IT IS IMPORTANT THAT YOU READ CAREFULLY AND UNDERSTAND THE TERMS AND CONDITIONS OF THIS AGREEMENT. BY SIGNING BELOW, YOU AGREE TO BE BOUND BY ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT OR IF YOU DO NOT AGREE TO BE BOUND BY ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT SIGN, AND YOU WILL NOT HAVE THE RIGHT OR AUTHORIZATION TO USE, ACCESS OR DISTRIBUTE THE PRODUCT UNITS.

1. DEFINITIONS

(a) "Confidential Information" means the confidential and/or proprietary information of Licensor (whether such information is or is not marked or identified as confidential or proprietary), including software (in object and source code form), inventions (whether or not patentable), trade secrets, ideas, know-how, techniques, processes, formulas, algorithms, schematics, research, development, software design and architecture, testing procedures, design and functional specifications, problem reports and performance information, marketing and financial plans and data. "Confidential Information" does not include information that Reseller can show through documentary evidence: (a) is or becomes publicly known through no fault, act or omission of Reseller; (b) is known by or in the possession of Reseller prior to its receipt from Licensor; or (c) is lawfully obtained from a third party who rightfully possesses the information (without confidentiality or proprietary restriction) and who did not receive it, directly or indirectly, from Licensor.

(b) "Documentation" means Licensor's standard end user documentation for the Licensed Software, as modified from time to time by Licensor in its sole discretion.

(c) "End User" means a licensee of the Licensed Software who acquires such software for normal personal use or business end use and not for resale or distribution.

(d) "End User License" means Licensor's standard end user license agreement for the Licensed Software, as modified from time to time by Licensor in its sole discretion, the current version of which is located at the website <http://www.komodocreator.com/licenses/>

(e) "Intellectual Property Rights" means all present and future copyrights, trademark rights, service mark rights, trade secret rights, patent rights, moral rights, and other intellectual property and proprietary rights recognized in any jurisdiction.

(f) "Licensed Software" means the software(s) made available by Licensor under this Agreement, in English, as more specifically set forth at the website <http://www.komodocreator.com/licenses/> or any successor website thereto.

(g) "Product Units" means an installation of one (1) copy of the Licensed Software in object code format, the End User License, Documentation, and/or other items as determined by Licensor in its sole discretion.

(h) "Term" means _____.

(i) "Territory" means _____, except to the extent limited by U.S. export laws and the applicable import and export laws of foreign jurisdictions, as described in Section 14.

(j) "Licensor Marks" shall mean those trademarks, trade names and service marks, as such trademarks, trade names and service marks may be added to or removed by Licensor in Licensor's sole discretion from time to time during the term of this Agreement.

(k) Sale and Purchase of Product Units. All references in this Agreement to the "sale" or "selling" of Product Units shall mean a license to use such Product Units and sale of the tangible media on which the Product Units are distributed. All references in this Agreement to the "purchase" of Product Units shall mean a license to use such Product Units and the purchase of the tangible media on which the Product Units are distributed.

2. APPOINTMENT

(a) Appointment of Distributor. Conditioned upon Distributor's continued satisfaction of the terms and conditions of this Agreement, Licensor hereby appoints Distributor, and Distributor hereby accepts appointment, as Licensor's exclusive Distributor for the licensing and distribution of Product Units to customers in the Territory only for use in the Territory only. Distributor shall not reproduce or sell the Product Units, and Distributor shall not license or distribute the Product Units except as expressly set forth in this Agreement. Distributor agrees that it shall not offer for sale, sell, license or otherwise distribute Product Units acquired by it from any entity other than directly from Licensor without the prior written approval of Licensor.

(b) Distribution outside the Territory. Distributor shall limit its sales activities with respect to the Product Units to customers located in the Territory, and shall refrain from marketing, licensing or selling the Product Units outside of the Territory except to the extent such activities may not be restricted under applicable law.

(c) Appointment of Subdistributors. Distributor may appoint subdistributors to act on the Distributor's behalf only on prior written approval of Licensor; provided, however, that any compensation to such subdistributors shall be solely the Distributor's responsibility. Any agreement with such agent or subdistributor with respect to Product Units shall be coterminous with this Agreement.

