

# Authorized Dealer Agreement to Sell MicroBiz Software

CAM Commerce Solutions, Inc. 17075 Newhope  
Street Suite A Fountain Valley, CA 92708 Phone:  
(800) 937-2289 Fax: (714) 241-9893

Please complete all sections of the application, SIGN EACH PAGE and mail or FAX to your Regional Account Manager. Your application will be reviewed and submitted for approval to our dealer program.

Dealer Name: \_\_\_\_\_  
Company Name: \_\_\_\_\_  
Dealer Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_  
\_\_\_\_\_

THIS AUTHORIZED DEALER AGREEMENT ("Agreement") is entered into by and between CAM Commerce Solutions ("CAM") and the dealer identified above ("Dealer"). Intending to be legally bound, the parties agree to all of the terms and conditions set forth in this Agreement. **If printed out, please initial each page before faxing it to us for approval. Thank you.**

## I. APPOINTMENT.

CAM hereby appoints Dealer as a nonexclusive dealer for the most current version of each MicroBiz software product then currently marketed by CAM (the "Software") in the territory described above ("Territory"). Dealer hereby accepts such appointment. Dealer shall have the right to obtain compiled code copies of the Software products, together with the documentation for such products (collectively "Software Copies" or "Software Copy"), from CAM and to market and resell such Software Copies within the Territory to third parties ("EndUsers") that intend to use Software solely for their own internal data processing needs within the Territory. CAM retains full rights (i) to appoint other dealers and resellers in the Territory, and (ii) to directly resell and license the Software in the Territory. Dealer acknowledges and agrees that rentals, leases, timesharing, "silver master" (customer's ability to reproduce software) sales, and site license sales of Software shall be permitted only with the express prior written consent of CAM. All references in this Agreement to the "sale", "selling" or "purchase" of Software or Software Copies shall mean the granting or purchase of a license to use such Software or Software Copies.

## II. TERMS OF PURCHASE OF SOFTWARE COPIES BY DEALER

2.1 Prices. The price to Dealer for each of the Software Copies (the "Per Copy Fee") shall be equal to CAM's then-current standard U.S. domestic list price for such Software Copies. The difference between Dealer's Per Copy Fee and Dealer's price to its customers shall be Dealer's sole remuneration for resale of the Software Copies. CAM has the right at any time to revise its list prices or any additional discount programs without prior notice to Dealer. Such revisions shall apply to all orders received after the effective date of revision. Price increases shall not affect unfilled orders accepted by CAM prior to the effective date of the price increase. Price decreases shall apply to pending orders accepted by CAM prior to the effective date of the decrease. CAM suggested retail prices are optional. Dealer may adopt any pricing structure it wishes.

2.2 Taxes. Amounts payable to CAM under this Agreement are payable in full to CAM without deduction and are net of any sales, use, excise, ad valorem, property, withholding, value added or other taxes or duties imposed by any governmental authority (except taxes based on CAM's net income). Dealer shall pay all such amounts payable with respect to the sale and purchase of Software Copies under this Agreement. When CAM has the legal obligation (independent of this Agreement) to collect such taxes, CAM shall invoice Dealer and Dealer shall pay the appropriate amount to CAM unless Dealer provides CAM with a valid tax exemption certificate authorized by the appropriate taxing authority.

2.3 Shipping. Software Copies delivered under this Agreement shall be sent to Dealer F.O.B. at CAM' address. Risk of loss shall pass to Dealer or its carrier agent at the F.O.B. Point. Unless Dealer instructs otherwise in writing, CAM shall select the carrier. Dealer agrees to bear all custom duties, tariffs, freight, insurance and other shipping expenses, as well as any special packing expenses.

2.4 Terms and Conditions. Unless otherwise agreed in writing, CAM shall determine applicable shipping instructions. CAM may accept or reject any order in whole or part, in its discretion. No terms on purchase orders, invoices or like documents by Dealer shall serve to alter or add to the terms of this Agreement.

2.5 Dealer Copies. Dealer shall have the right to order a reasonable number of Software Copies, marked not for resale, to be used solely for demonstration purposes by Dealer provided Dealer shall pay to CAM the then-current

charges for any such Software Copies (including shipping charges) set forth in CAM's then current U.S. Dealer Price list. The right to use such Software Copies will be governed by the terms of this Agreement and CAM's then current End User agreement. The foregoing shall not apply to Software copies purchase by Dealer for Dealer's own internal commercial use.

