



Reseller Agreement

Document 4074A

www.leaplaws.com

Access to this document and the LeapLaw web site is provided with the understanding that neither LeapLaw Inc. nor any of the providers of information that appear on the web site is engaged in rendering legal, accounting or other professional services. If you require legal advice or other expert assistance, you agree that you will obtain the services of a competent, professional person and will not rely on information provided on the web site as a substitute for such advice or assistance. Neither the presentation of this document to you nor your receipt of this document creates an attorney-client relationship.

RESELLER AGREEMENT

This RESELLER AGREEMENT (the “**Agreement**”) is entered into this ____ day of _____, 20__ (the “**Effective Date**”) by and between [COMPANY NAME], a _____ [corporation] (the “**Company**”), with offices at [PRINCIPAL ADDRESS] and [NAME OF RESELLER], a _____ [company] with offices at [PRINCIPAL ADDRESS] (“**Reseller**”).

RECITALS

WHEREAS, the Company owns and licenses [DESCRIBE PRODUCT/SERVICE] (the “**Service**”);

WHEREAS, Reseller desires to market, sell and support the Service; and

WHEREAS, the Company desires to appoint Reseller as an authorized reseller of the Service pursuant to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions.

The following definitions apply to capitalized terms in this Agreement. All other capitalized terms are defined in the body of the Agreement. The terms “days” and “months” refer to U.S. calendar days and months, rather than to business days and business months, unless expressly noted.

1.1. “**Company IP Rights**” means any patent, copyright, trade secret, trademark or other intellectual property right embodied in or related to the Company Technology.

1.2. “**Company Technology**” means any and all of the following used by the Company in providing the Service: (a) the [COMPANY/PRODUCT] name, the [COMPANY/PRODUCT] logo, the [COMPANY] domain name, the Site, the product and service names associated with the Service, and other trademarks and service marks; (b) certain proprietary and third party audio and visual information, documents, software and other works of authorship; and (c) other proprietary and third party technology, hardware, products, processes, algorithms, user interfaces, know-how, trade secrets and other Confidential Information, techniques, designs, inventions and other tangible or intangible technical material or information.

1.3. “**Confidential Information**” means all confidential and proprietary information of a party (“**Disclosing Party**”) disclosed to the other party (“**Receiving Party**”), whether orally or in writing, that is either marked or designated as confidential or is identified in writing as confidential or proprietary within fifteen (15) days of disclosure to the Receiving Party; provided that the following shall be deemed to be Confidential Information even if not so marked or identified: the terms and conditions of this Agreement (including pricing and other terms reflected in all schedules hereto), the Disclosing Party’s business and marketing plans, technology and technical information, product designs, and business processes, any information or materials with the name, sign, trade name or trademark of the Disclosing Party and any information that a reasonable person would deem confidential or proprietary given the nature of the information and the circumstances under which it is disclosed. “**Confidential Information**”

does not include any item of information which (a) is or becomes available in the public domain without the fault of the Receiving Party; (b) is disclosed or made available to the Receiving Party by a third party without restriction and without breach of any relationship of confidentiality; (c) is independently developed by the Receiving Party without access to the disclosing party's Confidential Information; or (d) is known to the recipient at the time of disclosure.

1.4. **“Content”** means the information and data contained in the Site, whether embedded or accessed by linking.

1.5. **“Documentation”** means any user documentation, on any media, provided by the Company for use with the Service.

1.6. **“Derivative Works”** means a revision, modification, translation, abridgment, condensation or expansion of or addition to the Service or Documentation or any work that employs pre-existing code from the Service or, if prepared in violation of this Agreement or without the consent of the Company, would infringe the Company IP Rights.

1.7. **“Embedded Content”** means the information and data embedded in the Site, excluding the information and data accessible through links within the Site.

1.8. **“EULA”** means the Company's End User License Agreement (or other similar subscription agreement) governing the terms of use of the Service entered into by each Subscriber as a requirement for use of the Service, a copy of which is located on the Site. [URL: _____]

1.9. **“Price List”** means the Company's then-current price list for the Service (as may be modified by the Company from time to time), less any applicable discount as set forth in Exhibit A.

1.10. **“Subscriber”** means any person or entity that subscribes to the Service solely for its own internal use.