(d) Independent Contractor Status. The relationship of Licensor and Distributor established by this Agreement is that of independent contractors, and neither party is an employee, agent, partner or joint venturer of the other. Distributor shall not be considered an agent or legal representative of Licensor for any purpose, and neither Distributor nor any director, officer, agent, or employee of Distributor shall be, or be considered, an agent or employee of Licensor. Distributor is not granted and shall not exercise the right or authority to assume or create any obligation or responsibility on behalf of or in the name of Licensor. All sales and other agreements between Distributor and its customers are Distributor's sole responsibility and will have no effect on Licensor's obligations under this Agreement.

(e) Operations and Expenses. The detailed operations of Distributor under this Agreement are subject to the sole control and management of Distributor. Distributor shall be responsible for all of its own expenses and employees. Distributor shall provide, at its own expense, such office space and facilities, and hire and train such personnel, as may be required to carry out its obligations under this Agreement. Distributor agrees that it shall incur no expense chargeable to Licensor, except as may be specifically authorized in advance in writing in each case by Licensor.

(f) No Other Rights. Except as expressly provided in this Agreement, no right, title or interest is granted by Licensor to Distributor. No right, title or interest is granted by Licensor to Distributor relating to Products other than the Product Units.

(g) No Conflicts. Distributor represents and warrants that, as of the Effective Date, it is not involved, directly or indirectly, in any activities involving products which compete or have the potential to compete with the Product Units, including but not limited to the distribution of competing product lines ("Competing Activities"). Distributor agrees that it shall not enter into any Competing Activities in the Territory during the term of this Agreement and for a period of five (5) years afterward. If Distributor becomes involved in any Competing Activities, Distributor shall promptly inform Licensor of such involvement, and Licensor shall have, in addition to all other remedies to which it may be entitled, the right to terminate this Agreement without liability at any time thereafter pursuant to Section 13.b.

(h) Wish Lists. The wish list is the ability of any Licensee to request via a web interface any type of update, functionality or change to the architecture of the software; these will be approved and integrated at the Licensor's discretion and where the technology and available resources allows (see also Wish List Exceptions).

(i) Wish List Exceptions. A licensee may ask for bespoke developments and have these developed specifically to their requirements, these will be developed in priority to the Wish List, but will remain the Intellectual Property of Licensor and will be distributed to all other Licensees. These will also be chargeable to the licensee.

3. LICENSE OF LICENSOR MARKS

(a) License. Subject to the terms and conditions of this Agreement, Licensor grants to Distributor a non-transferable, revocable license, without right of sublicense, to use the Licensor Marks in the Territory solely in connection with the sale, distribution and advertisement of the Product Units. Distributor shall not use the Licensor Marks except as expressly permitted herein.

(b) Restrictions. All representations of the Licensor Marks that Distributor intends to use shall first be submitted to Licensor for approval of design, color and other details or shall be exact copies of those provided by Licensor. Distributor shall fully comply with all guidelines, if any, communicated by Licensor concerning the use of the Licensor Marks. Distributor shall not alter or remove any trademarks, service marks, trade names or other marks affixed to the Product Units by Licensor, nor affix the Licensor Marks to any Product. Except as set forth in this Section 3, nothing contained in this Agreement shall grant or shall be deemed to grant to Distributor any right, title or interest in or to the Licensor Marks. All uses of the Licensor Marks shall inure solely to the benefit of Licensor, and Distributor shall obtain no rights with respect to any of the Licensor Marks, other than the right to distribute Product Units as set forth herein, and Distributor hereby irrevocably assigns to Licensor all right, title and interest held by Distributor, if any, in or to any of the Licensor Marks. At no time during or after the term of this Agreement shall Distributor challenge or assist others in challenging the Licensor Marks (except to the extent expressly entitled by applicable law) or the registration thereof or attempt to register any trademarks, service marks, marks or trade names confusingly similar to the Licensor Marks. Upon any termination or expiration of this Agreement, or the election of Licensor pursuant to Section 4.b below, Distributor shall immediately cease to use any and all of the Licensor Marks, and any listing by Distributor of any Licensor Mark in any telephone book, directory, public record or elsewhere shall be removed by Distributor as soon as possible, but in any event not later than the subsequent issue of such publication.

