This Independent MSP Agreement (“Agreement”) is made this \_\_ , (‘the Effective

Date”), by and between (“Company”) located at (“Company address”) and (“MSP”) with offices at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Whereas Company desires to engage MSP on a non-exclusive basis to market and sell the products of Company, namely (“Products”), and MSP desires to engage in such services, MSP and Company (also referred to herein as “Party” in the singular and “Parties” in the plural) desire to define the terms and conditions applicable to MSP’s performance of such services. Company and MSP hereby agree as follows:

1. **Length of Agreement.** The Parties agree that this Agreement will last for a term of one (1) year, unless otherwise terminated by either Party as provided in this Agreement. This Agreement may be renewed for successive one (1) year terms at the sole discretion of Company. Should Company determine to renew the Agreement. Company will send MSP notice of renewal not less than thirty (30) days prior to the end of the then current term.

2**. Appointments and Acceptance.** The Parties agree with regards to the appointment of MSP under this Agreement as follows:

A. Company hereby appoints MSP as one of Company's non-exclusive MSPs to (i) identify to Company sales prospects, and (ii) solicit orders for Products as marketed from time to time by Company. MSP acknowledges that each customer must accept electronically the Company’s form of end user license agreement (“EULA”) as a condition to receiving access to the Company’s Products. MSP shall not take any act, or omit to take an act that would have the impact of invalidating the terms of the EULA.

B. MSP shall identify specific sales prospects, where he/she has contacts likely to generate sales of the Company’s Products, within its designated territory identified on Exhibit A (the “Territory”) or industry specialty due to long-term relationships or prior business contacts. The MSP shall register all opportunities with the Company by submitting the name of the prospect, the contact MSP has, and a plan for marketing the Products to each prospect (each such registered opportunity, a “Qualified Lead”). If a Qualified Lead has been registered with the Company for a period of six (6) months or longer by MSP, Company may request that MSP provide additional detailed information as to why such Qualified Lead should remain on MSP’s registered prospects, and Company may require MSP to delete the prospect from MSP’s list of prospects.

C. Company shall have the right, from time to time, at its sole discretion, to change the scope of the Territory. In any such instance, Company shall issue a new Exhibit A to MSP reflecting such change, which shall, as of the effective date stated thereon, supersede the prior Exhibit A. MSP acknowledges and agrees that it neither has, nor will acquire, any vested or proprietary right or interest with respect to the Territory, any Company customers or prospects in the Territory, or any Company customer lists. MSP further acknowledges and agrees that any goodwill accruing in the Territory during the term of this Agreement with respect to Company or Company Products shall be considered the property of Company rather than MSP.

D. MSP hereby accepts its appointment hereunder.

E. MSP agrees that Company shall have absolute discretion as to whether or not to accept any customer proposed by MSP. If Company does not accept the Qualified Lead in writing within (3) Business Day period, the Qualified Lead shall be deemed rejected.

3. **Responsibilities of MSP.** MSP shall satisfy the following responsibilities at all times during the term of this Agreement:

A. MSP shall use best efforts to provide services, in a manner consistent with the standards generally observed by a professional in the industry to which such services performed can be classified, in accordance with the terms and conditions set forth herein.

B. MSP shall exhibit and conduct behavior in a manner consistent with the high image, reputation and credibility of Company and Company Products, and shall engage in no activities that reflect adversely on Company or Products.

C. MSP will use best efforts to promote the Company’s Products, and to achieve sales of the Company’s Products.

D. MSP will comply with all applicable laws in its performance of this Agreement.

4. **Scope and Limitations of MSP's Authority.** The Parties agree as follows with regards to the scope and limitations of MSP’s authority under this Agreement:

A. MSP has authority to solicit and accept orders on behalf of MSP only. For Qualified Leads in which the Company will be making sales directly, MSP may not accept orders.

B. MSP has no authority to bind Company to any agreements, bids or sales orders.

C. MSP shall adopt Company’s price terms, credit terms, sales programs and other terms and conditions of sale governing transactions as specified on the website in the Pricing section, including, without limitation, the EULA. MSP shall have no authority to modify any such prices, credit terms, sales programs or other terms or conditions of sale or terms of the EULA without prior authorization from Company. Company shall have the right, from time to time, at its sole discretion, to change the terms of the effective date stated thereon, supersede the prior Exhibit B. Any Company Products ordered by MSP prior to or during the ninety (90) day period following notice from Company of any change in Exhibit B will be invoiced in accordance with the then-current price.

