Appendix 3A

AUTHORIZED RESELLER AGREEMENT

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This Authorized Reseller Agreement (this “Agreement”) is made as of [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (the “Effective Date”), between [Company], a [Michigan corporation] with offices at [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (“Company”), and [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], a [Michigan Corporation], with offices at the address set forth in Exhibit D (“Reseller”) (each of Company and Reseller, a “Party”; and together, the “Parties”). The definitions of certain capitalized terms are set forth in Section 14 below.

1. BACKGROUND.

1.1 Company has developed the software products identified on Exhibit A.

1.2 Reseller desires to obtain, and Company has agreed to grant, the right to distribute these software products in accordance with the terms of this Agreement.

2. APPOINTMENT OF RESELLER. Subject to Reseller’s compliance with the terms of this Agreement, Company hereby appoints Reseller as a “Company Authorized Reseller” and grants to Reseller the license rights described in Section 3.

3. INTELLECTUAL PROPERTY RIGHTS.

3.1 Software License. Subject to all the terms and conditions of this Agreement, Company hereby grants to Reseller a nonexclusive, nontransferable, nonsublicensable license during the Term under Company’s intellectual property rights in the Software:

(a) To reproduce and distribute copies of the Software solely to End Users in the Territory for which Reseller has provided an End User Agreement that has been accepted by Company in accordance with Section 5.3;

(b) To place copies of the Software on Reseller’s computer systems for Reseller’s personnel to use for technical support; and

(c) To include Company’s name and trademarks in Reseller’s sales and marketing materials consistent with Company’s reasonable policies for trademark and logo usage.

3.2 Documentation License. Subject to all the terms and conditions of this Agreement, Company hereby grants to Reseller a nonexclusive, nontransferable license during the Term under Company’s intellectual property rights in the Documentation:

(a) to use and copy the Documentation in support of Reseller’s licensed use of the Software; and

(b) to distribute copies of the Documentation to End Users.

3.3 Compliance Assistance. Upon Company’s request, Reseller shall provide commercially reasonable assistance to enable Company to verify that End Users are complying with the applicable End User Agreement.

3.4 Restrictions.

(a) General. Reseller acknowledges that the Software and Documentation contain valuable trade secret and confidential information of Company or its licensors. Reseller shall take the actions necessary to fulfill its obligations in this Agreement by instruction or agreement with its employees or agents who are permitted access to the Software or Documentation. Reseller may only give access to the Software or Documentation on a need-to-know basis.

(b) Proprietary Rights. Title to all patents, copyrights, trade secrets, and other proprietary rights in or related to the Software and Documentation (including all of their component parts) are and will remain the exclusive property of Company or its licensors. Reseller will not acquire any right in the Software or Documentation except the limited rights specified in this Agreement, or take any action that jeopardizes Company’s or its licensors’ proprietary rights. Company will own all rights in any copy, translation, modification, adaptation, or derivative work of the Software or Documentation, including any improvements, whether or not authorized by Company, and Reseller hereby assigns these rights to Company.

(c) No Implied Licenses. There are no implied licenses in relation to this Agreement, and Reseller shall not, and shall not knowingly permit others to, use, modify, or distribute the Software or Documentation outside the scope of the express licenses granted in this Agreement.

(d) No Reverse-Engineering. Reseller shall not, and shall not knowingly permit others to: (a) modify the Software; or (b) decompile, reverse-engineer, disassemble, or otherwise attempt, directly or indirectly, to obtain or create source code for the Software; except that decompiling the Software is permitted solely to the extent the laws of Reseller’s jurisdiction give Reseller the right to do so to obtain information necessary to render the Software interoperable with other software, provided that Reseller must first request this information from Company and Company may, in its sole discretion, either provide this information to Reseller or impose reasonable conditions, including a reasonable fee, on this use of the Software to ensure that Company’s proprietary rights in the Software are protected.

(e) Required Proprietary Notices. Reseller shall ensure that each copy it makes of the Software or Documentation contains the same proprietary notices as provided to Reseller.

(f) Unauthorized Distribution or Copying. Other than in strict accordance with this Agreement, Reseller shall not, and shall not knowingly permit others to:

(i) lease, license, sublicense, transfer, or assign any of its rights under this Agreement;

(ii) sell, rent, or distribute the Software or Documentation, including providing access to the Software or Documentation or using the Software or Documentation to provide outsourced services or on a timesharing basis; or

(iii) use, copy, duplicate, or otherwise reproduce any part of the Software or Documentation.

