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SOFTWARE LICENSING ISSUES

Definition of products to be licensed:

Definition of existing product, by name, (and any specifics re platform, OS, hardware/software environment, etc.)

Agreed definitions of functionality, features, etc., for a new product, or porting/expansion, etc., to be newly developed.

Limitations on scope of license?

By type of use or bundling with other software or hardware products (VAR, OEM)

By platform or OS

By geography (U.S./North America only, Asia, EU, etc.)

By market channel (publishing, consumer, military, agricultural, etc.)

By time?

By end-user type? (e.g., education, consumer, government, industry)

By media (e.g., CD or floppy, game cartridge, online, etc.)

Object code only, or source code also? How will copies be made and distributed?

As already copied and packaged by licensor? (Distributor, VAR)

Copies to be made by licensee and incorporated into licensee's products (OEM)

Exclusivity:

As to owner, (i.e., can owner license the same rights to other licensees?)

As to distributor, (i.e., can distributor/licensee distribute other competing products (careful of antitrust...))

License of entire program/content, or just some, i.e. anything being reserved (characters, art, routines?)

Any "art" involved?

Characters, designs, names, likenesses

Music?

Do the rights or products license include anything owned by others?

Ownership of rights/warranties to be licensed

Warranty - absolute - best of knowledge

Any new aspects being developed jointly or by/for Licensee-who owns? Rights to exploit what/how?

Deliverables required of licensor

Definition

Schedule - timing

Any payments associated with?

Development Process

Agreed test suites/quality control standards to be applied

Acceptance/rejection

Payments due owner

Technology access fee – nonrefundable

Fixed payments upon milestones reached in dev process?

Advance against royalties:

Nonrefundable

Refundable

Minimum royalties

Percentage of gross revenues/sales, or percentage of "profits"?

Minimum - per - what - period

Royalties

How to define sales

Bundled with other products, etc.

Per "unit" (how to define "unit")

Fixed - per - time - period

Fixed percentage or sliding scale percentage depending on volume of sales

Reserve for returns

Collateral for payments? (security interest and copyright - registration with copyright - UCC-1, etc.)

Names to be used for, or in association with, products?

Any registered trademarks, of owner or licensee?

Who will own rights to use the name/trademark for, or in association with, products

Advertising, promotional materials

Agreed promotional efforts

Press releases/roll-outs

Joint promotion funds

Testing

Alpha

Beta

Quality Control standards

Bug fixes - after how long - who pays for

Licensee- support

Which party responsible - which levels of severity

Definition of level of severity

What/how much included for free? What/how much can Licensor charge for? How much charge?

End-user support

Which party responsible - which levels of severity

Definition of level of severity

Can Licensor charge for? How much?

Updates/upgrades

Distinction between the two - minor/major, keep up with changes in OS, new functionalities, etc.

Right of owner to do updates/upgrades?

Obligation of owner to do update/upgrades?

Which types can owner charge extra for?