

NON-EXCLUSIVE SOFTWARE DISTRIBUTION AGREEMENT

This contract is not effective until executed by Distributor, and received and accepted by Electric Rain by an electronic approval confirmation letter.

This Non-Exclusive Software Distribution Agreement (this "Agreement") is entered into as *date approved into the Electric Rain Distributor Program* (the "Effective Date"), by and between Electric Rain, Inc., a Delaware corporation having a primary place of business at 5171 Eldorado Springs Drive, Boulder, Colorado, USA ("Electric Rain") and *company name entered in the online application* ("Distributor") having a primary place of business at *business address entered into the online distributor application*.

Background

- A. Electric Rain has developed and desires to advertise, promote, market and distribute the company's software products.
- B. Distributor desires to obtain the right to act as an independent Distributor of the Products, with the non-exclusive right to market, promote and resell the Products.

Agreement

Electric Rain and Distributor agree as follows:

1. **APPOINTMENT AS DISTRIBUTOR.** If approved by Electric Rain, on the terms and subject to the conditions set forth herein, Electric Rain appoints Distributor as an independent, non-exclusive authorized Distributor of the Products in the geographic area identified by the *country entered into the application* hereto ("Market"), and Distributor hereby accepts such appointment. Distributor may advertise, promote and resell the Products solely to third party resale entity within the Market. For purposes of this Agreement, the term "third party resale entity" means an entity that desires to resell the product to End-users. For purposes of this Agreement, the term "End User" means a person or entity that desires to acquire the Products for its own use, rather than for resale or distribution. All rights not specifically granted by Electric Rain hereunder are reserved by Electric Rain. Without limiting the generality of the foregoing, Electric Rain reserves the right to advertise, promote, market and distribute the Products, and to appoint third parties to advertise, promote, market and distribute the Products, worldwide, including in the Market. Further, Electric Rain reserves the right, in its sole discretion, at any time and from time to time, to modify any or all of the Products, or to discontinue the publication, distribution, sale or licensing of any or all of the Products without liability of any kind.

2. **CONSIDERATION, ORDERS AND DELIVERY.** Distributor acknowledges that Electric Rain has the right, at any time and from time to time, to modify any or all of the Prices by providing notice of such modified Prices to Distributor. Electric Rain shall ship Products upon acceptance of Distributor's written order and Distributor's payment in full for the Products. Distributor shall pay for the Products in U.S. dollars in immediately available funds using a Visa, MasterCard, or American Express Credit Card, or by wire transfer, or in such other manner as Electric Rain may approve. Orders shall be shipped F.O.B. Electric Rain's warehouse. Except as otherwise mutually agreed in writing, Distributor shall be responsible for all costs associated with its performance of this Agreement. All freight, insurance, duty and taxes applicable to Distributor's purchase and sale of Products shall be paid by Distributor. Distributor will indemnify and hold Electric Rain harmless from any obligation to pay any governmental entity any employer statutory taxes, withholding taxes, social security taxes or other taxes, levies or duties in connection with Distributor's performance under this Agreement, and from any and all damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs of litigation) arising out of or resulting therefrom.

3. **MARKETING AND PROMOTION OF PRODUCTS**

3.1 Promotion. Distributor shall use its best efforts to market and promote Products to Reseller in the Market, including by: (a) attendance by Distributor at trade shows at which Distributor promotes the Products, (b) listing the Products in Distributor's product lists and Distributor's other marketing materials, (c) advertising the Products in trade journals, magazines, and other appropriate publications, and (d) at Electric Rain's request, translating and distributing Electric Rain's press releases and other publicity and sales materials in the Market.

3.2 Marketing Practices. Distributor will at all times perform hereunder in a professional manner and in accordance with this Agreement and any guidelines issued by Electric Rain. Distributor will: (a) conduct business in a manner that reflects favorably at all times on the Products and the good name, goodwill and reputation of Electric Rain; (b) avoid deceptive, misleading or unethical practices that are or might be detrimental to Electric Rain, the Products or the public, including but not limited to disparagement of Electric Rain or the Products; (c) make no false or misleading representation with respect to Electric Rain or the Products; and (d) make no representations with respect to Electric Rain or the Products that are inconsistent with Electric Rain's end user license agreement for the Products, promotional materials and other literature distributed by Electric Rain, including all liability limitations and disclaimers contained in such materials.