(g) No Registration of Similar Names. Neither Party shall register any trademark or domain name, or use any company name, that is confusingly similar to any trademark or company name of the other Party.

Any breach of this Section 3.4 will be considered a material breach of this Agreement that is incapable of cure.

3.5 Feedback. Company welcomes the Reseller’s ideas, suggestions, or recommendations regarding a Product (“Feedback”). Company is free to use and incorporate the Feedback without any payment to Supplier, and Reseller hereby assigns to Company all right, title, and interest in any intellectual property rights it may have or obtain in the Feedback.

3.6 Reasonable Cooperation. Reseller shall promptly provide to Company all relevant facts in its possession upon becoming aware of a likelihood of infringement or other illegal use or misuse by any third party of the Software or Documentation or any related intellectual property rights. Reseller shall provide reasonable cooperation in any related suits and actions, at Company’s request and expense.

3.7 No Exclusivity. Company is under no obligation to restrict other vendors from distributing the Software in any geographical location and Company retains the right to transact directly with any customer.

4. COMPANY RESELLER SUPPORT SERVICES.

4.1 Sales Training. Company shall provide training to Reseller’s staff in the important characteristics, benefits, markets, competition, and operation of the Software, as Company deems appropriate.

4.2 Sales Materials. Company shall provide the information, descriptive materials, demonstration programs, and manuals on the sale of the Software as Company provides generally to its resellers (the “Company Sales Materials”). Company hereby grants Reseller the right to reproduce and distribute the Company Sales Materials to fulfill its obligations under this Agreement. Reseller may provide feedback on the Company Sales Materials from time to time and Company shall make reasonable efforts to modify the Company Sales Materials to accommodate Reseller’s feedback.

4.3 Secondary Support Included at No Charge. Company shall provide up to four (4) hours per year, plus an additional two (2) hours for each Reseller End User that purchases Updates, of Secondary Support to Reseller at no additional charge in accordance with Exhibit B. Company shall provide this Secondary Support with respect to the current and immediately preceding Version Release of the Software.

5. DUTIES OF RESELLER.

5.1 Sales and Marketing. Reseller shall do the following:

(a) Promotion. Use commercially reasonable efforts to promote the licensing of the Software.

(b) Company Standards. Comply with all reasonable standards of Company for displaying, advertising, demonstrating, and explaining the operation and use of the Software.

5.2 Operations. Reseller shall do the following:

(a) Training. Ensure that its staff is appropriately trained.

(b) IP Notices. Include copyright and/or patent notices, as applicable, in appropriate locations and forms on all copies of the Software and Documentation distributed by Reseller.

(c) Information. Provide accurate and adequate information to Company regarding each End User’s systems, software, and equipment.

(d) Access. Provide Company necessary access to Reseller’s or End User’s personnel, documentation, records, and facilities as needed for Company to timely perform any services hereunder.

(e) End User Support. Attend to the needs of its End Users on a timely basis.

(f) Notice of Issues. Alert Company promptly of any material issues related to the Software (including possible infringement issues) and use its best efforts to resolve any customer satisfaction issues that may arise from the use of the Software.

(g) Legal Notices. Advise Company immediately of any legal notices served on Reseller or filed by Reseller that might affect Company or the market prospects of the Software.

5.3 End User Agreements.

(a) Prior to the provision of any Software, Reseller shall obtain an executed End User Agreement from the prospective End User and submit this agreement to Company for acceptance and signature. Company agrees to accept or reject this agreement and provide written notice to Reseller within ten (10) business days after submission. Reseller may not provide any Software to a prospective End User until it has received written notice of acceptance from Company.

(b) Company may from time to time update its form of End User Agreement and provide it to Reseller. Reseller shall use this updated form with prospective End Users.

(c) Notwithstanding the terms of any agreement with any End User, Reseller remains obligated to Company pursuant to the terms and conditions of this Agreement.

5.4 Acceptance. Reseller will be deemed to have accepted the Software on the Commencement Date. All copies of Software made by Reseller will be deemed accepted upon acceptance of the first copy delivered to Reseller.