(c) Infringement. Distributor shall promptly notify Licensor of any actual or suspected infringements, imitations, or unauthorized use of the Licensor Marks by third parties of which Distributor becomes aware. Licensor shall have the sole right, at its expense, to bring any action on account of any such infringements, imitations or unauthorized use, and Distributor shall cooperate with Licensor, as Licensor may reasonably request, in connection with any such action brought by Licensor. Licensor shall retain any and all damages, settlement and/or compensation paid in connection with any such action brought by Licensor.

(d) Registered User Agreements. Licensor and Distributor shall enter into registered user agreements with respect to the Licensor Marks pursuant to applicable trademark law requirements in the Territory, if any. Distributor or Licensor, at Licensor's sole discretion, shall be responsible for proper filing of registered user agreements and all such other required registrations relating to the legal protection of the Licensor Marks with governmental authorities in the Territory and shall pay all costs or fees associated with such filing(s).

4. OBLIGATIONS OF DISTRIBUTOR

(a) Diligence. Distributor shall use its best efforts to promote the marketing and distribution of the Product Units.

(b) Minimum Revenue Requirements. In the event Distributor fails to meet the minimum revenue requirements set forth in Exhibit A attached hereto, then, notwithstanding anything in this Agreement to the contrary, and at Licensor's election and not obligation, (i) Licensor shall be free to appoint other distributors for its Product Units in the Territory, (ii) Distributor shall not have any exclusive sale, marketing or distribution rights to the Product Units, (iii) the license grant of Section 3 to the Licensor Marks shall terminate, and (iv) notwithstanding anything to the contrary in Section 5.a below, the Prices paid by Distributor for the Product Units shall be equal to _____ percent (_____) of the applicable List Prices.

(c) Minimum Revenue Guarantee. Distributor hereby guarantees that the aggregate amount of payments received by Licensor from Distributor under this Agreement during the Term shall equal or exceed the amounts of _____ in the currency of _____ (_____) respectively (the "Guaranteed Minimums"). Within thirty (30) days after the end of each Term Distributor shall pay Licensor the difference between the applicable Guaranteed Minimum and the actual aggregate amount of payments received by Licensor from Distributor under this Agreement during such Term respectively, if such actual aggregate amount is less than the applicable Guaranteed Minimum.

(d) Costs and Expenses. Except as expressly set forth herein, Distributor shall be solely responsible for all costs and expenses related to the advertising, marketing, promotion, and distribution of the Product Units and for performing its obligations hereunder.

(e) Promotional Materials. Distributor shall maintain an adequate inventory of Licensor's current sales materials and samples ("Sales Materials") and shall use such Sales Materials in an efficient and effective manner to promote the sale of the Product Units in the Territory.

(f) Reports.

(i) Annual Financial Reports. Distributor shall provide to Licensor annual audited financial reports, which reports shall (i) be provided to Licensor no later than two (2) months after the close of Distributor's applicable fiscal year, and (ii) be treated as Confidential Information pursuant to the terms of Section 9 below.

(ii) General Market Information. Distributor shall provide to Licensor information regarding general market conditions and competitors on a regular basis, but no less than once per calendar quarter.

(iii) Sales Activities. Within thirty (30) days after the end of each calendar quarter, Distributor shall send to Licensor a sales activities report including the names of customers, quantities of Product Units purchased, dollar amounts invoiced to and received from such customers, and customer backlog, and further shall maintain records of the same.

(g) Relations with Customers. Distributor shall process and complete each customer order in a timely fashion. Distributor shall provide to customers any and all instructions, precautions, and other warnings provided by Licensor to Distributor; and Licensor shall provide to Distributor any such instructions, precautions, and other warnings as Licensor in its sole discretion deems necessary or desirable.

(g) Product Representations. Distributor shall not to make any representations with respect to the Product Units other than those expressly authorized in writing in Licensor's written data sheets.

(h) Indemnification. Distributor agrees to indemnify and hold Licensor, its officers, directors, employees, successors, and assigns harmless from and against any and all losses, damages or expenses of whatever form or nature, including attorneys' fees and other costs of legal defense, whether direct or indirect, that they, or any of them, may sustain or incur as a result of any acts or omissions of Distributor or any of its directors, officers, employees, or agents, including but not limited to (i) breach of any of the provisions of this Agreement, (ii) negligence or other tortious conduct, (iii) representations or statements not specifically authorized by Licensor herein or otherwise in writing, or (iv) violation by Distributor (or any of its directors, officers, employees, or agents) of any applicable law, regulation, or order in or of the Territory or the United States.