### III. LIMITED WARRANTY, NON-INFRINGEMENT.

3.1 Limited Warranty. CAM warrants to Dealer that, for a period of thirty (30) days after the date of delivery to Dealer of a Software Copy, the media on which the Software is furnished under normal use will be free from defects in materials and workmanship. The above warranty does not apply to any Software Copy that has been modified or altered by any party other than CAM, or produced by Dealer, or for any defects caused by any use of the Software Copy in a manner for which it was not designed, or by the negligence of any party other than CAM. CAM does not warrant that use of the Software will be uninterrupted or error free.

CAM'S SOLE LIABILITY WITH RESPECT TO THE EXPRESS WARRANTY SET FORTH IN SECTION 3.1 SHALL BE FOR CAM, AT ITS OPTION, TO CORRECT THE SOFTWARE COPY, REPLACE THE SOFTWARE COPY, OR REFUND THE AMOUNT PAID FOR SUCH SOFTWARE COPY. DEALER SHALL NOT MAKE OR PASS ON TO ANY PARTY ANY WARRANTY OR REPRESENTATION ON BEHALF OF CAM OTHER THAN OR INCONSISTENT WITH THE ABOVE LIMITED WARRANTY. EXCEPT FOR THE EXPRESS WARRANTY SET FORTH ABOVE, CAM GRANTS NO OTHER WARRANTIES, EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE, REGARDING THE SOFTWARE OR THE SOFTWARE COPIES, AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

IV. Records and Audit Rights. Dealer agrees to keep, and to maintain until three (3) years after the last payment under this Agreement is due and paid, complete books, records and accounts with respect to Dealer's resale of and payment for Software Copies hereunder. CAM shall have the right, not exercisable more than twice every twelve (12) months, at its expense to audit such books and records for purposes of verification of the sales and inventory information with respect to the Software Copies. Any such audit shall be conducted by CAM or its representatives during normal business hours. Dealer shall cooperate fully with CAM or its representatives in any such audit. Any underpayment shall be payable immediately together with a service charge of one and onehalf percent (1.5%) per month, or the maximum permitted by law, whichever is less, calculated from the date when such payment should have been made. If any underpayment exceeds ten percent (10%), Dealer shall, in addition to immediate payment of the underpayment plus the service charge referred to above, pay CAM's audit costs and shall permit CAM to conduct quarterly audits until CAM is satisfied that Dealer's records and accounts are in order.

### V. ADDITIONAL OBLIGATIONS OF DEALER

5.1 Marketing Activities. Dealer shall use its best efforts to promote vigorously the marketing and resale of the Software to realize the maximum sales potential for the Software Copies in the Territory. Dealer may purchase from CAM marketing materials at prices listed on CAM's then current U.S. Dealer price list. If Dealer wishes to create its own marketing materials, Dealer shall, prior to its use of such materials, submit such materials to CAM for CAM's approval, which shall not be unreasonably withheld. CAM will review such materials promptly. Dealer warrants that all documentation and verbal descriptions related to Software Copies made by or for Dealer shall be accurate and made in a professional manner. Dealer shall not modify the written warranty furnished by CAM relating to the Software Copy. If CAM so elects, Dealer agrees to sell to CAM all rights to the marketing materials, designs or publicity developed by or for Dealer at a price equal to Dealer's actual cost. Except as otherwise set forth herein, Dealer shall be solely responsible for all costs and expenses related to advertising, marketing, promoting and reselling the Software in the Territory.

5.2 Competitive Products. In consideration for its appointment, Dealer agrees to provide CAM with prior written notice if Dealer intends to market and resell within the Territory any software products from other vendors (including Dealer) which, in CAM's opinion, compete with CAM software products or which perform similar functions. Upon receipt of such notice, CAM may terminate this Agreement. Dealer shall not advertise, or otherwise promote or commercialize outside the Territory the fact that Dealer is a licensed dealer of the Software, except that the Dealer may advertise on the Internet.

5.3 End User License. Prior to providing any End User with a Software Copy, Dealer shall insure that all Software Copies sold or licensed to End Users contain the terms and conditions set forth in CAM's then current End User agreement, or such other terms and conditions as CAM and Dealer may agree as appropriate for resale of the Software Copies in the Territory. Dealer must deliver to End User the original Software Copies, Documentation and packaging prior to completed installation of the Software. Within ten (10) days after Dealer's delivery of a Software Copy to an End User, Dealer shall send to CAM a duplicate original, signed by the End User, of the then current CAM form of End User License Agreement fully completed. CAM may require Dealer to identify the End User(s) at time of Dealer's order.

