

Software Beta Site Agreement

This Software Beta Site Agreement (the "Agreement"), effective as of _____, 1995 (the "Effective Date"), is made and entered into between Elsinore Technologies, Inc., a Delaware Corporation with principle offices at 7200 Falls of the Neuse Rd., Suite 202, Raleigh, NC 27615 (the "Company") and _____ ("Licensee").

WHEREAS, the Company is developing new computer software and Licensee is interested in serving as a beta test site for such software for the Company;

NOW, THEREFORE, in consideration of the premises, and the mutual obligations undertaken herein, the parties hereby agree as follows.

1. Scope

1.1 Right to Use. Subject to the terms and conditions of this Agreement, the Company grants Licensee a nonexclusive, nontransferable license to use the pre-production version of the computer software product(s), in object code form, as set forth on Exhibit A attached hereto, including all supporting documentation ("Beta Software") only for evaluation by Licensee. Licensee shall use the Beta Software only at Licensee's premises at the address set forth above. Licensee agrees that it will not reverse assemble, decompile, or otherwise attempt to derive source code from the Beta Software.

1.2 Copies. Licensee shall not copy the Beta Software, in whole or in part, except as necessary to use or archive the Beta Software.

1.3 Evaluation. Licensee will install or, where applicable, will allow the Company to install the Beta Software, and will cooperate and consult with the Company in the evaluation of the Beta Software based on Licensee's operation, use, and testing of the Beta Software.

2. Rights in Beta Software.

2.1 Ownership. The Company shall retain sole and exclusive ownership of all right, title and interest in and to the Beta Software. Licensee shall physically identify the Beta Software and any related materials as owned by the Company.

2.2 Further Assurances. Licensee hereby assigns to the Company all right, title and interest in and to all reports, designs, inventions, specifications and other materials developed under this Agreement regarding improvement of the Beta Software, whether prepared by the Company or Licensee, during the course of or as a result of this Agreement. All such reports, designs, inventions, specifications and other materials shall be the Company's confidential information and shall be subject to the restrictions in Section 3 below.

3. Confidential Information. Licensee recognizes that the existence, content, purpose, design, and function of the Beta Software are highly proprietary and confidential in nature and that disclosure of that information to third parties would cause substantial detriment to the Company and to its business. Licensee agrees that neither it nor any of its employees will use for their own account or for the account of any third party or disclose to any third party any information whatsoever regarding the existence, content, purpose, design or function of the Beta Software. The parties understand, however, that any information (i) that is already public knowledge or (ii) that was known to Licensee prior to its negotiations with the Company or (iii) that is hereafter rightfully furnished to Licensee by a third party without restrictions on disclosure is not subject to this confidentiality requirement. Licensee agrees to require every Licensee employee who will have access to, or use of, the Beta Software to execute (in advance of and as a condition to such access, use or knowledge) a confidentiality agreement at least as protective of the Company as the terms of this Section 3.

4. Warranty Exclusion. The parties expressly recognize that the Beta Software is a newly developed, untested program that may contain "bugs" (as the term is used in the industry) and that may not function as intended. THE BETA SOFTWARE IS LICENSED "AS IS." THE COMPANY MAKES NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE BETA SOFTWARE, AND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

5. Term and Termination. This Agreement and the license granted herein shall terminate six (6) months, (180) days from the Effective Date unless the parties agree in writing to an extension of that term. The Company may terminate this Agreement and the license granted hereunder at any time, upon written notice, if Licensee fails to comply with any of the terms and conditions of this Agreement. Licensee may terminate this Agreement upon notice to the Company. Within thirty (30) days of termination or expiration of this Agreement, Licensee shall return or destroy, at the Company's discretion, all copies of the Beta Software and any related materials. The provisions of Sections 2, 3, 4, and 6 shall survive any termination or expiration of this Agreement.

6. Limitation of Liability. IN NO EVENT WILL THE COMPANY BE LIABLE FOR DAMAGES, INCLUDING LOSS OF DATA, LOST PROFITS, COST OF COVER OR OTHER SPECIAL, INCIDENTAL, CONSEQUENTIAL, DIRECT OR INDIRECT DAMAGES ARISING FROM THE USE OF THE BETA SOFTWARE OR ACCOMPANYING MATERIALS, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY. THIS LIMITATION WILL APPLY EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE PARTIES ACKNOWLEDGE THAT THIS IS A REASONABLE ALLOCATION OF RISK.

7. General. This Agreement is not assignable. Licensee shall not assign or sublicense or otherwise transfer the rights or license granted hereunder without the prior written consent of the Company. This is the entire agreement between the parties relating to the subject matter hereof and may only be modified in writing signed by both parties. This Agreement shall be governed by the laws of the State of Delaware without reference to conflicts of law principles. In any dispute arising out of this Agreement, the Company and Licensee each consent to the jurisdiction of both the state and federal courts of Wake County, North Carolina, and agree to bring any actions arising out of this agreement in such courts. If any provision of this Agreement is held unenforceable, the remainder of this Agreement will continue in full force and effect. This Agreement may be executed in counterparts.

LICENSEE

COMPANY

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____