

SOFTWARE LICENSING AGREEMENT

COMPUTER SOFTWARE LICENSING AGREEMENT

THIS AGREEMENT is entered into this _____, by and between _____, and _____.

WITNESSETH:

WHEREAS, Licensor is engaged in the business of designing and developing computer-related software and hardware systems and related products and has created and developed a software package called _____ that is intended to track consumer responses using a _____ system and is described in greater detail in the attached Exhibit "A" (the "Software"); and

WHEREAS, Licensee desires to utilize such Software in conjunction with tracking its consumer responses to questions presented in its _____ video game;

WHEREAS, Licensor and Licensee believe it is in their mutual interest and desire to enter into an agreement whereby Licensee would use Licensor's Software on its PC LAN in tracking consumer responses pursuant to the terms and conditions hereinafter provided.

NOW, THEREFORE, in consideration of the premises and the mutual covenants of this Agreement, the parties hereto agree as follows:

1. LICENSE

A. Licensor hereby grants to Licensee, for the term of this Agreement, a nonexclusive, nonassignable, right and license to use the Software in connection with its business of tracking consumer responses on its _____ system in _____ (the Site). Licensee's PC-LAN system at the Site currently includes _____ personal computers, the serial numbers of which are identified in Exhibit "B." Licensor will place the Software on the LAN Server.

B. This license is expressly limited to _____ personal computers on Licensee's LAN. In the event that Licensee desires to add more PCs to the LAN, it shall notify Licensor of such fact, provide Licensor with the serial numbers of the additional PCs to be added, and agree to pay the Additional User Fee recited in Schedule A attached hereto.

C. No right or license is being conveyed to Licensee to use the Software at any other location. Licensee is prohibited from making any copies, archival or otherwise, of the Software. Licensee is further prohibited from using the Software in any manner other than as described above.

2. TERM

This Agreement shall be effective as of the date of execution by both parties and shall extend for the period of _____ year(s) thereafter (Initial Term). This Agreement shall be automatically renewed for additional _____-year Extended Terms unless Licensee shall provide the Licensor in writing of its intention not to renew the Agreement, said notice to be provided at least _____ days prior to the expiration of the then in-effect Term.

3. COMPENSATION

A. In consideration for the licenses granted hereunder and during the Initial Term of the Agreement and for each Extended Term, Licensee agrees to pay to Licensor the User Fee recited in Schedule A (the User Fee) in accordance with the Fee Payment Schedule recited in Schedule A. In the event that Licensee should add additional personal computers to the LAN currently being licensed, Licensee agrees to pay Licensor an Additional User Fee per computer as recited in Schedule A attached hereto, prorated in accordance herewith when such additional computers are added to the LAN.

B. At the time of installation, Licensee agrees to pay Licensor the Installation Fee recited in Schedule A attached hereto. In the event that additional installations are required, Licensee agrees to pay the Additional Installation Fee recited in Schedule A prior to such additional installation.

4. CONFIDENTIALITY

A. Licensee recognizes that the Software is the proprietary and confidential property of Licensor. Accordingly, Licensee shall not, without the prior express written consent of Licensor, during the term of this Agreement and for _____ years thereafter, disclose or reveal to any third party or utilize for its own benefit other than pursuant to this Agreement, any Software provided by Licensor concerning Products, provided that such information was not previously known to Licensee or to the general public. Licensee further agrees to take all reasonable precautions to preserve the confidentiality of Licensor's Software and shall assume responsibility that its employees, sublicensees, and assignees will similarly preserve this information against third parties. The provisions of this clause shall survive termination of this Agreement.

B. Licensee shall take no steps in attempting to reverse engineer the Software.

5. INSTALLATION, TRAINING, AND ACCEPTANCE

A. Licensor shall install the Software on Licensee's server in accordance with the Delivery Schedule recited in Schedule A attached hereto. At the time of such installation, Licensor shall provide Licensee with appropriate documentation for the Software reasonably acceptable to Licensee and a sufficient number of user manuals for each PC on the LAN.

B. At the time of installation of the Software and for no additional consideration, Licensor shall

train at least _____ employees of Licensee in the use of the Software at Licensee's facility.

C. Subsequent to the installation of the Software, Licenser agrees to provide additional training to Licensee's employees at Licenser's facilities for a fee of _____ Dollars (\$ _____) per day per employee.

D. In the event that Licensee fails to notify Licenser of any difficulties or problems with the Software within _____ days after installation thereof, Licensee shall be deemed to have accepted the Software. Prior to acceptance of such Software, Licenser shall have the right to repair or replace the Software at its discretion. Upon acceptance of such Software, Licenser shall be under no obligation to repair or replace such Software except as provided for in the Warranty provision in this Agreement.

6. WARRANTIES

A. Licenser further represents and warrants that it has no actual knowledge that the Software infringes any valid rights of any third party.

B. Licenser warrants that the Software will perform in accordance with the specifications provided by Licenser to Licensee, a copy of which will be added to this Agreement. **THE WARRANTY PROVIDED FOR HEREIN IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, THAT MAY ARISE EITHER BY AGREEMENT BETWEEN THE PARTIES OR BY OPERATION OF LAW, INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

C. In the event of a claim by Licensee under this warranty, Licenser shall have the option to either repair or replace the Software. In the event that Licenser fails to repair or replace the Software within a reasonable period, Licensee's sole recourse shall be to terminate the Agreement and Licenser's sole obligation shall be to return any Licensee and Installation Fees paid by Licensee. In no event shall Licenser be liable for any incidental, consequential, or punitive damages as a result of its performance or breach of this Agreement.