5.4 Administration and Support. CAM reserves the right to require Dealer to maintain and monitor electronic mail between Dealer and CAM. Dealer may elect to have CAM support its EndUsers or may elect to offer its own support to EndUsers in accordance with then current CAM Software support policies as published from time to time. Whether or not Dealer elects to offer Software support to EndUsers, Dealer shall inform all EndUsers of the availability of support directly from CAM and permit EndUsers to elect to obtain Software support directly from CAM. Dealer agrees to maintain a place of business in the Territory and to respond promptly to all inquiries addressed to Dealer from customers within the Territory.

5.5 Dealer Staff Training. Upon purchase of a Dealer Kit, CAM shall provide, in accordance with CAM's then standard policy, training to Dealer's staff regarding the use and operation of the Software and any updates thereto. Dealer shall use its best efforts promptly to attend such training. Dealer may purchase additional training at CAM's then current training rates.

## VI. TERM AND TERMINATION

6.1 Term. This term of this Agreement shall commence on the date of its final execution by an authorized officer of CAM and shall continue in force for three (3) years (the "Fixed Term") unless terminated earlier under this Section 7. If both CAM and Dealer do not renew this Agreement in writing within sixty (60) days before the end of the Fixed Term, this Agreement shall not be renewed and shall automatically terminate at the end of the Fixed Term and be of no further force or effect. The parties agree that, notwithstanding the number of times this Agreement may be renewed, it is not the intention that it be construed as a contract of indefinite duration.

### 6.2 Termination for Cause.

a. If either party defaults in the performance of any provision of this Agreement then the nondefaulting party may terminate this Agreement without prior notice. Without limitation, Dealer's failure to provide proper support to an End-User shall be cause for termination.

b. This Agreement shall terminate, without notice, (i) upon the institution by or against Dealer of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Dealer's debts, (ii) upon Dealer's making an assignment for the benefit of creditors, (iii) upon Dealer's dissolution, or (iv) upon the sale, transfer, hypothecation or other disposition of fifty percent (50%) or more of the stock or ownership of Dealer.

6.3 Termination for Convenience. Either CAM or Dealer may terminate this Agreement at any time, with or without cause, upon thirty (30) days prior written notice to the other party.

### 6.4 Effect of Termination.

a. Upon termination of this Agreement for any reason, CAM shall not be liable to Dealer for, and Dealer hereby expressly waives all rights to compensation, indemnities or damages of any kind, whether on account of the loss by Dealer of present or prospective profits, commissions, anticipated orders, expenditures, investments or commitments made in connection with this Agreement, goodwill created, or on account of any other reason. Upon termination of this Agreement for any reason, Dealer shall deliver to CAM, within ten (10) days, the name and address of each Software customer of Dealer.

b. Upon termination of this Agreement for any reason whatsoever, Dealer shall immediately pay CAM all amounts owed to CAM. Late payment fees shall apply from the effective date of termination. In addition, CAM shall have the right to purchase, at its sole election, and Dealer shall deliver C.O.D. within 10 days of the date when notice of such election is sent, any or all Software Copies then in Dealer's inventory at cost paid by Dealer less CAM's applicable restocking fee and less any credits in CAM's favor.

c. If, under any applicable law, dealers are entitled to any compensation upon termination for cause or the expiration of a fixed term of their dealer agreements, this Agreement shall be deemed a contract for a duration of not more than two years, and shall expire upon the expiration of such two years after the initial effective date of this Agreement. To the extent any such compensation is deemed earned as a matter of law, the parties shall readjust all prices so that the prices charged to the Dealer shall be decreased by the amount necessary to give such compensation to the Dealer as part of the overall pricing and compensation arrangements between the parties, and no additional payments shall be due Dealer from CAM.

6.5 Survival of Certain Terms. The provisions of Sections 2.2, 3, 4, 7, 8, 9.2, 9.3, 9.4, 9.11 and 9.12 shall survive the termination of this Agreement for any reason. All other rights and obligations of the parties shall cease upon termination of this Agreement.