5.5 No Untrue Statements. Reseller has not provided to Company, and shall not during the Term provide to Company, any untrue statement of a material fact related to Reseller, its activities, or this Agreement, nor omitted, and shall not during the Term omit, any material fact necessary to make a Contractor statement related to Reseller, its activities, or this Agreement, not misleading.

5.6 Reseller Failure to Perform. Reseller understands that failure to perform the duties in this Section 5 is a material breach of this Agreement subject to Section 12.2(a).

6. PRICING AND TERMS.

6.1 Software License Fees. Reseller shall pay to Company the license fee prices set forth in Exhibit A (the “License Fees”) for each copy of the Software it provides to an End User. Reseller is free to determine the prices it charges to End Users. Company may change the prices on Exhibit A at any time, provided that it provides Reseller with at least ninety (90) days’ notice.

6.2 Software Updates. Company shall provide the first year of Updates to each End User without charge. Subsequent years of Updates for an End User may be purchased by Reseller paying the annual fee listed in Exhibit A (the “Update Fees”), provided that the purchase is made within twelve (12) months after acceptance of the End User Agreement. After this twelve (12) month period, or after any period for which Updates were not purchased, the price for Updates shall include 125% of the total payments that would have been owed if Updates had been purchased during the lapsed period.

6.3 Monthly Payments. Within thirty (30) days after the end of each month Reseller shall pay to Company the License Fees and Update Fees owed (the “Monthly Payment”).

6.4 Additional Services. Reseller shall pay Company’s then-current time and material rates, including payment for actual expenses incurred, for any Additional Services (collectively, the “Additional Charges”). Prior to providing Additional Services Company shall submit for Reseller’s prior approval estimates for the time and expenses required. Reseller shall pay any Additional Charges billed to Reseller within thirty (30) days after receipt of an invoice from Company.

6.5 Taxes. Reseller shall pay all applicable transaction taxes, including sales and use taxes, value added taxes, privilege taxes, and other transactional charges such as duties, customs, tariffs, imposts, and government-imposed surcharges (“Transaction Taxes”). Transaction Taxes are not included in Company’s pricing. If Company is required to collect Transaction Taxes from Reseller and remit them to a taxing authority, Company shall separately state the Transaction Taxes on an invoice. Each Party is responsible for its own income taxes or taxes based on gross revenues or gross receipts.

6.6 Failure to Pay.

(a) Material Breach. Reseller acknowledges that its failure to timely pay will be a material breach of this Agreement for which Company may, in addition to pursuing all other remedies, terminate this Agreement in accordance with Section 12.2(a).

(b) Interest. Company may, at its option, assess interest at the rate of one and one-half percent (1.5%) per month on past-due amounts.

(c) Reimbursement. Reseller shall also reimburse Company for all expenses incurred by Company in exercising any of its rights under this Agreement or applicable law with respect to a default in payment or other breach of this Agreement by Reseller, including reasonable attorney fees and the fees of any collection agency retained by Company.

7. RECORD KEEPING.

7.1 Reseller Records. Reseller shall keep true and accurate records and books of account containing data reasonably required for the computation and verification of payments to be made under this Agreement. Reseller shall retain records for five (5) years after the date of origination.

7.2 Certification. On Company’s written request, Reseller shall provide to Company a signed certification:

(a) verifying that Reseller is using the Software and Documentation in accordance with this Agreement; and

(b) listing the End Users to which the Software was provided.

7.3 Audit. Upon notice to Reseller, Company may, at its expense, audit Reseller’s use of the Software and compliance with this Agreement. The audit will be conducted during business hours and will not unreasonably interfere with Reseller’s business activities. Reseller shall provide Company or its auditor with all reasonable information and assistance required to enable it to determine whether Reseller is in compliance with this Agreement. If the audit reveals that Reseller has underpaid amounts due under this Agreement, Reseller shall pay the underpaid amounts plus interest at the rate set forth in Section 6.6 within twenty (20) days after written notice. If the audit reveals that Reseller has underpaid amounts totaling five percent (5%) or more of the amounts due in any year, Reseller shall reimburse Company for all reasonable costs, fees, and expenses associated with the audit within twenty (20) days after written request.