D. MSP acknowledges that Company may, in its sole and absolute discretion: (i) discontinue the availability of the Products and services or make whatever additions, deletions or other changes to the Products and services it deems necessary, desirable or appropriate; (ii) change the qualifications and criteria for its customers; and (iii) change the terms of any EULA.

E. MSP at no time shall engage in any unfair trade practices with respect to Company or Products, and shall make no false or misleading representations with respect to Company or Products. MSP shall refrain from communicating any information with respect to guarantees or warranties regarding Products, except such as are expressly authorized by Company.

 F. MSP shall not use Company's tradenames or trademarks or any names closely resembling same as part of MSP's corporate or business name, or in any manner which Company, in its sole discretion, may consider misleading or otherwise objectionable.

5. **MSP Product Purchases.** The Parties agrees as follows with regards to the purchases of

Company Products by MSP under this Agreement:

A. MSP shall purchase Company Products at the wholesale pricing level as specified in the current Exhibit B.

B. Company will invoice MSP for Company Products purchased by MSP. MSP understands and agrees that Company will not deliver Company Products to MSP but will make such Products available to customers (subject to such customers entering into the EULA) within a reasonable period following receipt of payment for such Company Products.

C. MSP shall not have access to the Products; access to the Products will be provided for customer upon execution of the EULA and receipt of payment. MSP understands and agrees that Company is not liable to MSP for any loss of access to, or inability to sell Company Products.

6. **MSP Referrals.** The Parties acknowledge that certain of MSP’s prospects may desire to contract directly with Company with respect to purchase of and payment for the Products. Company agrees to pay to MSP a referral fee for Qualified Leads purchasing directly from Company, to be negotiated.

7. **Ownership of Intellectual Property.**

During the term of this Agreement, Company grants to MSP a non-exclusive, non-transferable license to use and display Company’s trademarks, service marks, trade names logos, and other identifiers (“Marks”) only in connection with the marketing and promotion of the Products as authorized hereunder. Any such use shall be in accordance with Company’s policies regarding the usage of its Marks. Subject to the express license granted to MSP above, MSP agrees that Company owns all rights, title and interest in and to the Marks. MSP shall not, at any time during the term of this Agreement or thereafter, dispute or contest, directly or indirectly, Company’s right and title to the Marks or the validity thereof or assist any third party to do so. MSP shall not apply for or register the Marks or any confusing similar trademarks or service marks during the term or thereafter. Referral Partner acknowledges it shall not acquire any rights in the Marks hereunder, except for the license granted herein. All goodwill arising from the use of the Marks by Referral Partner shall inure to the benefit of Company and Company shall own all trademark and service mark rights, if any, in the Marks created by such uses.

The Parties hereto agree that all intellectual property rights to Company Products are solely vested in Company. MSP shall make no claims to Company Products nor shall MSP make any such claims in any ideas, suggested modifications to products, or any other information or materials delivered by MSP (“Work Product”) that result from MSP’s services pursuant to this Agreement. The Parties agree that such Work Product is considered to be a “work for hire” and shall be therefore exclusively vested in Company and/or automatically assigned to Company. MSP agrees to promptly execute any documents necessary for Company to perfect its rights in such Work Product.

8. **Support of Company Products.** The Parties agrees as follows with regards to the support of

Company Products under this Agreement:

A. Company shall use commercially reasonable efforts to provide MSP with internal Product support for MSP, its employees and contractors.

B. MSP shall provide first tier end user support for all Company Products, which MSPs

 sells.

9. **Employees and Contractors.** MSP agrees that it will ensure that its employees and contractors performing services under this Agreement comply with this Agreement, including, but not limited to, having such employees sign documents assigning intellectual property rights to Company to the extent MSP is required to assign such rights to Company. MSP’s obligations pursuant to this section shall survive the termination/expiration of this Agreement.

10. **Fees; Taxes.**

In the event Company signs an agreement with a Qualified Lead during the term of this Agreement, then, subject to the terms of this Agreement, Company shall compensate MSP with the Referral Fee as set forth in Exhibit B attached hereto and incorporated herein by reference. MSP shall not be entitled to any reimbursement of any expenses or for any other payment or compensation of any type other than as set forth in Exhibit B.

MSP shall be responsible for payment of all sales, use, and excise taxes relating to the MSP’s services and MSP’s sale of any Products to customers under this Agreement.