VII. LIMITED LIABILITY. EXCEPT AS SET FORTH IN SECTION 3.2, CAM'S TOTAL LIABILITY UNDER ANY CAUSE OF ACTION ARISING UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS RECEIVED BY CAM FROM DEALER UNDER THIS AGREEMENT IN THE TRANSACTION GIVING RISE TO THE LIABILITY. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER OR TO ANY OTHER THIRD PARTY, FOR ANY LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY OTHER INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING

FROM THE USE OF THE LICENSED PRODUCTS, OR THE FAILURE OF THE LICENSED PRODUCTS TO PERFORM, OR FOR ANY OTHER REASON, OR ARISING UNDER ANY CAUSE OF ACTION; PROVIDED, HOWEVER, THAT THIS LIMITATION SHALL NOT APPLY TO ANY BREACH OF THE CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION 8.2 OR TO DEALER'S EXCEEDING ITS AUTHORITY GRANTED HEREIN. IT IS ACKNOWLEDGED BY THE PARTIES THAT NOTHING IN THIS SECTION 7 SHALL LIMIT DEALER'S OBLIGATION TO PAY AMOUNTS ALREADY DUE AND OWING TO CAM.

#### VIII. PROPRIETARY RIGHTS AND CONFIDENTIALITY

8.1 Proprietary Rights. Dealer agrees that CAM owns all right, title, and interest in and to all patents, trademarks, trade names, inventions, copyrights, knowhow and trade secrets ("Proprietary Rights") relating to the design, manufacture, operation, documentation or service of the Software, the Software Copies and all translations thereof. The use by Dealer of any of these Proprietary Rights is authorized only for the purposes herein set forth, and upon termination of this Agreement for any reason such authorization shall cease. Dealer agrees to assign (or cause to be assigned) and hereby does assign fully to CAM all worldwide right, title and interest to all derivatives and modifications of the Software conceived, made or discovered by Dealer, solely or in collaboration with others, and to execute all documentation reasonably necessary to effect assignment of, any and all such intellectual property rights to CAM.

8.2 Confidentiality. Each party hereto acknowledges that by reason of its relationship to the other hereunder it will have access to certain information and materials concerning the other party's business, plans, customers, technology and products that are confidential and of substantial value to such party, which value would be impaired if such information were disclosed to third parties. Without limiting the foregoing, each party agrees that it will not use in any way for its own account or the account of any third party, nor disclose to any third party, any information received by it which is marked confidential or which is disclosed orally and confirmed in writing to be of a confidential nature within thirty (30) days after disclosure by the other party ("Confidential Information"). Each party shall protect the confidential nature of such Confidential Information with at least the level of care it takes to protect its own confidential information of similar value, but in no event with less than reasonable care. The parties agree that the Software contains Confidential Information belonging to CAM. Dealer shall not publish any technical description of the Software other than the description published by CAM.

8.3 Trademarks and Trade Names. During the term of this Agreement Dealer shall have the right to indicate to the public that it is an authorized dealer for CAM's MicroBiz Software products and to advertise (within the Territory) such Software under the trademarks and trade names that CAM may adopt from time to time ("Trademarks"), provided that all representations of the Trademarks that Dealer intends to use shall first be submitted to CAM for approval (which shall not be unreasonably withheld). Nothing herein shall grant to Dealer any right, title or interest in or to the Trademarks. Upon termination of this Agreement, Dealer shall cease to use all Trademarks.

8.4 Proprietary Notices and Related Matters. Dealer shall not (and shall require that its EndUsers do not) remove, alter, cover or obfuscate any Proprietary Rights notices placed or embedded by CAM on or in any Software Copies. Dealer shall not, and shall not authorize any third party to, modify, alter, reverse engineer, disassemble or decompile the Software.

8.5 Notification of Unauthorized Use. Dealer shall promptly notify CAM in writing upon its discovery of any unauthorized use or infringement of the Software, the Proprietary Rights or the Trademarks. CAM shall have the sole and exclusive right to bring infringement actions or proceedings against third parties, and, in the event that CAM brings such an action or proceeding, Dealer shall cooperate and provide full information and assistance to CAM and its counsel in connection with any such action or proceeding.

8.6 Return of Materials. All designs, drawings, formulas or other data, photographs, samples, literature, and sales aids of every kind relating to Software shall remain CAM property. Within thirty (30) days after the termination of this Agreement, Dealer shall ship such items to CAM as CAM may direct, at CAM's expense. Dealer shall not make or retain any copies of any Confidential Information which may have been entrusted to it.

8.7 Injunctive Relief. The parties agree that any violation by Dealer of any of the proprietary rights or confidentiality restrictions set forth in this Section 8 could cause CAM irreparable harm without adequate remedy at law. CAM shall be entitled to seek injunctive relief against any such violation or intended violation by Dealer.

#### IX. GENERAL PROVISIONS

9.1 Independent Contractors. CAM and Dealer are independent contractors. Nothing contained in this Agreement shall be construed to (i) give either party the power to direct and control the daytoday activities of the other, (ii) constitute the parties as agents, partners, joint venturers, coowners or otherwise as participants in a joint or common undertaking, or (iii) allow Dealer to create or assume any obligation on behalf of CAM for any purpose whatsoever.