1.11. **“Subscriptions”** means purchases of one or more subscriptions to the Service.

1.12. **“Territory”** means the geographic area within which the license granted hereunder shall be operative, specified herein as “the United States”, as may be modified in accordance with the terms hereof.

2. Ownership and Retention of Rights.

Reseller acknowledges that in providing the Service, the Company utilizes the Company Technology. As between Reseller and the Company, the Company owns all right, title and interest in and to the Service, the Company Technology and the Company IP Rights. Other than as expressly set forth in this Agreement, no license or other rights in or to the Service, the Company Technology and the Company IP Rights are granted to Reseller, and all such licenses and rights are hereby expressly reserved.

3. Appointment; Licenses

3.1. License to Resell Service. Subject to the terms of this Agreement, the Company hereby grants to Reseller a non-exclusive, non-transferable, non-sublicensable, revocable, limited license, only in the Territory, to market and sell Subscriptions to Subscribers in the Territory. Reseller may not permit any other persons or entities to use the Service without a valid Subscription (except as expressly provided in this Section 3) without the prior written consent of the Company.

3.2. Internal Use License. Subject to the terms and conditions of this Agreement, the Company hereby grants to Reseller a non-exclusive, non-transferable, non-sublicensable, revocable, limited license to use the Service only for its internal business purposes on behalf of its Subscribers or potential Subscribers to (a) market Service, (b) demonstrate the Service to potential Subscribers and (c) service and support Reseller's Subscribers. Except as otherwise permitted above, Reseller's internal use of the Service pursuant to this license shall be subject to the EULA.

3.3. Documentation License. The Company hereby grants Reseller a non-exclusive, non-transferable, non-sublicensable, revocable license to use the Documentation and to make a reasonable number of copies of the Documentation solely for its own business purposes to support Reseller's rights under Sections 3.1 and 3.2, provided that Reseller must reproduce and include the copyright notice and any other notices that appear on the original copy of the Documentation on any copies made by Reseller regardless of type of media.

3.4. [Trial Periods]. Each trial period granted to a potential Subscriber shall be for a period of [NUMBER (___)] days (each, a "**Trial Period**"). Reseller may issue trial passwords to potential Subscribers for not more than [NUMBER (___)] Trial Periods without the prior written consent of the Company.]

3.5. Territory. The Company may modify the Territory upon not less than thirty (30) days' prior written notice to Reseller.

4. Restrictions on Use. Reseller shall not (a) create or attempt to create by reverse engineering, disassembly, decompilation or otherwise, the source code, (or the underlying ideas, algorithms, structure or organization) from the Service, or any part thereof, or aid or permit others to do so, except and only to the extent expressly permitted by applicable law; (b) remove or alter any trademark, logo, copyright or other proprietary notices or markings in the Service; or (c) copy, modify or create any Derivative Work of, the Service or any portion thereof.

5. Pricing.

5.1. Reseller Prices. For each Subscription ordered by Reseller, Reseller shall pay to the Company the Reseller price, which shall be the then-current suggested retail price set forth on the Price List, less any applicable Reseller discount as detailed in Exhibit A hereto.

5.2. Resale Price. Reseller is free to determine its own resale prices for Subscriptions to the Service. By way of reference only, the Price List shows the suggested retail price for Subscriptions to the Service.

5.3. Price Changes. The Company shall have the exclusive right, at any time upon thirty (30) days' prior written notice to Reseller, to change its prices or discounts or institute support and maintenance fees related to the Service, *provided* that such price changes will not apply to orders already accepted by the Company

5.4. Monthly Statements. Within ten (10) days after the end of each month during the Term, Reseller shall submit to the Company a statement in writing (the "**Monthly Statement**") with respect to the preceding month containing: (a) the number of Subscriptions sold; (b) the date of each Subscription; (c) the amount of fees payable pursuant to Section 5.1; (d) the names and contact information of all Subscriber who purchase Subscriptions (including address, phone and email); and (e) such other information as is reasonably necessary to enable the Company to understand Reseller's calculation of the fees payable under Section 5.1. Each Monthly Statement shall be accompanied by payment of the amount set forth on such Monthly Statement.

