

ON-LINE DATA SOLUTIONS, INC. OEM SOFTWARE AGREEMENT

1. Partners with On-Line Data Solutions, Inc, heretofore, ODS, are required to comply with, and by using any such facilities, agree to comply with and be subject to On-Line Data Solutions OEM Software Agreement, hereby known as the "Agreement". On-Line Data Solutions reserves the right to amend these Conditions and Policies at any time.

2. Prices

2.1. All prices for software provided by ODS to OEM partner are in US dollars.

2.2. OEM partner may set the prices paid to it by customers. ODS has the right to revise its prices to OEM partner with thirty (30) days written notice. Such revisions shall apply to orders received by ODS on or after the effective date of the revision.

2.3. OEM partner shall be responsible for paying all taxes of any nature which become due with regard to ODS software, except for taxes on ODS's income, irrespective of which party may be responsible for reporting or collecting such taxes.

2.4. OEM partner shall receive a fifty (50) percent discount off then published prices of ODS software.

2.5. OEM software must be purchased in quantities of 10.

3. Payment and Terms

3.1. Payment shall be made in US dollars to ODS into the account designated by ODS, or as may otherwise be agreed in writing by the parties. Payments are due upon presentation of software serial number. If due to bank charges, transfer fees, or the like, ODS should receive less than its invoice amount, ODS will re-invoice OEM Partner for the shortfall. Should payment in full of any invoice (aside from such shortfalls) not be received by ODS within thirty (30) days after presentation, ODS will impose a debt service charge amounting to one percent (1.5%) of the overdue balance for each month or fraction thereof the overdue amount remains unpaid. In the event that any amount remains unpaid sixty (60) days after presentation of invoice, ODS may discontinue, withhold, or suspend services to OEM partner.

3.2. Failure of OEM partner's clients to pay in no way relieves the Partner's obligations to make full payment.

3.3. OEM Partner hereby agrees to pay any and all attorney fees, court costs, and related expenses incurred by ODS in the collection of any amount due it.

4. Duties of OEM Partner

4.1. OEM partner will bundle all ODS software with it's own commercial software.

4.2 OEM partner may not sell OEM software as the equivalent ODS software product.

4.3. OEM partner shall not modify, adapt, translate, reverse engineer, decompile,

disassemble or otherwise attempt to discern the source code of the ODS products purchased.

4.4. OEM partner may not reproduce or publicly display any copyright or trademark material belonging to ODS.

4.5. OEM partner will provide all technical support to its end-users.

4.6 In carrying out this agreement, OEM Partner will conduct itself in an ethical and lawful manner, will exercise its best efforts to achieve a high level of customer satisfaction, and will do nothing to bring the reputation of ODS into disrepute.

5. Duties of ODS

ODS will provide technical support to OEM Partner for ODS program code only. All companion source code written by OEM partner or third parties is excluded.

6. Limitation of ODS's Obligation & Liability

6.1. ODS shall not be liable to OEM Partner or any of its customers, including, but not limited to, losses or damages of any and every nature, resulting from the loss of data, inability to access Internet, or inability to transmit or receive information, caused by, or resulting from, delays, non - deliveries, or service interruptions whether or not caused by the fault or negligence of ODS.

6.2. ODS's liability to OEM Partner, and any end user of ODS software is limited to the amount paid to and received by ODS for software not accepted. In no event shall ODS be liable to OEM Partner, or any end user or any other entity for any special, consequential, or other damages, however caused, whether for breach of contract, negligence or otherwise, even if ODS has been advised of the possibility of such damage.

6.3. OEM Partner will take all necessary measures to preclude ODS from being made a party to any lawsuit or claim regarding ODS software provided to any OEM Partner or end user. OEM Partner hereby agrees to indemnify and hold harmless ODS from any and all claims of whatever nature brought by any of OEM Partner's customers against ODS in excess of the remedy set forth in paragraph 4.

7. Confidentiality

OEM Partner acknowledges that by reason of its relationship with ODS hereunder, it may have access to certain information and materials relating to ODS's business, plans, customers, software technology, and marketing strategies that is confidential and of substantial value to ODS, which value would be impaired if such information were disclosed to third parties. OEM Partner agrees that it will not use in any way for its own account nor for the account of any third party, nor disclose to any third party, any such information revealed to it by ODS. OEM Partner further agrees that it will take every reasonable precaution to protect the confidentiality of such information. In the event of termination of this agreement, there shall be no use or disclosure by the OEM Partner of any such confidential information in its possession, and all confidential materials shall be returned to ODS or destroyed. The provisions of this section shall survive the termination of the agreement for any reason. Upon any breach or threatened breach of this section, ODS shall be entitled to injunctive relief, which relief

shall not be contested by OEM Partner.

8. Relationship of the Parties

The relationship between ODS and OEM Partner is that of vendor and vendee. The parties are independent contractors and neither party is an employee, agent, partner or joint venture of the other. This agreement is a commercial agreement between businesses, not a consumer agreement. OEM Partner has no authority, apparent or otherwise, to contract for or on behalf of ODS, or in any other way legally bind ODS in any fashion, nor shall OEM Partner be authorized to make any representations about ODS or its software other than to set forth ODS's responsibilities as outlined in this agreement.

