

Software Distribution Agreement
between
Trifox, Inc.
and

This Agreement is entered into as of _____, by and between Trifox, Inc. a California corporation, located at 3131 S. Bascom Ave, Suite 150, Campbell, California, 95008 (hereinafter "Trifox") and _____, located at _____ (hereinafter "Distributor").

RECITALS

A. Trifox owns or otherwise has rights to market certain proprietary software products which perform application development functions and report writing functions, as described in Exhibit D.

B. Trifox wishes to grant Distributor the right to market and sublicense these software products in conjunction with Distributors proprietary product.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises herein contained, the parties agree as follows:

AGREEMENT

ARTICLE 1-DEFINITIONS

For the purpose of this Agreement, the following definitions shall apply:

(a) "Software" The term "Software" hereafter refers collectively to the proprietary computer software program products licensed hereunder to Licensee and the Documentation (as defined below).

(b) "Documentation" shall mean that those certain manuals, instructions and other written materials which Trifox customarily provides to its licensees with respect to each of the Software.

(c) "Designated System" shall mean that single operating system and computer, identified by frame serial number, including associated peripheral units and remote terminals on which the software shall be used.

(d) "Applications Program" shall mean any software program or routine developed by or for Licensee through use of the Software and shall include any such software program or routine which runs either as part of or in combination with the Software or independently of the Software as a separate program.

(e) "Enhancements" shall mean any improvement, modification or correction to any of the Software which Trifox provides at no additional charge to its licensees as part of its maintenance obligation to such licensees.

(f) "Media" shall mean tapes, floppies, or downloaded software from Trifox's FTP server.

(g) "Licensing Fee" shall mean the fee paid by Distributor to Trifox pursuant to Exhibit B.

(h) "Maintenance Fee" shall mean the fee for maintenance contracts paid by Distributor to Trifox pursuant to Exhibit B.

(i) "First Level Support" shall mean telephone support for all Sublicensees, both for problem resolution and education.

(j) "Territory" shall mean that certain geographic market described in Exhibit C attached hereto.

(k) "Relicense" shall mean an internal transfer by the end user within his group or company (including parent, sister divisions, and majority-owned subsidiaries) from one Designated System to another Designated System.

(l) "Sublicensee" shall mean a user of the Software who is a Sublicensee or customer of Distributor.

(m) "End User" shall mean a customer that licenses the Products for its own use and may not transfer or sublicense the Products to another customer. Internal relicensing is permissible for end users.

(n) "OEM" shall mean a company that purchases hardware and software, adds substantial value, and resells the equipment.

(o) "Reseller" shall mean a company that purchases hardware and software, adds little or no value, and resells the equipment.

(p) "VAR" (Valued Added Reseller) shall mean a company that purchases hardware and software, adds some value, and resells into a specific industry and/or geographic territory.

(q) "Sales", "Purchase" and like terms shall mean activities engaged in by either Trifox or Distributor which result in revenue production and a licensing of the Software to a customer and shall not be construed to mean an actual sale of the Software.

(r) "Full Use Software", as listed in Exhibit D, are intended for either the Distributor or its sublicensees to develop Applications Programs which will embed Trifox's Run-Time Software.

(s) "Run-Time Software", as listed in Exhibit D, are intended to execute only those Application Programs developed by either the Distributor or its sublicensees using Trifox's Full Use Software. The Run-Time Software can not be used to create or modify either new or existing Application Programs.

ARTICLE 2-RIGHTS OF DISTRIBUTOR

2.1 In accordance with and subject to the terms of this Agreement, Trifox hereby grants to Distributor the nonexclusive right and license to:

(a) Market and sublicense the software to customers in conjunction with Distributor's software, provided however nothing contained herein will: (1) prohibit Trifox from directly licensing the Software to any customer in the Territory on any computer, (2) prohibit any internal re-licensing by either party's customers or sublicensees of the Software in the Territory, (3) require Trifox to continue licensing or maintaining the Software other than as herein provided, or (4) permit Distributor to transfer the marketing component of this Agreement (except as provided under 14.3 "Assignment").

2.2 Trifox hereby further grants to Distributor a nonexclusive license to use Trifox's trademarks, trade names and service marks in the performance of Distributor's obligations hereunder. Distributor shall not permit any person under its control to use any such marks or names except as provided herein. Upon termination of this Agreement, Distributor will immediately cease all use of Trifox's trademarks, trade names or service marks except as may be required in the sale of the software in inventory or for continued maintenance purposes.

