

Reseller Agreement - DeltaGraph 2003

This Agreement (the "Agreement") is entered into as of _____, 200__ (the "Effective Date") by and between Red Rock Software, Inc. with principle place of business at 10 West Broadway, Ste. 475, Salt Lake City, UT 84101 ("Owner") and _____ ("Reseller") with address for the purpose of this Agreement at _____ (email: _____; facsimile: _____).

1. Right of Distribution

Subject to the terms of this Agreement, Reseller is granted the non-exclusive right to purchase from Owner and resell to end users located in the Territory (defined below), the prepackaged software products described in Exhibit A (the "Products"). Reseller shall use reasonable commercial efforts to promote the sale of the Products. Territory means North America (the United States, Mexico and Canada. Reseller may not sell to any end user outside of the Territory or to any other reseller or distributor.

2. Ordering and Shipping

Reseller's order for Products must be in writing and sent by facsimile or email to Vervante Corporation (Owner's fulfillment partner at):
Fax:650-745-1215

Email: orders@vervante.com

Phone:888-845-4992

All orders are subject to acceptance by Owner. Owner will use reasonable efforts to ship accepted orders within 2 business days of receiving order, but neither Owner nor its fulfillment partner will be liable to Reseller or any third party for any delay, error or failure in filling orders. Owners may allocate available inventory on whatever basis that Owner determines in its discretion. Products are shipped to Reseller F.O.B delivery of the Products to a common carrier. Reseller shall reimburse Owners for all shipping charges. Title and risk of loss shall pass to Reseller upon delivery of Product to the carrier.

3. Payment

All initial orders must be pre-paid. All subsequent orders must also be prepaid unless Owner approves the use of Reseller's purchase orders. To request payment by purchase order, Reseller must use the Purchase Order Request Form located on Vervante's web site at www.vervante.com. Owner will use reasonable efforts to promptly approve Reseller's Purchase Order Request. Owner may deny or withdraw its approval of the use of purchase orders at any

time in its discretion. Payment for orders placed by purchase order is due thirty (30) days from the date of shipment. Payment must be made directly to Vervante by wire transfer, credit card (Visa, American Express, MasterCard, Diners) or check as directed by Vervante. Reseller agrees to pay a late payment charge of 1.5% upon unpaid balances past due. If Reseller is late in payment 2 consecutive months Reseller will be put on 60 days probation. During the probation period Reseller may not order more Product until all prior invoices are paid.

4. Warranty Service

Reseller agrees to honor any warranty requests received from end users pursuant to the terms of the End User License Agreement relating to the Product as distributed by Reseller. Reseller will accept return of Products under the limited warranty set forth in the End User License Agreement and return such defective Product, at Reseller's expense, to Owner at 10 West Broadway, Suite 475, Salt Lake City, UT 84101, or to Owner's designated agent within 90 days of receipt. Owner will, within 10 days of receipt verify warranty coverage for such returned Product and, if so covered, either ship to Reseller (at Owner's expense) replacement Product or issue a refund to Reseller of Reseller's purchase price for such defective Product (at the lowest price paid by Reseller). Reseller shall make no representations or warranties on behalf of Owner and no representations, warranties, or guarantees to customers with respect to the specifications, features or capabilities of the Products that are inconsistent with the literature distributed by Owner, including all warranties and disclaimers contained in such literature.

5. Pricing and Taxes

Reseller's price per Product for an order is set forth in Exhibit A. All pricing and fees stated above are exclusive of taxes and other fees. Except for taxes based on Owner's income, Reseller shall pay any federal, state, local and

foreign taxes, fees or duties imposed on the sale, export, use or possession of the Products, including penalties and interest. Reseller will promptly pay to Owner an amount equal to any such items actually paid or required to be collected and paid by Owner. Owner may, in its discretion, change the purchase price or suggested retail price upon notice to Reseller and Exhibit A shall be deemed amended accordingly.