(i) End User License Agreement. Distributor agrees that End User shall be bound by the terms of the End User License Agreement (EULA) accompanying each Product. Distributor shall have no authority to modify in any way the terms of any EULA, nor to make any representations or warranties contrary to the EULA. Distributor shall make a good-faith effort to ensure that End User is aware of and complies with the EULA.

5. ORDERS, PAYMENT AND SHIPMENT:

(a) Orders and Payment. Reseller shall order Product Units and pay Licensor a per Product Unit license fee and per Product Unit monthly fee for each Product Unit in accordance with the procedures, pricing information and other terms and conditions located at <http://www.komodocreator.com/distributor/>, or any successor website thereto, which procedures, pricing information and terms and conditions are incorporated herein. All payments made by Reseller under this Agreement must be made by credit card or other payment method acceptable to Licensor in its sole discretion. All orders for the Licensed Software will be governed exclusively by the terms and conditions of this Agreement, including those terms incorporated herein by reference. Subject to Section 5.b below, it is expressly understood and agreed that other standardized forms not expressly incorporated herein such as acknowledgements which may contain terms in addition to or at variance with the terms of this Agreement will not add or vary the terms of this Agreement. In the event of a conflict between the provisions of this Agreement and the terms and conditions of other written communications, the provisions of this Agreement shall prevail.

(b) Right to Change Terms. Licensor, in its sole discretion, has the right to add, delete, modify and otherwise make changes to the Licensed

Software offered under this Agreement, to change the per Product Unit license fee described in Section 5.a above, to change the definition of "Territory" and to make other changes to this Agreement (collectively, "Changes") effective immediately upon posting of such change on Licensor's Distributor website at <http://www.komodocreator.com/distributor/> or any successor website thereto. For avoidance of doubt, any such Changes shall be effective for all orders submitted by Reseller after the date of posting of such Changes at <http://www.komodocreator.com/distributor/>. Upon posting of any such Change, Reseller may, in its sole discretion, elect to terminate this Agreement by providing at least ten (10) days prior written notice to Licensor (provided that such notice is received by Licensor within thirty (30) after such Change is posted), provided that Reseller has not placed an order after the posting of such Change and provided further that any such termination shall not affect any orders placed by Reseller prior to the effective date of such termination. Reseller's placement of any order after the posting of any Change or Reseller's failure to terminate this Agreement within thirty (30) days after such Change is posted shall constitute and be deemed Reseller's acceptance of such Change. RESELLER IS ADVISED TO REVIEW LICENSOR'S DISTRIBUTOR WEBSITE AT <http://www.komodocreator.com/distributor/> AT LEAST EVERY THIRTY (30) DAYS AND PRIOR TO PLACING ANY ORDERS TO DETERMINE WHETHER ANY CHANGES HAVE BEEN POSTED.

(c) Tax. Reseller will provide a resale certificate or other certificate, document, or other evidence of exemption for payment or withholding of use or sales taxes, tariffs, duties or assessments as requested by Licensor in order to exempt the distribution or licensing of Product Units from any such liability. Reseller shall pay, and shall indemnify and hold Licensor harmless from and against, all taxes, duties and levies directly imposed by all foreign, federal, state, local or other taxing authorities (including, without limitation, export, sales, use, excise, and valued-added taxes) based on the transactions or payments under this Agreement, other than taxes imposed or based on Licensor's net income. In the event that Reseller fails to provide evidence of its exemption for payment of use or sales taxes, tariffs, duties or assessments for the purchase of the Product Units to Licensor's satisfaction, Licensor may require that Reseller pay the applicable sales tax for the purchase of the Product Units.

(d) Books and Records. During the Term of this Agreement, and for three (3) years after the termination of this Agreement, Reseller shall maintain at its principal office true and accurate books and records as sufficient to confirm Reseller's compliance with this Agreement. Reseller shall, during usual business hours, permit Licensor or its agents, at Licensor's expense and upon ten (10) days prior written notice, to inspect and make copies of such books and records for the purpose of verifying Reseller's compliance with this Agreement. If such inspection reveals a material breach of this Agreement by Reseller, then Reseller shall pay for the cost of such inspection in addition to any other remedies available to Licensor for such breach.