8. RESELLER STATUS. During the Term of this Agreement, Reseller may represent that it is an authorized reseller of the Software. Reseller shall not in any way misrepresent, or in any way cause to be ambiguous, Reseller’s relationship with Company, Reseller’s duties as specified in this Agreement, the features of the Software (including any technical specifications and expected benefits of use), or the origin of the Software. In particular, Reseller shall not represent itself as the exclusive agent or exclusive vendor of the Software. Reseller shall not represent itself as the Company or manufacturer of the Software, or as Company itself.

9. WARRANTY DISCLAIMERS AND LIMITATIONS OF LIABILITY.

9.1 DISCLAIMERS.

(a) THE SOFTWARE AND DOCUMENTATION ARE PROVIDED TO RESELLER “AS IS,” AND COMPANY MAKES NO WARRANTIES, EXPRESS, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY, AS TO THE SOFTWARE, DOCUMENTATION, OR SERVICES PROVIDED UNDER THIS AGREEMENT. THE PARTIES DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

(b) COMPANY DOES NOT WARRANT THAT THE SOFTWARE, DOCUMENTATION, OR ANY SERVICES WILL MEET RESELLER OR END USER REQUIREMENTS NOT SPECIFIED IN THIS AGREEMENT, THAT THE SOFTWARE WILL OPERATE IN THE COMBINATIONS THAT RESELLER OR ANY END USER MAY SELECT FOR USE, THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED.

(c) Except as may be done in accordance with Section 13.4, no statement by any Company employee or agent, orally or in writing, will serve to create any warranty or obligation or to otherwise modify this Agreement.

9.2 LIMITATION OF LIABILITY.

(a) COMPANY WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES (INCLUDING FOR LOSS OF PROFITS, SAVINGS, REVENUE, OR USE, DAMAGED OR LOST FILES OR DATA, OR BUSINESS INTERRUPTION), IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION OR CHARACTERIZATION OF THE DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES. COMPANY WILL NOT BE LIABLE FOR ANY DAMAGES FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR AGGREGATE LIABILITY TO RESELLER RELATING TO THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION OR CHARACTERIZATION OF THE DAMAGES, EXCEEDING THE LESSER OF THE AMOUNT OF FEES PAID BY RESELLER TO COMPANY IN CONNECTION WITH THE SPECIFIC END USER AGREEMENT FROM WHICH THE CLAIM ARISES, OR THE AMOUNT OF FEES PAID BY RESELLER TO COMPANY UNDER THIS AGREEMENT DURING THE SIX (6) MONTH PERIOD PRECEDING THE FIRST ACT THAT GAVE RISE TO LIABILITY. THESE LIMITATIONS OF LIABILITY ARE INDEPENDENT OF ANY EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY, AND WILL SURVIVE AND APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY SPECIFIED REMEDIES.

(b) RESELLER ACKNOWLEDGES THAT THE FEES CHARGED BY COMPANY IN THIS AGREEMENT REFLECT THE OVERALL ALLOCATION OF RISK BETWEEN THE PARTIES, INCLUDING BY MEANS OF THE PROVISIONS FOR EXCLUSIVE REMEDIES, DISCLAIMERS, LIMITATIONS OF LIABILITY, AND INDEMNIFICATION IN THIS AGREEMENT. THESE PROVISIONS FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES, AND A MODIFICATION OF THESE PROVISIONS WOULD AFFECT SUBSTANTIALLY THE FEES CHARGED BY COMPANY. IN CONSIDERATION OF THESE FEES, RESELLER AGREES TO THIS ALLOCATION OF RISK AND HEREBY WAIVES ANY RIGHT, THROUGH EQUITABLE RELIEF OR OTHERWISE, TO SUBSEQUENTLY SEEK A MODIFICATION OF THESE PROVISIONS OR ALLOCATION OF RISK.

9.3 No Inconsistent Actions. Reseller shall not make any statements, representations, or warranties, or accept any liabilities or responsibilities, that are inconsistent with any disclaimer or limitation included in this Section 9.