6. Software

Owner retains all ownership rights to all applicable copyrights, trade secrets trademarks, service marks, trade names and other intellectual property rights in the Products. Reseller shall not (i) copy, modify or reproduce a Product or accompanying documentation in any way, (ii) reverse engineer, disassemble, or decompile a Product, (iii) remove, obscure or alter the Owner's proprietary notices, any accompanying End User License Agreement or other documentation for a Product, (iv) incorporate a Product into any other software or hardware product, or (v) private label any Product or any portion thereof or include any other party's marks or legends on a Product or any portion thereof. Any documentation accompanying a software product shall also be deemed part of the Product and delivered to each end user as a complete Product.

7. Acceptance

All orders shall be considered complete and accepted, with no right of revocation or return of Products (except as described in Sections 3 and 8) as of ten days after delivery to Reseller, unless Reseller gives written notice to Vervante within such ten-day period of all items not delivered. Upon Reseller's receipt of all items not originally delivered, the order shall be considered complete and accepted with no right of revocation or return.

8. Return of Obsolete Inventory

Owner may from time to time release Product versions or replacement Products meant to supersede existing Products and revise Exhibit A to reflect such new Product(s). For a period of thirty (30) days following notice by Owner of the availability of a new Product version or replacement Product, Reseller may return any or all unsold superseded Product inventory in new condition for a credit equal to Reseller's original purchase price of such returned inventory (at the lowest price paid by Reseller) towards the purchase of new replacement Product. To

receive such credit, Reseller must return (at Reseller's expense) such superseded inventory to Vervante within such 30-day period. The credit may then be used only toward the purchase of the replacement Product, provided that Reseller pay the then-current fulfillment fee charged by Vervante per replacement Product. This right of return does not include any Products purchased under any prior Reseller agreement with SPSS, Inc. Product upgrades (for modifying an existing Product version instead of replacing an existing Product version) are not available to Reseller under this Agreement and are only available directly Owner's or Vervante's web site.

9. Trademarks

Owner grants Reseller a non-exclusive, royalty-free license to use the Owner's trademarks, service marks, and trade names for the purpose of advertising, promoting, merchandising and marketing the Products. Reseller agrees that all such material relating to the Product shall identify the Owner as the source of the Products and otherwise comply with the Owner's reasonable Trademark guidelines as developed and/or modified by Owners from time to time. Reseller will discontinue all use of Owners marks and names promptly upon the termination or expiration of this Agreement.

10. Warranties

10.1 The media on which the Product software is furnished is warranted to be free of defects in workmanship and material under normal use for a period of sixty (60) days from the date of sale to the end user. Owner's sole responsibility and Reseller's exclusive remedy under this warranty will be to receive either (a) reasonably prompt replacement of the media following return to Owner of the defective Product (at Owner's expense, or (b) a full refund of the Product purchase price paid by Reseller, as Owner determines in its discretion.

10.2 Reseller and its end-user customers alone are responsible for determining if the Product meets their particular needs, for installing the Product software, and for the results obtained. THE PRODUCTS (INCLUDING ANY SOFTWARE) ARE PROVIDED "AS IS" WITHOUT WARRANTY, EXCEPT FOR THE MEDIA WARRANTY PROVIDED ABOVE. THERE ARE NO OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A

PARTICULAR PURPOSE AND OWNER EXPRESSLY DISCLAIMS ALL SUCH WARRANTIES AS TO ANY PRODUCTS PROVIDED UNDER THIS AGREEMENT. IN NO EVENT SHALL OWNER BE RESPONSIBLE FOR ANY LOSS OF PROFIT OR OTHER COMMERCIAL DAMAGE, INCLUDING BUT NOT LIMITED TO ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGE, EVEN IF OWNER HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. OWNER'S LIABILITY ARISING OUT OF THIS AGREEMENT SHALL IN NO EVENT EXCEED THE AMOUNT OF THE INITIAL ORDER AMOUNT SET FORTH ON THE ORDER FORM FOR THE PRODUCT. Owner reserves the right to change the warranty policy set forth in the limited warranty contained in the End User License Agreement at any time without further notice and without liability to Reseller or any other person.

11. Relationship of Parties

Owner and Reseller are independent companies and nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the parties.

12. Term and Termination

12.1 This Agreement shall commence on the Effective Date set forth above and shall continue for an initial term of one (1) year. Thereafter, this Agreement shall automatically renew for additional one-year periods, unless Owner or Reseller provide notice of non-renewal at least 60 days prior to the renewal date.