11. **Limitation of Liability and Exclusion of Certain Remedies. To the maximum extent permitted by applicable law, under no circumstance, regardless of the basis of the claim, shall the total cumulative liability of Company to MSP exceed the total amount of completed sales from MSP within the last six (6) calendar months. In no event shall Company be liable to MSP for consequential, special, incidental, or punitive damages (including, but not limited to, legal costs and fees) from any claim asserted against Company or by any third Party through any Party to this Agreement. The terms and provisions of this section shall survive the termination and/or expiration of this Agreement.**

12. **Confidentiality.** During the period in which MSP is providing services for Company and indefinitely thereafter, MSP shall keep secret and retain in strictest confidence, and shall not, without the prior consent of Company, furnish, make available or disclose to any third Party or use for the benefit of itself (except as necessary to fulfill the purposes of this Agreement) or any third Party, any Confidential Information of Company. As used herein, “Confidential Information” shall mean any non-public information relating to business or affairs of Company, including but not limited to; business strategies and plans, customer identities, customer accounts, potential customers, employees, suppliers, servicing methods, equipment, programs, style and design strategies and information, analyses, profit margins, or other proprietary information used by Company in connection with its business. If MSP is an entity, it will make sure that the Confidential Information is disclosed only to those of its employees whose functions require that they obtain access to the Confidential Information to carry out the purpose of this Agreement, that have been informed of the confidential nature and obligations of MSP with respect to the Confidential Information and who are subject to a general written agreement committing such employees to conduct that would not violate MSP’s obligations listed in this Section with respect to such Confidential Information if such conduct was committed by MSP. MSP’s obligations pursuant to this section shall survive the termination of this Agreement.

13. **Non-Competition.** Competitor, for purposes of this Section, shall mean any person or entity offering products or service substantially similar to any of the products and services of Company. During the term of this Agreement, MSP agrees not to provide nor assist any Competitor in marketing, selling, or otherwise providing, the same and/or substantially similar services and Work Product to any persons or entities in the Territory MSP will not develop any product or service directly competitive Company’s Products. For a period of 2 years after the termination of this Agreement MSP understands and agrees that MSP shall not induce any customers of Company, whether directly or indirectly through use of third Parties such as employers and agents, to leave Company’s business. Any such act by MSP shall subject MSP and any such third Parties to civil and possible criminal liability.

14. **Termination.**

A. Notwithstanding anything to the contrary in this Agreement or any Exhibits, Company may terminate this Agreement and related Exhibits without any obligation, upon thirty (30) days’ notice via e-mail, facsimile or hand delivery. Upon such notice of termination, MSP shall immediately surrender all Confidential Information (“Termination Obligations”) and certify to Company, in writing, that it has performed its Termination Obligations. MSP’s obligations pursuant to this Section shall survive the termination or expiration of this Agreement. Company may terminate this Agreement immediately upon notice in the event of a material breach of any terms by MSP.

B. **Effects of Termination**. Following termination or expiration of this Agreement, Company shall be under no obligation (i) to sell Products to MSP at a discount (including, without limitation, for any renewal terms for existing customers), (ii) to pay any referral payments for new customers previously identified as MSP’s Qualified Leads, or (iii) to continue to provide referral payments for the current customers for whom MSP was receiving referral payments beyond a period of [3 months] from the date of termination.

15. **Solicitation.** During the term for this Agreement and for a period of two (2) years after termination of this Agreement, MSP shall not hire, solicit, or induce or assist any third Party in

providing services or products in competition with the services of Company to any customer of the Company.

16. **No Other Relationship or Interest.** The relationship of MSP to the Company is an independent contractor. MSP shall be responsible for paying all income taxes and other taxes charged to MSP on amounts earned hereunder, and for any employment taxes for its personnel. The Parties agree that this Agreement does not create any other relationship or legal interest between the Parties, including, but not limited to, employer/employee relationship, license, title, guarantee of work, or right to use any Confidential Information, except as specified by this Agreement.

17. **Disclaimers**.

A. OTHER THAN AS SPECIFIED IN THE END USER LICENSE AGREEMENT AS FROM TIME TO TIME PROVIDED BY THE COMPANY, COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR INTELLECTUAL PROPERTY OWNERSHIP WITH REGARD TO THE PRODUCTS. COMPANY PROVIDES A LIMITED WARRANTY FOR CUSTOMERS OF THE PRODUCTS ONLY. MSP SHALL MAKE NO REPRESENTATIONS OR WARRANTIES ON BEHALF OF COMPANY OTHER THAN THOSE EXPRESSLY PROVIDED TO IT BY THE COMPANY FOR THAT PURPOSE.