10. INDEMNITY.

10.1 Company Intellectual Property Indemnity.

(a) Company Obligations. Company shall (i) defend or, at its sole option, settle, at its own expense any suit, action, or proceeding brought against Reseller, or its officers or employees (each, a “Reseller Indemnified Party”) by a third party claiming that any Software infringes any copyright or trade secret arising under the laws of any jurisdiction (an “IP Action”), and (ii) pay damages awarded against any Reseller Indemnified Party in the IP Action, or those monetary damages agreed to by Company and the claimant in a settlement of the IP Action.

(b) Procedures. The Reseller Indemnified Party must (i) notify Company promptly in writing of an IP Action, (ii) tender to Company sole control of the defense or settlement of the IP Action, and (iii) cooperate and, at Company’s expense, assist in the defense. Company shall not settle an IP Action with an admission of liability of a Reseller Indemnified Party without the prior written approval of that party. A Reseller Indemnified Party will have the right to participate at its own expense in an IP Action or related settlement negotiations using counsel of its own choice. If Company does not assume direction and control of the defense of any IP Action, or if the interests of Company and a Reseller Indemnified Party conflict in any material respect, then the Reseller Indemnified Party may assume direction and control of its defense and Company shall pay the reasonable costs and expenses incurred in connection with the defense.

(c) Remedies. If Company receives notice of an allegation that any Software infringes or misappropriates a third party’s intellectual property rights, or if Reseller’s use of any Software is enjoined as a result of infringement, Company may, at its sole option and expense:

(i) procure for Reseller the right to continue using the Software;

(ii) modify the Software so that it is no longer infringing; or

(iii) replace the Software with other Software of equal or superior functional capability.

If none of these actions is in Company’s determination commercially feasible, Company shall have the right to terminate any licenses and sublicenses to that Software. If Company terminates a Software license as described above:

(1) Company shall refund the License Fees paid for the license of that Software, prorated [to the end of the applicable term/over a straight-line five-year period], and

(2) Reseller shall immediately deliver to Company all copies of the Software in Reseller’s possession or control. This requirement applies to all copies in all forms, partial and complete, and whether or not modified or merged into other materials.

Notwithstanding any other provision of this Agreement, in no event will Reseller have the right to distribute copies of any Software after it becomes subject to a claim of infringement.

10.2 COMPANY IP INDEMNITY LIMITATIONS. THE RIGHTS GRANTED TO THE RESELLER INDEMNIFIED PARTIES UNDER SECTION 10.1 WILL BE THE SOLE AND EXCLUSIVE REMEDY AND COMPANY’S SOLE OBLIGATION AND LIABILITY FOR ANY ALLEGED INFRINGEMENT OF A PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHT, INCLUDING MISAPPROPRIATION OF A TRADE SECRET. COMPANY HAS NO LIABILITY FOR ANY CLAIM OF INFRINGEMENT CAUSED BY: (A) MODIFICATION OF THE SOFTWARE WITHOUT THE APPROVAL OF COMPANY; (B) ANY RESELLER OR THIRD-PARTY APPLICATION OR OTHER TECHNOLOGY; (C) USE OF THE SOFTWARE IN CONNECTION OR IN COMBINATION WITH EQUIPMENT, DEVICES, OR SOFTWARE NOT PROVIDED BY COMPANY (BUT ONLY TO THE EXTENT THAT THE SOFTWARE ALONE WOULD NOT HAVE INFRINGED); (D) COMPLIANCE WITH RESELLER’S OR ITS END USER’S DESIGN REQUIREMENTS OR SPECIFICATIONS; (E) USE OF SOFTWARE OTHER THAN AS PERMITTED UNDER THIS AGREEMENT OR IN A MANNER FOR WHICH IT WAS NOT INTENDED; OR (F) USE OR DISTRIBUTION OF OTHER THAN THE MOST CURRENT RELEASE OR VERSION OF THE SOFTWARE (IF THE INFRINGEMENT WOULD HAVE BEEN PREVENTED BY THE USE OF THIS RELEASE OR VERSION).

10.3 Reseller Use Indemnity.

(a) Reseller Obligations. Except with respect to infringement of third-party rights for which Company is obligated to indemnify under Section 10.1, Reseller shall defend and indemnify Company and its officers, directors, employees, and agents (each of the foregoing a “Company Indemnified Party”), for and against all claims, demands, damages, losses, and expenses of any nature (including attorney fees and other litigation expenses) arising from or in connection with the use, manufacture, promotion, distribution, or other disposition of Software by Reseller or the End Users to whom it provides Software (a “Use Action”).