12.2 This Agreement may be terminated by Owner if Reseller does not pay amounts invoiced within 10 days of when due.

12.3 Either party may terminate this Agreement (a) upon not less than 30 (thirty) days' prior written notice in the event of a material breach of this Agreement by the other party (other than a breach described in Section 12.2) and the failure of such other party to cure such breach within an additional 30 (thirty) day period; (b) a receiver is appointed for the other party or its property; (c) the other party makes, or attempts to make, an assignment for the benefit of its creditors; (d) any proceedings are commenced by or for the other party under any bankruptcy, insolvency, or debtor's relief law; or (e) the other party liquidates or dissolves or attempts to liquidate or dissolve

12.4 The expiration or termination of this Agreement, for whatever reason, will not

discharge or relieve either party from any obligation which accrued prior to such expiration or termination, will not relieve any party that has breached this Agreement from liability for damages resulting from such breach, and will not destroy or diminish the binding force and effect of any of the provisions of this Agreement that expressly, or by reasonable implication, come into or continue effect on or after expiration or termination hereof.

13. Post-Termination Actions

Upon expiration or termination of this Agreement for any reason, the parties shall have the following rights and obligations:

13.1 The due date of all outstanding invoices for the Products shall automatically accelerate so that they become due and payable on the effective date of termination, even if longer terms had been previously provided.

13.2 All orders or portions thereof remaining unshipped as of the effective date of termination shall automatically be cancelled, provided that Owner shall furnish Products in accordance with any of Reseller orders outstanding to its customers prior to the date of notification of such termination that do not call for delivery of Products beyond sixty (60) days from the date of such notification.

13.3 Provided Reseller is not in material breach of this Agreement, Reseller shall have the right to use Owner's trade names, trademarks and service marks to promote inventory of Products after the expiration or termination of this Agreement; provided, however, such right shall continue only so long as Reseller is actively attempting to sell Products remaining in its inventory following termination of this Agreement (which period shall not in any event exceed 180 days).

14. Exporting and Compliance with Laws

Reseller shall be exclusively responsible for the procurement and renewing of all export or import licenses required under the United States or foreign law for the export or import of the Products and shall pay all costs and other expenses in connection with such procurement and renewal. Reseller agrees to comply with any applicable export or import laws of the United States or any foreign country with respect to the export of the Products from the United States. Reseller shall be exclusively responsible at its own expense for compliance with all local laws

relating to the Products in the countries in which Reseller sells the Products.

15. General Provisions

15.1 This agreement supersedes all prior agreements, proposals, representations and communications between the parties relating to the subject matter herein. In the case of conflict between this Agreement and Reseller purchase orders issued for the Products, the terms of this Agreement shall prevail.

15.2 Reseller and Red Rock Software, Inc. agree that this Agreement and the Products including all information related to the Products that is disclosed to the Reseller as a result of this Agreement, (i) constitutes the proprietary and confidential information of Owner; (ii) shall be used by the Reseller only as required to exercise the license granted under this Agreement; and (iii) shall be held in confidence and shall not be made available in any form to any person or entity other than Reseller, without the express written consent of Owner. Owner agrees that the Reseller shall be permitted to disclose relevant aspects of the Products and related Owner

information to its customers, but solely to the extent that such disclosure is directly related to the customers use of the Product and provided that the Reseller shall take all reasonable steps to ensue that the Product is not duplicated in contravention of the Agreement.

15.3 This Agreement shall be interpreted under the laws of the State of Utah without regard to conflicts of law principles.

15.4 This Agreement is not assignable by Reseller. Any amendments or waivers of this Agreement must be in writing signed by both parties.

15.5 In any action between the parties to enforce any term of this Agreement, the prevailing party shall be entitled to recover reasonable expenses, including reasonable attorneys' fees.

15.6 Any notice required to be given by either party to the other shall be deemed given if in writing and actually delivered to the party at the address set forth above (including by facsimile and electronic mail).

Red Rock Software, Inc.

Authorizing Agent

Reseller

Authorizing Agent