9. Disputes

The parties shall attempt to resolve all disputes arising out of this agreement in a spirit of cooperation without formal proceedings. Any dispute which cannot be so resolved (other than the collection of money due on unpaid invoices) and other than the injunctive relief referred to in paragraph 8 shall be subject to arbitration upon written demand of either party. Arbitration shall take place in Long Island, NY, or at another location if the parties so agree. The arbitration shall follow the guidelines established by the American Arbitration Association.

10. Terms & Termination:

This agreement shall run for one (1) year. This Agreement shall automatically renew for a similar term thereafter, until terminated by either party with 30 days prior notice unless terminated in one of the following ways:

10.1. By either party, by notifying the other in writing by December 1 of any given year that this agreement will not be renewed.

10.2 **By ODS**, upon thirty (30) days written notice, if

10.2.2 OEM Partner becomes more than sixty (60) days in arrears in payment of its account with ODS;

10.2.2 OEM Partner breaches any material and substantial provision of this agreement and has not cured by the end of the 30 days

10.2.3. There are instituted bankruptcy or insolvency proceedings against OEM Partner, which are not vacated within sixty (60) days from the date of filing;

10.2.4. OEM Partner institutes voluntary bankruptcy or insolvency proceedings, or otherwise admits insolvency; or

10.2.5. OEM Partner makes an assignment of all or part of its assets for the benefit of creditors

10.2.6. By ODS immediately, if OEM Partner attempts to assign all or any part of this Agreement without ODS's prior written approval;

10.2.7. By ODS immediately, if OEM Partner fails to cause ODS to be informed in

writing immediately on the happening of any event specified in this section;

10.3. **By OEM Partner**, immediately upon giving written notice to ODS, if

10.3.1. There are instituted bankruptcy or insolvency proceedings against ODS, which are not vacated within sixty (60) days from the date of filing;

10.3.2. ODS institutes voluntary bankruptcy or insolvency proceedings, or otherwise admits insolvency;

10.3.3. ODS makes an assignment of all or part of its assets for the benefit of creditors; or

10.3.4. ODS fails to cause OEM Partner to be informed in writing immediately on the happening of any event specified in this section. The provisions of paragraphs 7, 9, 11, 12 and 13 survive any termination of this agreement.

11. Nonassignability

OEM Partner's rights and obligations under this agreement may not be transferred or assigned directly or indirectly without the prior written consent of ODS, which consent shall not be unreasonably refused.

12. Partial Invalidity

If any provision of this agreement is held to be invalid by a court of competent jurisdiction, then the remaining provisions shall nevertheless remain in full force and effect. ODS and OEM Partner agree to renegotiate in good faith any term held invalid and to be bound by mutually agreed substitute provision.

13. Applicable Law, Jurisdictional Matters

This agreement takes effect when accepted by ODS in New York. It is to be governed by and construed under the laws of the State of New York and the United States of America. The federal and state courts of the State of New York shall have exclusive jurisdiction to adjudicate any non-arbitrable dispute arising out of this agreement. OEM Partner hereby expressly consents to (1) the jurisdiction of the courts of New York and (2) service of process being effective upon it by registered mail sent to the address set forth at the beginning of this document, as may be changed from time to time by written notice actually received by ODS. ODS will comply with all orders issuing from tribunals having jurisdiction over ODS, and that such compliance could affect the services provided by ODS to OEM Partner or its customers; OEM Partner agrees to hold ODS harmless from any claims of OEM Partner or OEM Partner's customers resulting from such compliance.

14. Notices

Except with respect to service of process as set forth in paragraph 15, all notices may be sent by email, fax, or express mail to the email address, fax number, or address most recently provided and will be effective upon transmission. Evidence of successful transmission shall be retained.

15. Entire Agreement, Modifications

This agreement sets forth the entire agreement and understanding between the parties and merges all prior discussion between them. ODS may make changes to this agreement upon thirty (30) days written notice to OEM Partner, advising of the change and the effective date thereof. Utilization of ODS products by OEM Partner and/or its customers following the effective date of such change shall constitute acceptance by OEM Partner of such change(s), unless OEM Partner objects in writing to such changes, in which case the changes shall not take effect until there is written consent to other arrangements by both parties.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, do hereby execute this instrument, with each signatory warranting its authority to enter into this agreement on behalf of the party it represents.

I have read and accepted the above terms and conditions.

ON-LINE DATA SOLUTIONS, INC.
1919 MIDDLE COUNTRY ROAD
SUITE 204
CENTEREACH, NY 11720

OEM PARTNER: _____
ADDRESS: _____

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

Please mail to:

On-Line Data Solutions, Inc.
1919 Middle Country Road, Suite 204
Centereach, NY 11720

And fax to: (631) 737-9539 or email to: sales@coolfusion.com

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