(b) Procedures. The Company Indemnified Party must:

(i) notify Reseller promptly in writing of a Use Action;

(ii) tender to Reseller sole control of the defense or settlement of the Use Action; and

(iii) cooperate and, at Reseller’s expense, assist in the defense.

Reseller shall not settle any Use Action with an admission of liability of a Company Indemnified Party without the prior written approval of that party. A Company Indemnified Party will have the right to participate at its own expense in a Use Action or related settlement negotiations using counsel of its own choice. If Reseller does not assume direction and control of the defense of any Use Action, or if the interests of Reseller and a Company Indemnified Party conflict in any material respect, then the Company Indemnified Party may assume direction and control of its defense and Reseller shall pay the reasonable costs and expenses incurred in connection with the defense.

(c) Step-In Right. A Company Indemnified Party may at its option agree to waive its indemnification with respect to any Use Action and assume control over the defense and settlement of the action at its own expense.

11. CONFIDENTIAL INFORMATION.

11.1 Definitions. In the course of performing under this Agreement, either Party (a “Discloser”) or its Representatives may provide Confidential Information to the other Party or its Representatives (a “Recipient”). “Confidential Information” means (a) technical information relating to the Software, Documentation, or other products of the Parties; and (b) marketing and other business information of the Parties with potential competitive value (e.g., customer information, promotional plans, market data, etc.)[, provided the Confidential Information is marked as “Confidential” or otherwise identified as confidential at the time of disclosure or promptly afterward]. The contents of this Agreement and Company’s other agreements with its authorized resellers shall be deemed Confidential Information of Company. A Party’s granting of access to information (including by the granting of access to its premises) constitutes providing that information for purposes of this section. “Representatives” means a Party’s directors, officers, employees, advisors (including financial advisors, counsel, and accountants), agents, or controlling persons.

11.2 Obligations. The Recipient acknowledges that Confidential Information is entrusted to it in confidence and the reputation and success of the Discloser depend on maintaining and safeguarding the secrecy of its Confidential Information. The Recipient, during and after the Term:

(a) shall take all reasonable precautions to protect the confidentiality of the Confidential Information and shall use no less than the degree of care it uses in protecting its own Confidential Information of a similar nature;

(b) shall use Confidential Information only for the purpose of fulfilling its obligations or exercising its rights under this Agreement, and not in any manner detrimental to the Discloser;

(c) shall not, or permit others to, disclose any Confidential Information to any other person or entity; and

(d) shall not remove, or permit to be removed, any notice indicating the confidential nature of the Confidential Information.

11.3 Exceptions. Except for personal information governed by applicable privacy law, the Recipient is not obligated under Section 11.2 for Confidential Information that:

(a) is generally known, or readily ascertainable by proper means, by the public other than through a breach of this Agreement by the Recipient or its Representative;

(b) is known by the Recipient before it is disclosed to the Recipient or its Representative by the Discloser as evidenced by applicable written records; or

(c) is disclosed to the Recipient or its Representative by a third party not subject to any nondisclosure obligations with respect to the Confidential Information.

11.4 Representatives. The Recipient shall restrict circulation of Confidential Information to its Representatives who need Confidential Information in order to carry out the purposes of this Agreement, and who are bound to hold in confidence all Confidential Information made available to them and to use the Confidential Information only for authorized purposes. The acts and omissions of a Party’s Representatives are deemed the acts and omissions of that Party under this Agreement.

11.5 Return of Confidential Information. The Recipient shall return all Confidential Information at the earlier of the termination of this Agreement or upon the request of the Discloser, except that the Recipient may retain a limited number of electronic backup copies of the Confidential Information as are automatically created and retained by its standard backup processes and systems. The Recipient shall comply with its nondisclosure obligations under this Section 11 with regard to these copies and shall destroy them in accordance with its normal destruction processes. Reseller may also retain copies of Company Confidential Information solely to the extent needed for Reseller to meet its contractual technical support, maintenance, warranty, and consulting obligations entered into prior to the date of termination. Reseller shall comply with its nondisclosure obligations under this Section 11 with regard to the retained copies.