- 3.3 Promotional Materials. Distributor consents to the listing of its business name, address, phone number and web site addresses in such Electric Rain advertising and promotional materials as Electric Rain may determine in its sole discretion, including product literature and Electric Rain's web sites. During the term of this Agreement, Electric Rain may provide to Distributor promotional materials with respect to Products. Distributor may not use the promotional materials for any purpose other than advertising and promoting the Products to End Users in the Market. Notwithstanding anything to the contrary herein, Distributor may not distribute any Distributor-created promotional materials with respect to Electric Rain or the Products without Electric Rain's prior written approval of such materials.
- 3.4 Permits, Licenses and Compliance with Laws. Distributor will, at its sole cost and expense, obtain all permits and licenses necessary in connection with its performance of this Agreement, and will comply with all applicable laws, rules and regulations in the performance of this Agreement. Without limiting the generality of the foregoing, Distributor will comply with all applicable export laws. Without limiting the foregoing, Distributor agrees that it will not knowingly export or re-export any Products to Country Group Q, S, W, Y, or Z, Afghanistan, or the People's Republic of China unless prior export license or authorization is obtained from the United States Department of Commerce, if so required by U.S. export laws or regulations.
- 3.5 Privacy/Data Collection. Distributor will at all times during the term of this Agreement maintain appropriate technical and organizational measures to protect any End User data that it collects, accesses or processes in connection with this Agreement against unauthorized or unlawful use, disclosure, processing or alteration. Distributor will act only on Electric Rain's instructions in relation to the collection, use, disclosure and processing of any such End User data, but in all instances in accordance with all applicable laws, rules and regulations.
4. **RESALE OF PRODUCTS**. Electric Rain shall provide copies of its end user license agreements to Distributor. Distributor shall promptly review such agreements and advise Electric Rain as to what revisions, if any, should be made to the end user license agreements for resale in the Market to ensure that the agreements comply with requirements of local law in the Market, and that Electric Rain has protection concerning proprietary rights, warranty disclaimers and limitations of liability under such local law that are as least as stringent as the protection provided by U.S. federal law and the laws of the State of Colorado. Distributor may charge Resellers for Products at prices determined in Distributor's sole discretion. Distributor may distribute Products solely by sale of Packages. For purposes of this Agreement, a "Package" means physical or electronic media containing a particular Product, related user documentation, and Electric Rain's end user license agreement as it may

be modified by Electric Rain for use in the Market. The relationship between the End User and Electric Rain shall be as specified in the applicable Electric Rain end user license agreement. Notwithstanding the foregoing, as between Electric Rain and Distributor, Distributor shall be solely responsible for providing customer support to End Users in the Market. Distributor will notify Electric Rain immediately in the event that it is unable to respond effectively to any End User request.

5. **OWNERSHIP.** As between Electric Rain and Distributor, all right, title and interest in and to the Products and associated Electric Rain promotional materials and documentation, including without limitation all copyrights, patent rights, trademark and service mark rights, trade secret rights and other intellectual property rights are and will remain the property of Electric Rain, and such items may only be used by Distributor as expressly permitted hereunder. Distributor shall not remove, alter or otherwise modify any copyright, trademark or other notices of proprietary interest contained in the Products, Electric Rain promotional materials and/or documentation.

6. **CONFIDENTIAL INFORMATION**

- 6.1 "Confidential Information" Defined. "Confidential Information" includes: (a) the Products; (b) any personally identifiable data or information regarding any End User; (c) any and all information disclosed by Electric Rain to Distributor, in whatever format, that is either identified as or would reasonably be understood to be confidential and/or proprietary; (d) any notes, extracts, analyses or materials prepared by Distributor which are copies of or derivative works of Confidential Information or from which Confidential Information can be inferred or otherwise understood; and (e) the terms and conditions of this Agreement. "Confidential Information" does not include information received from Electric Rain that Distributor can clearly establish by written evidence: (x) is or becomes known to Distributor from a third party without an obligation to maintain its confidentiality; (y) is or becomes generally known to the public through no act or omission of Distributor; or (z) is independently developed by Distributor without the use of Confidential Information.

- 6.2 Distributor's Obligations. Distributor will make no use of Confidential Information for any purpose except as expressly authorized by this Agreement. Except as expressly provided in this Agreement, Distributor will not disclose Confidential Information to any third party and will protect and treat all Confidential Information with the same degree of care as it uses to protect its own confidential information of like importance, but in no event with less than reasonable care. Except as expressly provided in this Agreement, Distributor will not use, make or have made any copies of

Confidential Information, in whole or in part, without the prior written authorization of Electric Rain. In the event that Distributor is required to disclose Confidential Information pursuant to law, Distributor will notify Electric Rain of the required disclosure with sufficient time for Electric Rain to seek relief, will cooperate with Electric Rain in taking appropriate protective measures, and will make such disclosure in a fashion that maximizes protection of the Confidential Information from further disclosure.