9.2 Indemnity. Dealer shall be solely responsible for, and shall indemnify and hold CAM free and harmless from, any and all claims, damages or lawsuits (including attorneys' fees) arising out of the acts or omissions of Dealer or its employees or agents and from any claims or liabilities arising out of or connected to any breach by Dealer of its obligations under this Agreement, including, without limitation, any penalties, interest, attorneys' fees and disbursements incurred by CAM or any person relying upon Dealer's obligations under this Agreement.

9.3 Governing Law. The rights and obligations of the parties under this Agreement shall be governed by and construed under the law of the State of California, without reference to conflict of laws principles.

9.4 Entire Agreement. This Agreement sets forth the entire agreement and understanding between the parties relating to the subject matter hereof and merges all prior discussions between them. No modification of or amendment to this Agreement shall be effective unless in writing signed by the party to be charged. Notwithstanding anything to the contrary, CAM may modify the terms, upon 30 days prior notice, such as in a Dealers' Monthly newsletter, fax, electronic mail or other notice.

9.5 Notices. Except as set forth in Section 9.4, any notice required or permitted by this Agreement shall be in writing and shall be sent by prepaid registered or certified mail, return receipt requested, addressed to the other party at the address shown at the beginning of this Agreement or at such other address for which such party gives notice hereunder. Such notice shall be deemed to have been given five (5) days after deposit in the mail, except that notice of change of address shall be effective only upon receipt.

9.6 Force Majeure. Nonperformance of either party (except for payment obligations) shall be excused to the extent that performance is rendered impossible by strike, fire, flood, act of God, governmental acts, failure of suppliers or any other reason beyond the reasonable control of the nonperforming party.

9.7 No Waiver. The failure of either party to enforce at any time any of the provisions of this Agreement, or the failure to require at any time performance by the other party of any of the provisions of this Agreement, will in no way be construed to be a present or future waiver of such provisions, nor in any way affect the validity of such provision, or the ability of either party to enforce each and every such provision thereafter.

9.8 Nonassignability and Binding Effect. Dealer agrees that its rights and obligations under this Agreement may not be transferred or assigned directly or indirectly without the prior written consent of CAM. Subject to the foregoing sentence, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

9.9 Compliance With Laws. Dealer shall comply with all laws and regulations applicable to Dealer with respect to (i) the Software Copies, and (ii) the conduct of business generally. Noncompliance by Dealer or its employees or agents with this Section 10.10 shall be deemed to constitute a material default under this Agreement, justifying termination for default under Section 6.2.

9.10 Severability. If any provision of this Agreement becomes or is declared by an arbitrator or court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision. The parties agree to negotiate in good faith and be bound by a substitute, valid and enforceable provision that most nearly effects the parties' intent.

9.11 Payment. CAM shall submit an invoice to Dealer upon each shipment of Software Copies ordered by Dealer. The invoice shall cover Dealer's Per Copy Fees for the Software Copies in a given shipment plus any freight, taxes and other applicable costs initially paid by CAM but to be borne by Dealer. The full invoiced amount shall be paid by Dealer prior to delivery of all Products. Credit terms, when approved by CAM in writing, require payment within twenty (20) days of the date of invoice plus a late payment fee of 1.5% per month, or lesser amount required by law, on amounts not paid within such twenty (20) days. Dealer shall pay all of CAM's costs and expenses (including reasonable attorneys' fees) to enforce and preserve CAM's collection rights under this Agreement. For Dealer's telephone orders using a credit card, this Agreement constitutes Dealer's signature (or its ordering party's signature) on file with CAM.

9.12 Returns. Dealer shall inspect all merchandise promptly upon receipt thereof and may reject any item that contains any significant reproducible defects which render such merchandise unusable. To reject merchandise, Dealer shall (i) within ten (10) days of receipt of such merchandise return such rejected merchandise to CAM, freight prepaid and properly insured. No returns are allowed except for unopened products returned within twenty (20) days of delivery. All returns are subject to CAM's then applicable standard restocking fee as well CAM's original shipping and handling fees and must be preauthorized and accompanied a CAM return merchandise authorization number. Dealer will prepay all return shipping and handling.

ACCEPTED BY CAM: ACCEPTED BY DEALER: By:

By: \_\_\_\_\_ Print

Print Name: \_\_\_\_\_ Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Title: \_\_\_\_\_ Date: \_\_\_\_\_  
Date: \_\_\_\_\_

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