2.3 As consideration for the grant of license rights by Trifox hereunder, Distributor agrees to pay Trifox the Licensing Fee as described in Exhibit B. Terms and conditions of payment are also described in Exhibit B.

ARTICLE 3-OBLIGATION OF DISTRIBUTOR

3.1 During the term of this agreement, Distributor agrees to use its best and reasonable commercial efforts to market and sublicense the Software in the Territory in accordance with those license rights granted to Distributor pursuant to Article 2 above. Without limitation of the foregoing, Distributor agrees to do each of the following with respect to the Software during the term of this Agreement:

- (a) Maintain sufficient number of trained sales and support personnel to market and promote the Software in the Territory;
- (b) Cause the Distributor personnel who are responsible for the marketing, installation and/or support of the Software to receive training with respect to the Software;
- (c) Maintain adequate facilities or have access to adequate facilities, for the proper demonstration of the products in the Territory to actively encourage the sublicensing of the Products; and
- (d) Provide adequate advertising or promotion to stimulate the sublicensing of Products.
- (e) Maintain a sales level which generates at least _____ in Minimum License Fees due Trifox per quarter. If the Distributor can not meet this Minimum License Fees for three consecutive quarters, Trifox, at its option, may terminate this agreement. This Minimum License Fees may be adjusted by Trifox once a year at the anniversary date of each year this agreement is in effect. Trifox agrees each increase will not be more than 15%.

3.2 Distributor shall be responsible for delivery, installation, training and First Level Support for each Sublicensee of the Software obtained by Distributor during the term hereof. Any and all costs for such delivery, installation, and training shall be born and paid by the Distributor, subject to such payments as Distributor may receive from its Sublicensees for such services. In the event Distributor requests and Trifox provides any of its personnel to assist the Distributor in the installation, training or support for any Distributor Sublicensee, Distributor agrees to pay and reimburse Trifox for such assistance at Trifox's time and materials rates, as specified in Exhibit E. Distributor agrees to maintain access to each hardware and software platform combination as sold to each sublicensee as a means of providing First Level Support.

3.3 Distributor agrees that it shall require each Sublicensee of the Software to execute a written sublicense agreement containing the following terms and provisions:

- (a) Trifox's standard license terms and conditions including those confidentiality and non-disclosure obligations contained in Trifox's customary end-user license agreement, a copy of which is attached hereto as Exhibit F;
- (b) In the case of an end user, the obligations on the part of the Sublicensee to use the Licensed Product subject to such agreement for its own internal use on a single Designated System unit on terms contained in Trifox's customary end-user license agreement; or in the case of a Reseller, OEM, VAR, or Software House, that these identical obligations and terms are passed on to its sublicensee;
- (c) Except in the case of a Reseller, OEM, VAR, or Software House, prohibitions against assignment by such Sublicensee of its rights to any of the software;
- (d) Prohibitions against the use for the benefit of or to any person other than such Sublicensee, and, except in the case of a Reseller, OEM, VAR, or Software House, against the sublicensing, sale or other marketing by such Sublicensee of the Software or any software products, modules or programs developed by or for such Sublicensee in whole or in part through any use of the Software;

(e) Such other provisions regarding the terms of the sublicense and the license and other fees payable therefore as Distributor shall deem appropriate; and

(f) In the case of a Sublicensee that is not an end user but will transfer the Software (i.e., a Reseller, OEM, VAR, or Software House), that the Sublicensee agrees to transfer the Software only if subject to Trifox's standard end user agreement and to the prohibitions delineated in subparagraphs (a) through (e) above.

ARTICLE 4-MAINTENANCE OBLIGATIONS

4.1 Subject to Paragraph 4.2 below, Distributor shall be responsible for the performance of any and all First Level Support with respect to any Software which Distributor sublicenses to its customers pursuant to this Agreement. Should further support beyond First Level Support be required, Distributor will submit all relevant information to Trifox to enable Trifox to provide further support.