7. **DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES, IF ANY, MADE TO THE END USER IN THE APPLICABLE ELECTRIC RAIN END USER LICENSE AGREEMENT, ELECTRIC RAIN MAKES NO OTHER WARRANTIES RELATING TO THE PRODUCTS, EXPRESS OR IMPLIED. ELECTRIC RAIN DISCLAIMS AND EXCLUDES ANY AND ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE AND NON-INFRINGEMENT. NO PERSON IS AUTHORIZED TO MAKE ANY OTHER WARRANTY OR REPRESENTATION CONCERNING THE PRODUCTS OR THE MEDIA ON WHICH PRODUCTS ARE SUPPLIED. DISTRIBUTOR WILL MAKE NO WARRANTY, EXPRESS OR IMPLIED, ON BEHALF OF ELECTRIC RAIN.**
8. **LIMITATION OF LIABILITY. ELECTRIC RAIN'S AGGREGATE LIABILITY TO DISTRIBUTOR UNDER THIS AGREEMENT, WHETHER FOR BREACH OR IN TORT, IS LIMITED TO THE PRICE PAID BY DISTRIBUTOR FOR THE COPY OF THE PRODUCT WHICH GIVES RISE TO THE CLAIM. IN NO EVENT WILL ELECTRIC RAIN BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT (INCLUDING LOSS OF BUSINESS, REVENUE, PROFITS, USE, DATA OR OTHER ECONOMIC ADVANTAGE), HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF ELECTRIC RAIN HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR HEREIN FAILS OF ITS ESSENTIAL PURPOSE.**
9. **INDEMNIFICATION BY DISTRIBUTOR. Distributor will indemnify, defend and hold harmless Electric Rain from and against any and all claims, damages and expenses (including reasonable attorneys' fees and costs of litigation) by any third party resulting from any acts or omissions of Distributor relating to its activities in connection with this Agreement, Distributor's breach of this Agreement, or Distributor's misrepresentations relating to Electric Rain, the Products or this Agreement, regardless of the form of action. Distributor will be solely responsible for any claims, warranties or representations made by Distributor or Distributor's**

representatives or agents which differ from the warranties provided by Electric Rain in the applicable end user license agreement.

10. **INFRINGEMENT.** Electric Rain agrees to defend or, at its option, settle any claim or action against Distributor to the extent arising from a third party claim that a permitted use of a Product by End Users infringes any U.S. patent or copyright, provided Electric Rain has control of such defense or settlement negotiations and Distributor gives Electric Rain prompt notice of any such claim and provides reasonable assistance in its defense. In the event of such a claim of infringement, Electric Rain, at its option, may provide Distributor with substitute Products reasonably satisfactory to Distributor to replace those affected Products then in Distributor's inventory. Electric Rain will not be liable under this Section if the infringement arises out of Distributor's activities after Electric Rain has notified Distributor that Electric Rain believes in good faith that Distributor's activities will result in such infringement. The foregoing states the entire liability of Electric Rain with respect to infringement of intellectual property rights.
11. **ELECTRIC RAIN SUPPORT.** Electric Rain shall offer Distributor technical training for the Products from time to time upon reasonable request from Distributor at Electric Rain's then-current charges for such training. All training will be at Electric Rain's offices unless Electric Rain, in its sole discretion, agrees to offer training at another location. Distributor shall pay all travel, food, lodging, and other costs incurred by its personnel or by Electric Rain in connection with such training.
12. **ELECTRIC RAIN TRADEMARKS.** "Electric Rain Trademarks" means all names, marks, logos, designs, trade dress and other brand designations used by Electric Rain in connection with its products and services. In performing its obligations hereunder, Distributor may refer to the Products by the associated Electric Rain Trademarks, provided that such reference is not misleading and complies with any guidelines issued by Electric Rain. Distributor is granted no right, title or license to, or interest in, any Electric Rain Trademarks. Distributor acknowledges and agrees that any use of the Electric Rain Trademarks by Distributor will inure to the sole benefit of Electric Rain. If Distributor acquires any rights in any Electric Rain Trademarks by operation of law or otherwise, it will immediately, at no cost or expense to Electric Rain, assign such rights to Electric Rain along with all associated goodwill.
13. **RELATIONSHIP OF PARTIES.** This Agreement does not constitute either party the agent of the other, or create a partnership, joint venture or similar relationship between the parties, and neither party will have the power to obligate the other in any manner whatsoever. Distributor acknowledges and agrees that its relationship with Electric Rain is that of an independent contractor, and Distributor will not act in a manner that expresses or implies a relationship other than that of an independent contractor. Electric Rain and Distributor acknowledge and agree that: (a) Distributor

is permitted to promote and sell products and services of companies other than Electric Rain; (b) Distributor is not required to promote Electric Rain products or services exclusively; and (c) Distributor's decision to devote all or some of its business efforts to the products or services of any particular company is solely in the discretion of Distributor.