6. PRODUCTS

(b) Product Changes. Licensor reserves the right from time to time in its sole discretion, without incurring any liability to Distributor with respect to any previously placed Purchase Order (as defined in

Section 5.a above), to discontinue or to limit its production of any Product; to allocate, terminate or limit deliveries of any Product in time of shortage; to alter the design or construction of any Product; to add new and additional products to the Product Units; and upon reasonable notice to Distributor, to change its sales and distribution policies, not inconsistent with the terms of this Agreement.

(c) Discontinued Product. In the event Licensor discontinues sale of any Product, it shall give Distributor prompt notice thereof. Within sixty (60) days following the date of such discontinuation notice, Distributor may elect to return for credit against future purchases hereunder any of the discontinued Products (including samples) purchased by Distributor during the three (3) months prior to the date of such notice which have not been used or sold and which are in Distributor's inventory as of the date of that notice from Licensor.

7. SUPPORT OBLIGATIONS; MARKETING:

(a) End User Support by Distributor. Distributor shall provide support to End Users on terms at least as favorable as the terms under which Distributor provides support to end users for any comparable Distributor product.

(b) End User Support by Licensor. Subject to the terms and conditions governing such support web site then in effect, Licensor shall provide electronic support to End Users at the web site <http://www.komodocreator.com/support/> or any successor web site thereto, and such support shall consist exclusively of access to frequently asked questions ("FAQs"), a searchable knowledge base, forums, and the opportunity to provide feedback. Any such web site(s) shall be in English.

(c) Distributor Support: Subject to the terms and conditions governing such support web site then in effect, Licensor shall provide electronic support to Distributor at the web site <http://www.komodocreator.com/support/> or any successor web site thereto, and such support shall consist exclusively of access to frequently asked questions ("FAQs"), a searchable knowledge base, forums, and the opportunity to provide feedback. Any such web site(s) shall be in English.

(d) Marketing: Distributor shall use commercially reasonable efforts to successfully market, promote and solicit orders for the Product Units on a continuing basis, and shall bear all costs incurred by Distributor in the marketing, promotion and distribution of the Product Units. In marketing and distributing the Product Units, Distributor shall: (i) conduct business in a manner that reflects favorably at all times on the Product Units and the good name, goodwill and reputation of Licensor; (ii) avoid deceptive, misleading or unethical practices that are or might be detrimental to Licensor, the Product Units or the public, including, without limitation, disparagement of Licensor or the Product Units; (iii) not publish or use any misleading or deceptive advertising material; and (iv) make no representations with respect to the Product Units that are inconsistent with the literature distributed by Licensor, including, without limitation, any warranties and disclaimers contained in such literature. Distributor shall include in

all advertising all applicable copyright, trademark and other proprietary or restrictive rights notices as they appear on or in the Product Units.

8. WARRANTY; DISCLAIMER:

(a) Warranty to End Users. Any warranties regarding the Licensed Software are made to End Users only, pursuant to the terms and conditions of the End User License, and no warranty is extended to Distributor.

(b) No Warranty on Behalf of Licensor. Distributor shall not make any representation or warranty, express or implied, binding or purporting to bind Licensor in connection with the Product Units and/or the Licensed Software, including but not limited to any representations or warranties relating to the performance, condition, title, non-infringement, merchantability, fitness for a particular purpose, system integration, or data accuracy of any of the foregoing.

(c) DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES, IF ANY, MADE DIRECTLY TO END USERS PURSUANT TO THE END USER LICENSE, LICENSOR MAKES NO WARRANTIES WITH RESPECT TO ANY PRODUCT UNITS, LICENSE OR SERVICE, INCLUDING WITHOUT LIMITATION, THE LICENSOR ITEMS AND THE LICENSOR TRADEMARKS, AND HEREBY DISCLAIMS ALL STATUTORY OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. LICENSOR DOES NOT WARRANT THAT THE LICENSOR ITEMS SHALL MEET ANY END USER REQUIREMENTS OR THAT THE OPERATION OF THE LICENSED SOFTWARE SHALL BE UNINTERRUPTED OR ERROR-FREE. DISTRIBUTOR IS NOT AUTHORIZED TO MAKE ANY OTHER WARRANTY OR REPRESENTATION CONCERNING THE PERFORMANCE OF THE LICENSED SOFTWARE OTHER THAN AS PROVIDED, IF AT ALL, IN THE END USER LICENSE. DISTRIBUTOR SHALL MAKE NO OTHER WARRANTY, EXPRESS OR IMPLIED, ON BEHALF OF LICENSOR. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT, IN NO EVENT SHALL LICENSOR'S AGGREGATE LIABILITY ARISING UNDER, WITH RESPECT TO OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE TOTAL MONIES PAID BY DISTRIBUTOR TO LICENSOR UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH SUCH LIABILITY ARISES.