4.2 Trifox agrees to provide in a timely fashion Distributor all Enhancements and other ordinary maintenance provided by Trifox to its licensees at no charge with respect to each Licensed Product during the term of this Agreement. Trifox shall provide such Enhancements and maintenance to Distributor at Distributor's corporate headquarters in _____, unless otherwise mutually agreed to. Distributor will be responsible for distribution of all Enhancements and/or version release of Software to each Sublicensee within the Territory described in Exhibit C. Unless mutually agreed upon Trifox shall not charge the Distributor for the Enhancements.

4.3 Each Trifox release of new versions of the Software shall be coordinated with the Distributor prior to release to enable Distributor to maintain uniformity in its support of its customers. Trifox shall furnish to Distributor one copy of the Object Code and Documentation for each new release.

4.4 Trifox agrees to furnish in a timely fashion one copy of each training and marketing materials, whether existing or new, relating to the Software and Documentation in this Agreement.

ARTICLE 5-LICENSE FEES PAYABLE TO TRIFOX

5.1 Distributor shall pay to Trifox the License Fees pursuant to Exhibit B on a monthly basis. Distributor agrees Trifox has the right to increase the License Fees as specified in Exhibit B. If the Distributor has met the Minimum License Fees as specified in paragraph 3.1 (e), Trifox agrees the increase shall be done no more than once a year and not for more than 15% for each increase.

5.2 License fee payments shall be deemed made by Distributor when paid by Distributor.

5.3 Distributor agrees to maintain complete and accurate sets of books and financial records in form and substance suitable to enable Trifox to verify the amount of license fees payable pursuant to this Article 5. Distributor agrees to provide Trifox and its agents reasonable access to such books and financial records during the term, and for a twelve (12) month period following termination, of this Agreement.

5.4 Distributor will provide a statement from its auditors at year-end specifying that Distributor is in compliance with the license fee requirements as set forth in Exhibit B.

5.5 Distributor will furnish a copy of each sublicense issued to a customer of Distributor at the time the License Fees are paid to Trifox under 5.1 above.

ARTICLE 6-OBLIGATIONS OF TRIFOX

6.1 In the event the marketing component of this Agreement is terminated and Distributor is unable or unwilling to continue support of its Sublicensees and/or customers using Trifox's Software, Trifox agrees to continue support to such Sublicensees and/or customers. In the event the marketing component of this

Agreement is terminated, Trifox agrees that Distributor's corporate license shall remain in full force and effect and Trifox agrees to continue support of Distributor as a Licensee of Trifox in like manner as Trifox shall support its other Licensees.

ARTICLE 7-LIMITED WARRANTY OF TRIFOX

7.1 Trifox represents and warrants that it has full legal rights to enter into this Agreement and to grant Distributor the rights specified in this Agreement.

7.2 Trifox represents and warrants that, with respect to the Software listed in Exhibit D, it is the exclusive owner of those materials or has the right to sublicense Distributor to use such products and to have Distributor further sublicense such products to Distributor customers.

7.3 Trifox warrants that neither the Software nor their use by Distributor or its customers shall infringe or constitute an infringement of any patent, copyright, trademark or other property right in the United States or Canada.

7.4 As to each Software, Trifox warrants to the Distributor only that such Software will, if properly installed by Distributor (i) be capable of operation in conformance with the published Documentation for such Software; and (ii) be free from defects in manufacture or material. The foregoing warranty shall apply as to each Software for a period of ninety (90) days following delivery of the Software to Distributor's customer and shall terminate upon expiration of that period. In the event any of the Software does not meet the foregoing warranty, Trifox shall promptly take such corrective action with Distributor as necessary to cause the Software to conform to Trifox's obligations hereunder. This warranty does not apply to defects or nonconformance that arises out of Distributor's or its Sublicensees's misuse, neglect, accident, failure of electric power, equipment failure, or causes beyond Trifox's reasonable control.

7.5 In addition to the rights specified in Paragraph 7.4 above, in the event that Trifox determines during the term of this Agreement that any of the Software contain any defects, Trifox agrees to provide Distributor at no additional cost with such corrections to the defective Software as Trifox then provides at no charge to Trifox's existing customers and licensees of such Software as part of Trifox's continuing maintenance obligation relating thereto.

7.6 Distributor shall provide its Sublicensees with such warranty rights with respect to the Software as Distributor receives from Trifox. Trifox shall be responsible to Distributor for any corrective actions which are necessary during the Sublicensee's warranty period.