7. IMPROVEMENTS

Any improvements or modifications made by Licenser to the Software shall be promptly provided to Licensee and shall be automatically included in this Agreement.

8. TERMINATION

The following termination rights are in addition to the termination rights that may be provided elsewhere in the Agreement:

A. *Right to Terminate Upon Notice.* Either party may terminate this Agreement

on _____ days' written notice to the other party in the event of a breach of any provision of this Agreement by the other party, provided that, during the _____-day period, the breaching party fails to cure such breach.

B. *Licensee Right to Terminate.* Licensee shall have the right to terminate this Agreement at any time on _____ months' written notice to Licensor for any reason.

9. POSTTERMINATION RIGHTS

A. Upon the expiration or termination of this Agreement, all rights granted to Licensee under this Agreement shall forthwith terminate and immediately revert to Licensor and Licensee shall discontinue all use of the Software and the like.

B. Upon expiration or termination of this Agreement, Licensor may require that Licensee transmit to Licensor, at no cost, all material relating to the Software, provided, however, that Licensee shall be permitted to retain a full copy of all material subject to the confidentiality provisions of this agreement.

10. INDEMNITY

Licensor agrees to defend, indemnify, and hold Licensee, and its officers, directors, agents, and employees, harmless against all costs, expenses, and losses (including reasonable attorney fees and costs) incurred through claims of third parties against Licensee based on a breach by Licensor of any representation and warranty made in this Agreement as well as for any third-party claim for infringement of its intellectual property rights based on Licensee's use of the Software.

11. NOTICES

A. Any notice required to be given pursuant to this Agreement shall be in writing and mailed by certified or registered mail, return receipt requested, or delivered by a national overnight express service.

B. Either party may change the address to which notice or payment is to be sent by written notice to the other party pursuant to the provisions of this paragraph.

12. JURISDICTION AND DISPUTES

A. This Agreement shall be governed by the laws of _____.

B. All disputes hereunder shall be resolved in the applicable state or federal courts of _____. The parties consent to the jurisdiction of such courts, agree to accept service of process by mail, and waive any jurisdictional or venue defenses otherwise available.

13. AGREEMENT BINDING ON SUCCESSORS

This Agreement shall be binding on and shall inure to the benefit of the parties hereto, and their heirs, administrators, successors, and assigns.

14. WAIVER

No waiver by either party of any default shall be deemed as a waiver of any prior or subsequent default of the same or other provisions of this Agreement.

15. SEVERABILITY

If any provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision and such invalid provision shall be deemed to be severed from the Agreement.

16. ASSIGNABILITY

The license granted hereunder is personal to Licensee and may not be assigned by any act of Licensee or by operation of law unless in connection with a transfer of substantially all the assets of Licensee or with the consent of Licensor.

17. INTEGRATION

This Agreement constitutes the entire understanding of the parties, and revokes and supersedes all prior agreements between the parties and is intended as a final expression of their Agreement. It shall not be modified or amended except in writing signed by the parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents that may be in conflict therewith.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have each caused to be affixed hereto its or his/her hand and seal the day indicated.

By:

Title:

Date:

By:

Title:

Date:

SCHEDULE A

TO

SOFTWARE LICENSE AGREEMENT

DATED _____

BETWEEN

AND

1. USER FEE

During the Initial Term of this Agreement, the User Fee shall be _____ Dollars (\$_____). For each Extended Term, the User Fee shall be _____ Dollars (\$_____).

2. ADDITIONAL USER FEE

For every PC in excess of _____ on Licensee's LAN that will have access to the Software, Licensee shall pay Licensor an Additional User Fee of _____ Dollars (\$_____) per PC per Term of this Agreement.

3. INSTALLATION FEE

For the installation of the Software by Licensor on Licensee's LAN, Licensee agrees to pay Licensor an Installation Fee of _____ Dollars (\$_____).

4. ADDITIONAL INSTALLATION FEE

For each additional Installation made by Licensor after the initial installation, Licensee agrees to pay Licensor the sum of _____ Dollars (\$_____).

This fee covers subsequent installations of the software on the server.

5. DELIVERY SCHEDULE

Licensee agrees to install the Software on Licensee'S LAN within _____ days after execution of this Agreement.

6. FEE PAYMENT SCHEDULE

The User Fee and Installation Fee shall be payable as follows:

_____	Percent	Upon execution of this
(_____) of User Fee	Agreement
_____	Percent (_____	Upon installation of the Software
%) of User Fee		on the LAN
_____	Percent (_____	Upon installation of the Software
%) of Installation Fee		on the LAN
_____	Percent (_____	Upon acceptance by Licensee
%) of User Fee		
_____	Percent (_____	Upon acceptance by Licensee
%) of Installation Fee		

EXHIBIT A

TO

SOFTWARE LICENSE AGREEMENT

DATED _____

BETWEEN

AND

EXHIBIT B

TO

SOFTWARE LICENSE AGREEMENT

DATED _____

BETWEEN

AND