(d) DAMAGES. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, LICENSOR SHALL IN NO EVENT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), INDEMNITY OR OTHER LEGAL, CONTRACTUAL OR EQUITABLE THEORY FOR: (i) ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND WHETHER OR NOT ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES; OR (ii) DAMAGES FOR LOST PROFITS OR LOST DATA; OR (iii) COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES.

9. CONFIDENTIALITY:

Distributor shall protect the Confidential Information from unauthorized dissemination and shall use the same degree of care that Distributor uses to protect its own like information, but in no event less than a reasonable degree of care. Distributor shall not disclose

to third parties the Confidential Information without the prior written consent of Licensor. Distributor shall use the Confidential Information only for purposes of performing its obligations or exercising its rights under this Agreement. Notwithstanding the foregoing, Distributor may use or disclose the Confidential Information to the extent Distributor is legally compelled to do so, provided, however, prior to any such compelled disclosure, Distributor notifies Licensor and fully cooperates with Licensor in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. Distributor agrees that any breach of this Section 9 would cause irreparable harm to Licensor for which monetary damages would not be adequate and, therefore, Distributor agrees that, in the event of a breach of this Section 9, Licensor shall be entitled to equitable relief in addition to any remedies it may have hereunder or at law.

10. PROPRIETARY RIGHTS

(a) Proprietary Rights. Distributor agrees that Licensor retains all of its right, title and interest in and to all patents, trademarks, trade names, inventions, copyrights, know-how and trade secrets relating to the Product Units or the product lines that include the Product Units, and the design, manufacture, operation or service of the Product Units. The use by Distributor of any of these property rights is authorized only for the purposes herein set forth and upon termination of this Agreement for any reason such authorization will cease. Distributor shall not (and shall require that its customers do not) remove, alter, cover or obfuscate any copyright notices or other proprietary rights notices placed or embedded by Licensor on or in any Product.

11. INTELLECTUAL PROPERTY INDEMNIFICATION

(a) Limited Indemnity. Distributor agrees that Licensor has the right to defend, or at its option to settle, and Licensor agrees, at its own expense, to defend or at its option to settle, any third party claim, suit or proceeding (collectively, "Action") brought against Distributor alleging the Product Units infringe any copyright or trademark in existence as of the Effective Date, subject to the limitations hereinafter set forth. Licensor shall have sole control of any such Action or settlement negotiations, and Licensor agrees to pay, subject to the limitations hereinafter set forth, any final judgment entered against Distributor on such issue in any such Action defended by Licensor. Distributor agrees that Licensor will be relieved of the foregoing obligations unless Distributor notifies Licensor in writing of such Action within five (5) days after becoming aware of such action, gives Licensor authority to proceed as contemplated herein, and gives Licensor proper and full information and assistance to settle and/or defend any such Action. If it is adjudicatively determined, or if Licensor believes, that the Product Units, or any part thereof, infringe any copyright or trademark, or if the sale or use of the Product Units, or any part thereof, is, as a result, enjoined, then Licensor may, at its election, option, and expense: (i) procure for Distributor the right under such copyright or trademark to sell or use, as appropriate, the Product Units or such part thereof; (ii) replace the Product Units, or part thereof, with other noninfringing suitable products or parts; (iii) suitably modify the Product Units or part thereof; or (iv) remove the Product Units, or part thereof, terminate

distribution or sale thereof and refund the payments paid by Distributor for such Product Units less a reasonable amount for use and damage. Licensor shall not be liable for any costs or expenses incurred without its prior written authorization, or for any installation costs of any replaced Product Units.

(b) Limitations. Notwithstanding the provisions of Section 11.a above, Licensor assumes no liability for infringement claims arising from (i) combination of the Product Units or portions thereof with other software not provided by Licensor if such infringement would not have occurred but for such combination, or (ii) the modification of the Product Units or portions thereof unless such modification was made or authorized by Licensor, when such infringement would not have occurred but for such modification.