B. Under no circumstance shall Company be responsible to MSP or any customer or prospective customer for any representations or warranties made by MSP concerning the Products, which have not been authorized in writing by Company. Company shall not be responsible to MSP for any its failure to fill accepted orders, or for its delay in filling accepted orders, when such failure or delay is due to war, strike, accident, labor trouble, acts of nature, freight embargo, civil disturbance, vendor problems, or any other cause beyond Company’s reasonable control.

## **18. No Conflict.** Each Party represents and warrants to the other that its execution of this Agreement and performance of its obligations hereunder do not conflict with any of such Party’s agreements or other obligations, expressed or implied, contractual or otherwise. Each Party agrees and covenants that while this Agreement is in effect (including any extensions thereof), it shall not enter into any such obligation or agreement in conflict with this Agreement.

## **19. Compliance**.

## A. MSP represents and warrants that it is familiar with, understands, and shall fully comply with and abide by all applicable laws, regulations, policies, and rules in effect in the United States of America, and in any portion of the Territory into which it makes sales, or attempts to do business, with respect to the performance of its obligations under this Agreement. Such rules, laws, regulations, and policies include, but are not limited to, the U.S. Foreign Corrupt Practices Act, the U.S. Export Administration Regulations and other similar regulations, all United States federal and state laws, regulations and policies applicable to Parties contracting with the government of any country, state, county or municipality within the Territory, and such regulations and policies as may relate to communications and dealings with customers in the Territory (including customers owned and/or controlled by governmental bodies) and to the solicitation, disclosure, and handling of information relating to the procurement of goods and services by such customers in the Territory. MSP may not sell Products involving, directly or indirectly customers in Cuba, Burma, Iran, Libya, North Korea, Sudan, Syria, or any other country against which the United States maintains economic sanctions or embargoes or to any organization, entity, or individual in violation of US laws or regulations.

## B. Influencing Government Action. MSP agrees that it will not, in connection with this Agreement or its performance hereunder, directly or indirectly, offer, pay, promise to pay, or authorize the payment of, or give, promise to give, or authorize the giving of, any money or thing of value to any government official, customer or person, while knowing that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to a government official or customer for the purpose of corruptly influencing any act or decision of such government official or customer, including a decision to fail to perform his or her lawful duty, or inducing such government official or customer to use influence on any government or instrumentality thereof to corruptly affect or influence any act or decision of such customer, government or instrumentality thereof.

20. **Disputes and Governing Law.** The laws of Commonwealth of Virginia without regard to any conflict of law principles, govern this Agreement. The parties hereby consent to the exclusive jurisdiction of the state and federal courts located in the Commonwealth of Virginia. No action arising out of the transactions under this Agreement may be brought by either Party more than one year after the cause of action has accrued.

21. **Limitations on Assignment.** MSP may not assign, transfer or sell all or any of its rights under this Agreement or delegate all or any of its obligations hereunder, without the prior written consent of Company. Company may assign this Agreement to a parent, subsidiary or affiliated firm or to another entity in connection with the sale or other transfer of all or substantially all of its business assets. Subject to these restrictions, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties, their successors and permitted assigns.

22. **General.** This Agreement, including all Exhibit(s), constitutes the entire agreement between the Parties in connection with the subject matter hereof and supersedes all agreements, proposals, representations and other understandings, oral or written, of the Parties and any current or subsequent purchase order(s) provided by MSP. No alteration or modification of this Agreement or any Exhibits shall be valid unless made in writing and signed by an authorized MSP of each Party. The waiver by either Party of a breach of any provision of the Agreement shall not operate or be construed as a waiver of any subsequent breach and any waiver must be in writing and signed by an authorized representative of the Parties hereto. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall continue in full force and effect. Any notice or other communication required or permitted hereunder shall be given in writing to the other Party at the address stated above, or at such other address as shall be given by either Party to the other in writing. Any terms of this Agreement which by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and rightful assignees.

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the day and year first above written.

|  |  |
| --- | --- |
| ACCEPTED BY MSP: | ACCEPTED BY COMPANY: |
| Signature | Signature |
| Name | Name |
| Title | Title |
| Date | Date |

**Required Supplementary Documents**

1. **Exhibit A: Market & Territory**
2. **Exhibit B: Monthly Pricing Plans**