6. Taxes. Reseller shall bear and be responsible for the payment of all taxes in the Territory associated with the purchase or license of any Subscriptions (other than taxes based on the Company's net income) fees, duties or other amounts, however designated, including value added and withholding taxes which are levied or based upon such charges, or upon this Agreement. Reseller shall pay all such Taxes unless Reseller presents the Company with an exemption certificate acceptable to the taxing authorities.

7. Reseller Responsibilities.

7.1. Best Efforts. Reseller shall use its best efforts to (a) market, advertise and otherwise promote and sell Subscriptions in the Territory, (b) perform its obligations under this Agreement in a timely and professional manner and (c) further and preserve the goodwill and reputation of the Company and the Service. As part of these efforts, within thirty (30) days of the Effective Date, Reseller shall put the Company's name and logo on Reseller's web site according to the specifications provided by the Company, which are incorporated herein by reference.

7.2. No Private Labeling. Reseller shall not private label or brand [NAME] with Reseller's name or logo or that of a third party but may use Reseller's logo or brand together with the Company's branding and other identification provided that such use is not confusing to Subscribers or other third parties.

7.3. Forecasts; Marketing Plan. On or before the Effective Date, and on or before the tenth (10th) day of every calendar quarter thereafter during the Term, Reseller shall provide the Company with non-binding forecasts of expected sales of the Service for such calendar quarter. Reseller and the Company shall meet at least once each calendar quarter during the Term to review business goals. In addition, on or before the Effective Date, Reseller shall provide to the Company a marketing plan related to its proposed sales of the Service containing the information required in Exhibit B and such other information as the Company may reasonably request.

7.4. Limitations. Reseller shall take all reasonable steps to inform Subscribers of any applicable restrictions and limitations regarding the use of the Service.

7.5. Compliance with Laws. Reseller shall be solely responsible for complying with the applicable laws and regulations in the Territory, or any nation, or political subdivision thereof, in which it engages in business in performing its responsibilities hereunder. Reseller shall bear all expenses and costs related to compliance with any such laws and/or regulations.

7.6. Maintenance of Qualified Individuals. Reseller hereby represents and warrants it possesses the experience, skills and resources required to perform its obligations under this Agreement. Reseller shall, at its expense, retain and require adequate numbers of qualified individuals to (a) provide support services to Subscribers; and (b) act as Reseller's liaison for all technical and other communications. Reseller is solely responsible for all of its employees and agents, its labor costs and expenses arising in connection therewith and for any and all claims, liabilities or damages or debts of any type whatsoever that may arise on account of Reseller's activities, or those of its employees or agents in the performance of this Agreement and shall indemnify and defend the Company against, and hold it harmless from, any and all losses, expenses and liabilities incurred by the Company arising out of or relating to any acts or omissions of any such party.

7.7. Problem Resolution. Reseller shall keep the Company informed on a regular basis as to any problems encountered with the Service and as to any resolutions arrived at for those problems. Reseller shall communicate promptly to the Company any and all modifications, design changes or improvements to the Service suggested by any person to Reseller. Reseller

further agrees that the Company shall acquire any and all right, title and interest in and to such suggested modifications, design changes or improvements of the Service without the payment of any additional consideration to Reseller, its employees, its agents, or to any other person or entity.

7.8. Records and Reports; Audit Rights. Reseller shall maintain accurate, complete records of its marketing, sales and support services activities under this Agreement. The Company or its representatives may, upon reasonable notice to Reseller and during normal working hours, inspect those agreements and business records of Reseller necessary to verify Reseller's compliance with this Agreement. The audit will be conducted at the Company's expense unless the results of such audit establish that Reseller has underpaid the Company by more than five percent (5%) of the amount due over the audited period, in which case Reseller shall pay all amounts due and bear the expenses of the audit. All information obtained by the Company or its representatives conducting the audit will be Reseller's Confidential Information subject to the terms hereof.

7.9. Notice of Infringement. Reseller agrees to promptly notify the Company of any known or suspected infringement or misappropriation of the Company's IP Rights that comes to Reseller's attention.

7.10. Compliance. Reseller shall provide information as reasonably requested by the Company to ensure compliance by Reseller with the terms of this Agreement.