(c) DISCLAIMER. LICENSOR'S LIABILITY ARISING OUT OF OR RELATING TO THIS SECTION 11 SHALL NOT EXCEED THE AGGREGATE AMOUNTS PAID BY DISTRIBUTOR TO LICENSOR FOR THE ALLEGEDLY INFRINGING PRODUCT UNITS THAT ARE THE SUBJECT OF THE INFRINGEMENT CLAIM. THE FOREGOING PROVISIONS OF THIS SECTION 11 STATE THE ENTIRE LIABILITY AND OBLIGATION OF LICENSOR AND THE EXCLUSIVE REMEDY OF DISTRIBUTOR WITH RESPECT TO ANY ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS BY THE PRODUCT UNITS OR ANY PART THEREOF.

12. LIMITATION OF LIABILITY

IN NO EVENT SHALL LICENSOR'S LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT EXCEED THE AGGREGATE AMOUNTS PAID BY DISTRIBUTOR TO LICENSOR HEREUNDER, INCLUDING BUT NOT LIMITED TO LIABILITY UNDER SECTION 11 ABOVE. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR LOST PROFITS, COST OF PROCUREMENT OF SUBSTITUTE GOODS, OR ANY OTHER SPECIAL, RELIANCE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT UNITS LIABILITY, OR OTHERWISE. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED HEREIN.

13. TERM AND TERMINATION:

(a) Term. This Agreement shall commence on the date that Distributor agrees to this Agreement ("Effective Date") and will remain in full force and effect for an initial term of one (1) year ("Term"), unless earlier terminated pursuant to the terms of this Agreement. The Term shall automatically renew for successive one (1) year renewal terms ("Renewal Term") unless either party notifies the other in writing of its intention not to renew the Term at least thirty (30) days prior to the expiration of the then-current Term or Renewal Term.

(b) Termination for Cause. Either party may terminate this Agreement, effective immediately upon written notice to the other party if: (i) the other party materially breaches any term of this Agreement and fails to cure such breach, which is a curable breach, within thirty (30) days after receipt of the non-breaching party's written notice of such breach; (ii) the other party materially breaches any term of this Agreement which is not capable of cure; (iii) the other party dissolves, becomes insolvent or makes a general assignment for the

benefit of its creditors; (iv) a voluntary or involuntary petition or proceeding is commenced by or against the other party under federal, state or foreign bankruptcy laws; or (v) the other party becomes insolvent, is unable to pay its debts as they become due or ceases to conduct business in the normal course. Termination of this Agreement under this Section 13.b will be without prejudice to any other remedy which may be available to a party under applicable law.

(c) Termination Without Cause. Either party may terminate this Agreement without cause upon thirty (30) days written notice to the other party.

(d) Rights Upon Termination; Survival. Upon any termination or expiration of this Agreement: (i) Distributor shall cease to be an authorized Distributor of Product Units and all rights and licenses granted to Distributor hereunder shall cease; (ii) Distributor shall immediately (a) cease all use and distribution of the Product Units; (b) discontinue any use of the Licensor Trademarks; (c) cease to promote, solicit or procure orders for the Product Units; and (d) return the Confidential Information and all related materials and copies thereof to Licensor; (iii) the due date of all monies due Licensor shall automatically be accelerated so that such payments shall become due and payable on the effective date of termination, even if longer terms had been provided previously; and (iv) Sections 1, 2(b), 2(c), 2(d), 3(b), 3(c), 5(a), 5(c), 5(d), and 8 though 21 shall survive. In addition to the foregoing, Distributor agrees that it shall not, following termination of this Agreement, act in any way to damage the reputation or goodwill of Licensor or any Product Units. Except as otherwise expressly provided herein, upon any termination of this Agreement, Distributor shall not be entitled to, and to the fullest extent permitted by law waives, any statutorily prescribed or other compensation, reimbursement or damages for loss of goodwill, clientele, prospective profits, investments or anticipated sales, commitments or business opportunities of any kind.