14. TERM AND TERMINATION

14.1 Term. This Agreement shall be effective for a term of one year from the Effective Date. It shall be automatically extended for further one-year terms unless either party gives written notice to the other at least 60 days before the expiration of the initial or any renewal term of the party's intent not to renew.

14.2 Termination. Notwithstanding anything in this Agreement that may be interpreted to the contrary, Electric Rain may terminate this Agreement without cause and without liability upon 30 days' prior written notice to Distributor. Either party may terminate this Agreement for any material breach of the Agreement that is not cured to the non-breaching party's satisfaction within 10 days of written notice that specifies the breach.

14.3 Effect of Termination. Upon termination of this Agreement, Distributor will cease all advertising, marketing and resale of the Products. Termination of this Agreement will not effect either party's rights or obligations with respect to Products distributed by Distributor prior to the effective date of the termination.

14.4 No Liability for Termination. Neither party will be liable for any damages arising out of the termination of this Agreement in accordance with this Section 14. Distributor acknowledges and agrees that Electric Rain is not responsible for Distributor's dependence on revenues hereunder, and Distributor agrees to release, hold harmless and indemnify Electric Rain from any and all claims and liabilities relating to Distributor's revenues, financial forecasts or economic value that may result from any termination by Electric Rain of this Agreement as permitted hereunder.

14.5 Survival. Expiration or termination of this Agreement will not relieve either party from its obligations arising hereunder prior to such expiration or termination. Rights and obligations which by their nature should survive will remain in effect after termination or expiration of this Agreement.

15. ASSIGNMENT. Neither this Agreement nor any rights or obligations of Distributor hereunder shall be assignable or transferable by Distributor, in whole or in part, by operation of law or otherwise, without the prior written consent of Electric Rain. Any attempted assignment, subcontract or other transfer of this Agreement or any of

Distributor's rights or obligations hereunder will be void ab initio and will be considered a material breach of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.

16. **NOTICES.** Any notices or other communications required or permitted hereunder shall be in writing and personally delivered at the principal business addresses designated at the beginning of this Agreement, or mailed by registered or certified mail, return receipt requested, postage prepaid, at the address set forth above, or to such other address or addresses as may be hereafter furnished by one party to the other party in compliance with the terms hereof. Notwithstanding the foregoing, Electric Rain may give notice of changes in Prices, Product descriptions, order procedures, delivery procedures and other routine events and procedures by way of printed materials or newsletter.
17. **FORCE MAJEURE.** Electric Rain shall not be liable for failure or delay in performance of any of its obligations hereunder if such delay or failure to perform is caused by circumstances beyond its control. Distributor shall be required to accept any delayed shipment or delivery made within a reasonable time.
18. **GOVERNING LAWS; ATTORNEYS' FEES.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Colorado, U.S.A. The parties agree that any legal action or proceeding with respect to this Agreement may be initiated only in the federal or state courts located in the State of Colorado. By execution and delivery of this Agreement, the parties submit to and accept with regard to any such action or proceeding the exclusive jurisdiction of such courts. If any legal action or proceeding is initiated, the prevailing party shall be entitled to all attorney fees, court costs, and expenses in addition to any other relief to which such prevailing party may be entitled. **THIS AGREEMENT WILL NOT BE GOVERNED BY THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS OR BY THE PROVISIONS OF ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE, THE APPLICATION OF WHICH IS EXPRESSLY EXCLUDED.**
19. **EQUITABLE RELIEF.** Distributor acknowledges that any breach or threatened breach of this Agreement involving an unauthorized use of Confidential Information or Electric Rain intellectual property will result in irreparable harm to Electric Rain for which damages would not be an adequate remedy, and therefore, in addition to its rights and remedies otherwise available at law, Electric Rain will be entitled to seek injunctive or other equitable relief, as appropriate, and Distributor hereby waives the right to require Electric Rain to post a bond. If Electric Rain seeks injunctive or other equitable relief in the event of a breach or threatened breach of this Agreement by Distributor involving an unauthorized use of Confidential Information or Electric Rain intellectual property, Distributor agrees that it will not

allege in any such proceeding that Electric Rain's remedy at law is adequate. If Electric Rain seeks any equitable remedies, it will not be precluded or prevented from seeking remedies at law, nor will Electric Rain be deemed to have made an election of remedies.

20. ENTIRE AGREEMENT; WAIVER. This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes and terminates all other prior commitments, arrangements or understandings, both oral and written, between the parties with respect thereto. This Agreement may not be modified or amended except by an instrument in writing executed by each of the parties. None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of either party, their agents or employees, but may be waived only by an instrument in writing signed by an officer of the waiving party. No waiver of any provision of this Agreement on one occasion shall constitute a waiver of any other provision or of the same provision on another occasion.

IN WITNESS WHEREOF, by clicking the agree box both parties have entered into this Agreement as of the Effective Date of being approved.