ARTICLE 8-LIMITATION OF LIABILITY

8.1 EXCEPT AS SPECIFICALLY PROVIDED IN THIS ARTICLE, EITHER PARTY MAKES NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO ANY OTHER MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION OF ANY OF THE SOFTWARE, THEIR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, DATA OR PROFITS OR OTHER ECONOMIC LOSS ARISING OUT OF ANY NON-CONFORMANCE OF ANY OF THE SOFTWARE WITH THE FOREGOING WARRANTIES.

8.2 If for any reason by operation of the law or otherwise, any of the foregoing limitations of liability shall be ineffective, then in such event, either party's maximum liability shall not exceed the total amount of royalties paid to Trifox hereunder.

ARTICLE 9-MARKETING ASSISTANCE

9.1 During the term of this Agreement, Trifox agrees to do the following for the purpose of assisting Distributor in the marketing of the Software:

- (a) provide Distributor with such information for sales training purposes as Trifox shall deem appropriate regarding the benefits and performance capabilities of the Software;
- (b) Provide Distributor at no charge with limited copies of all sales material available within Trifox relating to the Software for the purpose of permitting Distributor to prepare its own sales literature for the Software; and
- (c) Provide Distributor with other marketing assistance as mutually agreed.

9.2 In addition to the limited quantities of sales literature to be provided by Trifox pursuant to Subparagraph 9.1 (b) above, Trifox agrees to sell to Distributor any additional sales literature relating to the Software as Distributor shall elect to purchase at Trifox's then current rates.

ARTICLE 10-TERM AND TERMINATION

10.1 The initial term of this Agreement shall commence as of _____ and continue for a period of three (3) years. This Agreement shall thereafter be renewed for successive three (3) year periods without further action by the parties, unless either party shall give written notice of its intent to terminate to the other party not less than ninety (90) days preceding expiration of the then current three (3) year period.

10.2 Except as provided in Paragraph 10.1 above, this Agreement may be terminated by either party in the event of a breach by the other party which is not cured following thirty (30) days written notice from the non-breaching party. Any termination of this Agreement shall not limit the rights of the non-breaching party to seek and recover damages incurred by that party as a result of such breach.

10.3 Upon a termination of the marketing component of this Agreement for any reason, Distributor agrees to do the following:

- (a) Return to Trifox all original copies of the media and written materials containing the object codes for the Software and all original Documentation, training and marketing materials relating to the Software; and
- (b) Destroy all internal copies of materials of any nature relating to the Software.

This paragraph 10.4 shall not apply to those Software and Documentation which Distributor has purchased for internal use or sublicensed to customers pursuant to the license granted hereunder.

10.4 Upon a termination of the marketing component of this Agreement for any reason, Distributor has the right to continue sublicensing Trifox's Run-Time Use Software in conjunction with Distributor's Application Program only. Distributor's obligation for licensing fees pursuant to Exhibit B shall remain in effect.

10.5 The obligations of the parties set forth in Paragraphs 2.1 (b) and 3.3 above and Articles 4, 5, 7, 8, 11 and 12 shall survive a termination of the marketing components of this Agreement. Following a termination of this Agreement, Distributor shall remain liable to pay Trifox any royalties due Trifox with respect to the Software following such termination. The maintenance and warranty obligations of the parties shall remain in force as long as Distributor's Sublicensee agreements are in effect.

ARTICLE 11-CONFIDENTIALITY; NON-DISCLOSURE

11.1 Distributor agrees that:

- (a) each of the Software and all related information furnished in any manner by Trifox, is and shall be treated as the confidential property of Trifox;
- (b) Distributor shall instruct and require all of its employees and agents to maintain the confidentiality of each of the Software and prevent its unauthorized use;
- (c) Distributor shall exercise reasonable care commensurate with the reasonable standards of industrial security, to safeguard the confidentiality of each of the Software and not to disclose the software or any part or parts thereof to any person except:

1. any of its employees or agents on a “need-to-know” basis, or
2. any customer who has executed a sublicense agreement in accordance with Paragraph 3.3 hereof. Distributor further agrees not to remove or destroy any proprietary or confidential legends or markings placed upon or contained within any of the Software and related materials. It is expressly understood and agreed that the obligations of this Article shall survive the termination or rescission of this Agreement or any part hereof.