14. COMPLIANCE WITH LAWS:

Distributor will comply with all applicable international, national, regional, and local laws and regulations with regard to its marketing, sales, distribution and other activities under this Agreement, including any applicable import and export laws and regulations in the Territory, and the U.S. Foreign Corrupt Practices Act, which prevents unlawful payments to third parties. Distributor will obtain, at its own expense, all necessary permits, licenses, registrations, and approvals needed in connection with the importation, marketing, sale, and distribution of the Product Units into and within the Territory. Distributor agrees that it will not export or re-export the Product Units in any form in violation of the export or import laws of the United States or any foreign jurisdiction. Distributor will defend, indemnify, and hold harmless Licensor from and against any violation of such laws or regulations by Distributor or any of its agents, officers, directors, or employees.

15. GOVERNING LAW:

This Agreement is to be construed in accordance with and governed by the internal laws of the State of Indiana without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of Indiana to the rights and duties of the parties. Any dispute regarding this Agreement shall be subject to the exclusive jurisdiction of the state courts in and for Kosciusko County, Indiana, U.S.A. (or, if there is federal jurisdiction, the United States District Court for the Northern District of Indiana), and the parties hereby irrevocably agree to submit to the personal and exclusive jurisdiction and venue of such courts. This Agreement shall not be governed by the U.N. Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

16. NOTICE:

Any notice required or permitted to be given under this Agreement if delivered (i) by hand and shall be effective on the date of delivery, (ii) by registered or certified mail, postage prepaid, return receipt requested and shall be effective three (3) business days after posting, (iii) by overnight courier with proof of delivery and shall be effective one (1) business day after dispatch, (iv) by email with confirming letter mailed under the conditions described in (ii) or (iii) above, and shall be effective on the date of transmission, or (v) by fax with confirming letter mailed under the conditions described in (ii) or (iii) above, and shall be effective on the date of transmission. All notices sent to Licensor must be given at the address, fax number and/or email of Licensor given in the first paragraph of this Agreement. All notices sent to Distributor must be given at the address, fax number and/or email of Distributor provided by Distributor at the time of entering into this Agreement, as updated from time to time by Distributor.

17. ASSIGNMENT:

This Agreement may not be assigned, in whole or in part, by Distributor without the prior written consent of Licensor. Licensor shall have the right to assign or otherwise transfer this Agreement or any of its rights or obligations hereunder. Any purported assignment, sale, transfer, delegation or other disposition by Distributor, except as permitted herein, shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns.

18. FORCE MAJEURE:

Any delay in the performance of any duties or obligations of either party (except the payment of money) will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, war, act of terrorism, or any other event beyond the control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the circumstances causing the delay and to resume performance as soon as possible.

19. PUBLICITY; PRESS RELEASES:

Distributor shall make commercially reasonable efforts to market, promote, and distribute the Product Units. Licensor shall be permitted to use the name of Distributor in publicity releases, advertising, or similar activities without the prior written consent of Distributor.

20. GOVERNMENT USE:

For Product Units delivered to an agency or instrumentality of the United States Government, Distributor shall identify the Product Units and any related information as "commercial computer software" and "commercial computer software documentation" and, as specified in FAR 12.212 or DFARS 227.7202, and their successors, as applicable, shall restrict the United States Government's rights to use, reproduce or disclose such Product Units in accordance with the terms and conditions of the End User License.

21. MISCELLANEOUS:

This Agreement constitutes the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior communications, understandings, and agreements, written or oral. This Agreement may be modified only by a written agreement signed by both parties. The failure of either party to enforce at any time any of the provisions hereof shall not be a waiver of such provision, or any other provision, or of the right of such party thereafter to enforce any provision hereof. If any provision specified in this Agreement shall be invalid under any applicable law, the invalid provision, or portion thereof, shall be struck and the remainder, if any, shall be deemed enforceable to the extent permitted under applicable law, and the remaining provisions of this Agreement shall be given effect in accordance with their terms. Nothing in this Agreement is intended or will be construed to give any person (other than Licensor and Licensee) any legal or equitable right, remedy or claim under this Agreement or any provision hereof. The captions or headings of the Sections of this Agreement are for reference only and are not to be construed in any way as part of this Agreement.

By Signing Below I am state that I have read and agree to the terms set forth in this Exclusive Distribution agreement.

Licensor Signature

Date

Peakey Enterprise LLC

Licensor Name

Distributor Signature

Date

Distributor Name

Exhibit A

Minimum Revenue Requirements:

A.1 The aggregate amount of payments received by Peakey Enterprise LLC from Distributor under this Agreement during Term must equal or exceed _____ in the currency _____ (_____).