7.11. Indemnification by Reseller. Reseller shall indemnify, defend and hold the Company harmless from and against any and all claims, liabilities, losses, damages or judgments, including all reasonable legal fees and expenses related thereto ("**Claims**") (a) that arise from or are connected with the Reseller's sales of the Service not in strict accordance with this Agreement; (b) any misrepresentation or any breach of this Agreement by Reseller; or (c) from any third party claim or action against the Company for injuries or damage to persons or property caused or claimed to have been caused by the negligent or intentional acts or omissions of Reseller personnel while in the course of performing work under this Agreement. Reseller's obligations under this Section are contingent upon (i) the Company giving prompt written notice to Reseller of any such claim (provided that later notice shall not relieve Reseller of its liability and obligations under this Section 7.12 except to the extent that Reseller is materially prejudiced by such later notice); (ii) the Company allowing Reseller to control the defense and any related settlement of any such claim, *provided* that Reseller shall obtain the Company's prior written consent before entering into any settlement which admits guilt or culpability on the part of the Company or requires the Company to take any action (such consent not to be unreasonably withheld); and (c) the Company furnishing Reseller with reasonable assistance in the defense of any such claim, so long as Reseller pays the Company's reasonable out-of-pocket expenses. The Company will have the right to participate in such defense at its own expense.

8. Company Responsibilities.

8.1. Collateral. The Company will make available to Reseller a quantity of such marketing, promotional or other sales materials as the Company may create and deem useful to assist Reseller in the proper promotion and sale of the Service in the Territory.

8.2. Training; Support. The Company will make available to Reseller, at no charge, (a) training via remote communications and (b) support services, each as may be reasonably requested by Reseller.

8.3. Indemnification. The Company shall indemnify, defend and hold Reseller harmless from and against all Claims for (a) infringement of any patent, copyright or trademark rights or other intellectual property rights of third parties which result from the sale of the Service and (b) a breach of this Agreement by the Company. The Company's obligations under this Section are contingent upon (a) Reseller giving prompt written notice to the Company of any such claim (provided that later notice shall not relieve the Company of its liability and obligations under this Section 8.3 except to the extent that the Company is materially prejudiced by such later notice); (b) Reseller allowing the Company to control the defense and any related settlement of any such claim, *provided* that the Company shall obtain Reseller's prior written consent before entering into any settlement which admits guilt or culpability on the part of Reseller or requires Reseller to take any action (such consent not to be unreasonably withheld); and (c) Reseller furnishing the Company with reasonable assistance in the defense of any such claim, so long as the Company pays Reseller's reasonable out-of-pocket expenses. Reseller will have the right to participate in such defense at its own expense.

8.4. Security Measures. The Company through its hosting company shall undertake commercially reasonable security measures to prevent unauthorized use and ensure the security, confidentiality and integrity of the Embedded Content, including: (a) firewall protection; (b) maintenance of independent archival and backup copies of the Service and the Embedded Content; and (c) protection from any network attack and other malicious, harmful or disabling data, work, code or program.

9. Orders; Payment; Delivery

9.1. General Provisions. All orders for Subscriptions submitted by Reseller shall be in writing and sent to the Company at the address set forth on the signature page hereof or as the Company otherwise specifies ("**Purchase Orders**"). Purchase Orders may be placed by fax. All Purchase Orders are subject to acceptance by the Company. Purchase Orders shall contain the following: (a) name and address of firm or company, (b) administrative contact name; and (c) the EULA, duly executed (or accepted if a click-wrap version) by the Subscriber purchasing such Subscriptions.

9.2. No Modification of Terms. Nothing contained in any Purchase Order, acknowledgment or invoice shall in any way modify the terms or add any additional terms or conditions to this Agreement.

9.3. Payment Terms. Unless otherwise provided herein, all payments will be due net sixty (60) days from the date of the Company's invoice and shall be made in U.S. Dollars. Reseller shall pay interest on all amounts not paid when due at the rate of one and one half percent (1.5%) per month or the highest rate permitted by law, whichever is lower. The Company reserves the right to change payment terms at any time if, in the Company's opinion, Reseller's financial condition or payment record so warrants.