11.2 Distributor shall not take any action under this Agreement inconsistent with Trifox’s proprietary interests in the Software.

11.3 Distributor acknowledges that violation of the terms of this article shall cause Trifox irreparable damage for which monetary damages may be inadequate, and Distributor agrees that Trifox may seek injunctive relief.

ARTICLE 12-PATENT AND COPYRIGHT INDEMNIFICATION

12.1 Trifox agrees to defend, indemnify and hold Distributor harmless from any claims of U.S. patent, copyright, trademark or other proprietary right infringement asserted against Distributor or its Sublicensees by virtue of Distributor’s use or its Sublicensees’ use of any of the Software, provided that Trifox is given prompt notice of any such claim, and further provided that Distributor and any such Sublicensee shall further cooperate with Trifox in such defense.

12.2 Notwithstanding Paragraph 12.1 above, Trifox shall not be liable for any claim of patent, copyright, trademark or other proprietary right infringement which is based on the misuse or modification of the Software.

ARTICLE 13-RIGHTS TO COPY

13.1 Distributor shall have the right to make copies of the media containing the Software or the Documentation relating to the Software, as follows:

- (a) Such copies of the media containing the Software and Documentation as is reasonably required by Distributor for back-up and archive purposes;
- (b) Such copies of the Documentation relating to the Software for its internal use as may be required in connection with the performance of its obligations hereunder;

13.2 Distributor shall have the unlimited right to make copies of all training and marketing materials provided by Trifox under this Agreement.

13.3 Any sublicense agreement shall prohibit the Sublicensee from making copies of any of the Software or Documentation except for archive and back-up purposes provided in Subparagraph 13.1 (a) above.

13.4 Each and every such copy shall contain the Trifox Copyright or proprietary rights notice.

ARTICLE 14-GENERAL PROVISIONS

14.1 Amendment. This Agreement shall not be amended except in writing signed by authorized representatives of Trifox and Distributor. The waiver by either party of any of its rights hereunder shall not be construed as a waiver of any subsequent breach.

14.2 Notices. Any notice or other communication required or permitted hereunder shall be in writing, shall be deemed to have been given when delivered personally or when placed in the mail, postage prepaid, by registered or certified mail return receipt requested, and addressed as follows:

If to Trifox:
Trifox, Inc.
Suite 150
3131 S. Bascom Ave.
Campbell, CA 95008
Attention: President

If to Distributor:

14.3 Assignment. Neither party may assign or otherwise transfer any of its rights under this Agreement without the other party's prior written consent, which consent shall not be unreasonably withheld, Notwithstanding the foregoing, however, either party shall be entitled to assign the marketing component of this Agreement and such party's rights thereunder to a successor to all or substantially all of its assets, whether by sale, merger, or otherwise.

14.4 Relationship between Parties. The relationship between Trifox and Distributor is that of licensor and licensee, and not that of principal and agent. Neither party has the right or authority to act on the other's behalf or to commit or obligate the other party in any way, except as herein provided. Distributor will include in all contracts with its customers a provision confirming that it does not have such right or authority.

14.5 Choice of Law. This Agreement shall be interpreted and construed in accordance with the laws of the State of California.

14.6 Arbitration. Any disputes, including an action for damages or for the balance due (arising out of this agreement or its enforcement or interpretation) shall be settled by binding arbitration before three arbitrators, in San Jose, California, pursuant to the rules of the American Arbitration Association. Each party to this Agreement shall select one arbitrator and the two arbitrators shall select a third arbitrator. Neither party will communicate separately with any arbitrator, Judgment upon any award of the arbitrators may be entered in any court having competent jurisdiction thereof. The costs of any and all arbitration shall be shared equally by the parties to the arbitration.

14.7 Exhibits. Any additional conditions which the parties have made applicable to this Agreement shall be embodied in the Exhibits attached hereto and made a part hereof. These Exhibits, A through G, are delineated in the Exhibits attachment.

14.8 Export Control. The Distributor will not directly or indirectly re-export any of Trifox's Software without first obtaining written approval and any necessary United States export license.

14.9 Entire Agreement. This Agreement supersedes all previous agreements between the parties and such previous agreements shall be of no further force or effect.

IN WITNESS WHEREOF, the undersigned have set their hands hereto as of the date first above written.

TRIFOX, Inc.

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

(Date)

(Date)