9.4. Purchase Orders; Acceptance. A Purchase Order shall not bind the Company until the Company accepts the Purchase Order in writing (e-mail being an acceptable form of writing) or enables any such Subscriber to access the "subscriber" section of the Site. The Company may accept or reject any Purchase Order in its sole discretion. The Company shall use reasonable efforts to notify Reseller within five (5) business days of receipt by the Company of a Purchase Order of the acceptance or rejection thereof. The receipt or deposit by the Company of a pre-payment shall not constitute acceptance of a Purchase Order. Any pre-payment received from Reseller shall be returned if the Company does not accept the order. If a Purchase Order is

rejected by the Company, the executed or accepted EULA delivered with such Purchase Order shall automatically be deemed cancelled and will be void and of no force and effect.

9.5. Access to Site. Upon acceptance of an order by the Company and the satisfaction of all the Company prerequisites prior to access, the Company shall enable Subscriber to access the “subscribers” section of the Site.

9.6. Reseller’s Acceptance of Orders. Reseller shall not accept orders for Subscriptions in the Company’s name nor under terms varying from those established hereunder.

10. Term and Termination.

10.1. Term. This Agreement shall become effective as of the Effective Date and shall remain in effect for [NUMBER (___)] year (the “**Initial Term**”) and shall be automatically renewed thereafter on a year-to-year basis (each a “**Renewal Term**”, and together with the Initial Term, the “**Term**”), unless either party shall give the other party not less than thirty (30) days’ written notice of its intention not to extend this Agreement prior to the expiration of the then-current Term.

10.2. Termination for Cause. If one party defaults in the performance of any material provision of this Agreement (which shall include Sections 7 (Reseller Responsibilities) and 9.3 (Payment Terms)), then the non-defaulting party may give written notice to the defaulting party that this Agreement shall be terminated unless the default is remedied within thirty (30) days (ten (10) days in the case of a payment default). If the non-defaulting party gives such notice and the default is not remedied during such thirty (30) day period (or ten (10) day period in the case of a payment default), then this Agreement shall be automatically terminated at the end of that period.

10.3. Termination for Insolvency. Either party shall have the right to terminate this Agreement, without notice, upon (a) the institution by or against the other party of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of the other party’s debts, (b) the other party’s making an assignment for the benefit of creditors or (c) the other party’s dissolution or ceasing to do business.

10.4. Effects of Termination. Upon termination or expiration of this Agreement for any reason whatsoever, Reseller shall immediately (a) cease all use of the Service; (b) discontinue any use of the name, logo, trademarks, service marks or slogans of the Company and the Service; (c) discontinue all representation or statements from which it might be inferred that any relationship exists between Reseller and the Company; (d) cease to promote, solicit orders for or procure orders for the Service (but Reseller shall not act in any way to damage the reputation or goodwill of the Company or the Service); and (e) promptly return all Confidential Information and related materials to the Company in accordance with Section 12.3 hereof.

10.5. Survival of Terms. The terms contained within the following sections shall survive any expiration or termination of this Agreement: Section 2 (Ownership and Retention of Rights); Section 4 (Restrictions on Use); Section 7.12 (Indemnification by Reseller); Section 8.3 (Indemnification by the Company); Section 10 (Term and Termination); Section 12 (Confidential Information); Section 13 (excluding Sections 13.2 and 13.3) (Trademarks and Service marks); Section 14 (Warranty and Liability Disclaimers); and Section 16 (General Provisions).

11. Relationship of the Parties.

11.1. Independent Contractors. The relationship of the Company and Reseller established by this Agreement is that of independent contractors, and nothing contained in this

Agreement or in the parties performance thereof shall be construed to constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking.

11.2. Non-exclusive Relationship. Nothing in this Agreement shall be construed as limiting the Company's marketing or distribution activities or its appointment of other resellers, distributors, sales representatives, sub-resellers, licensees or agents of any kind in any place.

12. Confidential Information.

12.1. Protection of Confidential Information. Each party shall protect the other's Confidential Information from unauthorized dissemination and use the same degree of care that such party uses to protect its own like information but in any event not less than a reasonable degree of care. Neither party shall disclose to third parties the other's Confidential Information without the prior written consent of the other party. Neither party shall use the other's Confidential Information for purposes other than those necessary to directly further the purposes of this Agreement. Each employee or agent of Reseller, performing duties hereunder, shall be made aware of this Agreement and shall execute a document that binds said employee or agent of Reseller to the same level of confidentiality contained herein.

12.2. Permitted Disclosure. Notwithstanding any provision in this Agreement to the contrary, each party may disclose portions of the other's Confidential Information (a) to its lawyers and accountants who have a need to know such information and (b) pursuant to an order of a governmental agency or court of competent jurisdiction compelling disclosure, provided that the owner of the Confidential Information shall be given reasonable advance notice of such impending disclosure.

12.3. Disposition Upon Termination. Upon the termination of this Agreement for any reason whatsoever, or upon request of a party, each party shall return to the other party, or shall destroy, as the other party shall specify, all copies of all the Confidential Information in such party's possession. Within five (5) days thereafter, such party shall provide the other party with a certificate, executed by such party or by an officer of such party, confirming that all copies of all such Confidential Information have been returned to the other party or destroyed, as the case may be.

13. Trademarks and Servicemarks.

13.1. Trademark Ownership. Reseller acknowledges and agrees that the Company owns all the Company trademarks, service marks and tradenames placed on the Site or otherwise used with respect to the Service by the Company (the "**Marks**") and that any and all goodwill derived from the use of the Trademarks by Reseller hereunder inures solely to the benefit of the Company.

13.2. Authorized Use of Trademarks. During the Term, Reseller shall market the Service under the Marks. The Company reserves the right to change its Marks at any time. All advertising and other materials not provided by the Company in which the Marks are used shall be subject to the prior written approval of the Company, which approval will not be unreasonably withheld. Reseller shall not add to the Site any logo, marking or information that has not been approved in advance by the Company in writing. Whenever the Marks are used, Reseller shall indicate that such Marks are the property of the Company. Reseller shall have the right to indicate to the public that it is an authorized Reseller of the Service and use (within the Territory) the Marks to advertise and identify such the Service. The Company shall have the

right to audit Reseller's use of the Marks for such purposes and require Reseller to modify such use as may be required by the Company.

13.3. Reseller Marks. Reseller shall use no trademarks, trade names, service marks or other proprietary indicia in association with the Service other than the Marks, including any trademark or trade name owned by Reseller.

13.4. Defense of Trademarks. Reseller shall not at any time, whether during or after the Term, challenge, or assist others in challenging, the Company's Marks or other proprietary rights, or do, cause to be done, or tolerate any act or thing contesting or in any way impairing or tending to impair any said right, title, and interest of the Company. Unless requested to do so by the Company in writing, Reseller shall not register, directly or indirectly, any trademark, service mark, trade name, company name or other proprietary or commercial name or right that is identical or confusingly similar to the Marks or any other Company IP Rights or that constitute translations thereof into the language(s) spoken within the Territory.

13.5. Right to use Reseller's Name. The Company shall have the right to indicate to the public that Reseller is a reseller of the Service on the Site and in other Company marketing collateral and use Reseller's name and logo to do so, subject to the prior approval of Reseller, which approval will not be unreasonably withheld.

14. Warranty and Liability Disclaimers.

14.1. Warranty. Subject to the terms and conditions hereof, the Company warrants that it shall use commercially reasonable efforts to assure that the Service is accessible on the Internet twenty-four (24) hours a day, seven (7) days a week. The foregoing notwithstanding, Reseller acknowledges that from time to time the Service may not be available to display the Content as scheduled or may be inaccessible or inoperable for any reason including: (a) hardware and software malfunctions; (b) periodic maintenance procedures or repairs which the Company or its hosting company may undertake from time to time; or (c) causes beyond the control of the Company and which are not reasonably foreseeable by the Company, including interruption or failure of telecommunication or digital transmission links, hostile network attacks and network congestion or other failures. In the event of a breach of warranty under this Section, the Company's sole responsibility, and Reseller's sole and exclusive remedy, is, at the Company's option, (i) to repair and restore access to the Service via the Internet or (ii) correct any error or omission to the Embedded Content.

14.2. Disclaimer of Warranties, Liability. EXCEPT FOR THE EXPRESS WARRANTY SET FORTH IN SECTION 14.1 HEREOF, THE COMPANY PROVIDES THE SERVICE "AS IS" AND DOES NOT WARRANT ITS EFFECTIVENESS, USEFULNESS OR RELIABILITY. THE WARRANTY IN SECTION 14.1 IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER ORAL, WRITTEN, EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT; PROVIDED, HOWEVER, THAT THE COMPANY DOES NOT WARRANT THAT THE SERVICE WILL PERFORM UNINTERRUPTED OR ERROR FREE. IN NO EVENT SHALL THE COMPANY OR ITS AGENTS OR AFFILIATES BE LIABLE TO RESELLER OR OTHER THIRD PARTIES FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, MULTIPLE OR INCIDENTAL DAMAGES, INCLUDING LOST PROFITS, BUSINESS INTERRUPTION AND LOST DATA, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.

14.3. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR ELSEWHERE, IN NO EVENT WHATSOEVER SHALL THE CUMULATIVE LIABILITY OF THE COMPANY AND ITS AFFILIATES OR AGENTS HEREUNDER EXCEED THE TOTAL AMOUNT OF ALL FEES PAID TO THE COMPANY HEREUNDER DURING THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

14.4. Disclaimer of Other Representations. Reseller shall be responsible for providing a warranty and remedies (if any) directly to its Subscribers and shall not extend a warranty that exceeds or modifies the limited warranty set forth in Section 14.1. All representations made or agreements executed by Reseller pursuant to this Agreement shall be Reseller's sole responsibility. Furthermore, each such agreement shall contain an acknowledgment by any third party that it is not relying on any representations or warranties made by the Company except for those warranties expressly made in the Company's EULA.

15. Compliance with Applicable Laws. Reseller shall, at its own expense, comply with all applicable laws and make, obtain, and maintain in force at all times during the term of this Agreement, all filings, registrations, reports, licenses, permits and authorizations required under applicable law, regulation or order required for Reseller to perform its obligations under this Agreement.

16. Miscellaneous.

16.1. Entire Agreement. The provisions of this Agreement, including any Exhibits, constitutes the entire agreement between the parties with respect to the subject matter hereof, and this Agreement supersedes all prior agreements or representations, oral or written, regarding such subject matter. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party.

16.2. Governing Law; Legal Actions. This Agreement shall be governed by the laws of [STATE], as applied to agreements entered into and to be performed entirely within [STATE] without regard to the principles of conflict of laws or the United Nations Convention on Contracts for the International Sale of Goods. Unless otherwise elected by the Company in writing for a particular instance (which the Company may do at its sole option), the sole jurisdiction and venue for actions related to the subject matter hereof shall be the state and U.S. federal courts having within their jurisdiction the location of the Company's principal place of business. Both parties consent to the jurisdiction of such courts and agree that process may be served in the manner provided herein for giving of notices or otherwise as allowed by [STATE] state or U.S. federal law. In any action or proceeding to enforce rights under this Agreement, the prevailing party shall be entitled to recover costs and attorneys' fees.

16.3. Disputes. Any controversy, claim or dispute arising out of or relating to this Agreement, shall be settled by binding arbitration in [CITY/STATE]. Such arbitration shall be conducted in accordance with the then prevailing commercial arbitration rules of [NAME OF ARBITRATOR], with the following exceptions if in conflict: (a) one arbitrator shall be chosen by [ARBITRATOR]; (b) each party to the arbitration will pay its pro rata share of the expenses and fees of the arbitrator, together with other expenses of the arbitration incurred or approved by the arbitrator; and (c) arbitration may proceed in the absence of any party if written notice (pursuant to the Arbitrator's rules and regulations) of the proceeding has been given to such party. The parties agree to abide by all decisions and awards rendered in such proceedings. Such decisions and awards rendered by the arbitrator shall be final and conclusive and may be

entered in any court having jurisdiction thereof as a basis of judgment and of the issuance of execution for its collection. All such controversies, claims or disputes shall be settled in this manner in lieu of any action at law or equity, provided however, that nothing in this subsection shall be construed as precluding bringing an action for injunctive relief or other equitable relief. The arbitrator shall not have the right to award punitive damages or speculative damages to either party and shall not have the power to amend this Agreement. IF FOR ANY REASON THIS ARBITRATION CLAUSE BECOMES NOT APPLICABLE, THEN EACH PARTY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AS TO ANY ISSUE RELATING HERETO IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER MATTER INVOLVING THE PARTIES HERETO

16.4. Notices. All notices under this Agreement shall be in writing and shall be delivered to the addresses set forth on the signature page of this Agreement. Notice shall be deemed to have been given upon: (a) personal delivery; (b) the first business day after sending notice via nationally recognized overnight courier; (c) three (3) business days after depositing notice in the United States mail, sent Certified Mail Return Receipt Requested or (d) by e-mail that is return receipt requested. Notices to Company shall be addressed to the attention of its [Chief Executive Officer]. Notices to [Party 2] shall be addressed to the attention of its [Chief Executive Officer]. Either party may change its address for notice by giving notice of such address change in the manner provided herein

16.5. Assignment. Except pursuant to a merger or acquisition resulting in the acquisition of all or substantially all of the Company's assets or capital stock (in which case the Company may assign this Agreement without Reseller's consent), neither party may assign, delegate, sub-contract or otherwise transfer this Agreement or any of its rights and obligations hereunder, whether voluntarily, by operation of law or otherwise, without the other party's prior written approval.

16.6. No Waiver; Severability. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. The exercise by either party of any remedy under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise. If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision of the Agreement shall be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect.

16.7. Injunctive Relief. The parties agree that any unauthorized use of the Service or unauthorized disclosure of Confidential Information of either party, or a breach of this Agreement adversely affecting either party's intellectual property rights would cause irreparable injury to the injured party for which monetary damages would not be an adequate remedy and the injured party shall be entitled to equitable relief in addition to any remedies it may have hereunder or at law.

16.8. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument.

16.9. English Language; Notices. This Agreement is in the English language only, which language shall be controlling in all respects. Any versions of this Agreement in any other

language will be for accommodation only and will not be binding upon either party. All communications and documentation for the Service to be furnished under this Agreement shall be in the English language. Any notice, report, approval or consent required or permitted hereunder shall be in writing and shall be deemed to have been given if (i) delivered personally; (ii) mailed by registered air mail postage prepaid; or (iii) sent by facsimile followed by a hard-copy confirmation, to the respective addresses of the parties set forth below or as may be otherwise designated by like notice from time to time.

16.10. Force Majeure. Except for the obligation to make payments, nonperformance of either party shall be excused to the extent performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers or any other reason where failure to perform is beyond the reasonable control of and is not caused by the negligence of the non-performing party. In the event of a threatened default or default as a result of any of the above causes, the defaulting party shall exercise its best efforts to avoid and cure such default. In the event such an event prevents performance thereunder for a period in excess of ninety (90) days, then the non-defaulting party may elect to terminate this Agreement and/or cancel or suspend any Purchase Orders thereunder by a written notice to the defaulting party.

16.11. Construction. The titles of the sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement. Unless the context of this Agreement clearly requires otherwise: (a) references to the plural include the singular, the singular the plural, and the part the whole, (b) references to one gender include all genders, (c) “or” has the inclusive meaning frequently identified with the phrase “and/or,” (d) “including” has the inclusive meaning frequently identified with the phrase “including but not limited to” or “including without limitation,” and (e) references to “hereunder,” “herein” or “hereof” relate to this Agreement as a whole. Any reference in this Agreement to any statute, rule, regulation or agreement, including this Agreement, shall be deemed to include such statute, rule, regulation or agreement as it may be modified, varied, amended or supplemented from time to time. The parties agree that this Agreement shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against either party and that ambiguities shall not be interpreted against the drafting party.

16.12. No Other Rights Conferred. Nothing contained in this Agreement shall be construed as conferring by implication, estoppel or otherwise upon either party hereunder any license or other right except the licenses, rights and uses expressly granted hereunder to a party hereto.

[The remainder of this page has been intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

[COMPANY NAME]

[RESELLER NAME]

By: _____

By: _____

Name: _____

Name: _____

Its:

Its:

Address:

Address:

Fax:

Fax:

email:

email:

Attn:

Attn:

SERVICE, FEES AND DISCOUNTS

MARKETING PLAN REQUIREMENTS