11.6 Compelled Disclosure. If the Recipient receives a request to disclose all or any part of the Confidential Information under the terms of a subpoena or order issued by a court or other governmental agency, the Recipient shall:

(a) immediately notify the Discloser of the existence, terms and circumstances surrounding the request;

(b) consult with the Discloser on the advisability of taking legally available steps to resist or narrow the request; and

(c) if disclosure is required, cooperate with the Discloser at the Discloser’s expense in obtaining an order or other reliable assurance that confidential treatment will be accorded to the portion of the information as the Discloser may designate.

11.7 Replacement of Previous Nondisclosure Agreements. From and after the Effective Date, the Parties shall treat any information previously disclosed under any other confidentiality or nondisclosure agreement executed by the Parties in accordance with this Section 11 and the other agreement is of no further force or effect.

12. TERM AND TERMINATION.

12.1 Term.

(a) Unless terminated in accordance with this Section 12, this Agreement commences on the Effective Date and remains in effect for a period of eighteen (18) months (the “Initial Term”).

(b) At the end of the Initial Term, this Agreement automatically renews for successive one (1) year terms unless a Party provides written notice of its intention not to renew at least ninety (90) days before the end of the Initial Term or the renewal term.

12.2 Termination for Cause. Either Party may terminate this Agreement upon occurrence of any of the following:

(a) Material Breach. The material breach by the other Party of any provision of this Agreement if the breach is not remedied within thirty (30) days after notice of the breach is delivered to the breaching Party; or

(b) Liquidation, Etc. The other Party becomes insolvent or becomes the subject of any voluntary or involuntary bankruptcy, receivership, or other similar insolvency proceeding.

12.3 Termination for Convenience. Either Party may terminate this Agreement upon at least ninety (90) days’ written notice to the other Party.

12.4 Effect of Termination. Upon any termination of this Agreement:

(a) All rights granted by Company to Reseller in this Agreement shall terminate;

(b) Each End User Agreement then in effect will remain in effect until its expiration or termination, but without any renewals, extensions or the like;

(c) Reseller’s End Users will have the option of purchasing Software Maintenance and Technical Support directly from Company by entering Company’s then-standard Maintenance and Support Agreement; and

(d) Sections 3.3, 3.4, 3.5, 5.2, 5.5, 6.5, 6.6, 7, 9, 10, 11, 12.4, 12.5, and 13 shall survive.

12.5 Other Remedies. No termination under this Section 12 will be deemed a waiver or limitation of a Party’s other remedies for breach of this Agreement.

13. MISCELLANEOUS.

13.1 Assignment. Neither Party may assign or transfer, by merger, operation of law, or otherwise, this Agreement or any right or duty under this Agreement to a third party without the other Party’s prior written consent, except that Company may transfer this Agreement, together with all of its rights and duties under this Agreement, to a successor entity if Company is acquired, whether by equity or asset purchase, merger, corporate restructuring or reorganization, or the like. Any purported assignment or transfer in violation of this Section 13.1 is void.

13.2 Nonsolicitation. During the Term and for an additional twelve (12) months, neither Party may solicit for employment or engagement as an independent contractor, or employ or engage as an independent contractor, any person who is or was an employee or contractor of the other Party during the twelve (12) month period prior to this action, without the prior written consent of the other Party.

13.3 No Waiver. No failure to exercise, and no delay in exercising, any right will operate as a waiver; nor will any single or partial exercise of any right preclude any further exercise of that right or the exercise of any other right. The waiver by a Party of a breach of this Agreement will not constitute a waiver of any other breach.

13.4 Entire Agreement; Amendments. This Agreement together with its Exhibits contains all the agreements, representations, and understandings of the Parties and supersedes any previous understandings, commitments, representations, or agreements, verbal or written, with respect to the subject matter of this Agreement. If there is any inconsistency between a term in Sections 1 through 14 of this Agreement and a term on any exhibit, the term of this Agreement will govern. This Agreement may not be modified or amended except in a written document signed by a duly authorized representative of each Party that expressly states the sections of this Agreement to be modified; no other act, usage, or custom will be deemed to amend or modify this Agreement. Each Party hereby waives any right it may have to claim that this Agreement was subsequently modified other than in accordance with this Section 13.4.

13.5 Applicable Terms; Reseller Purchase Orders. All provision of Software or services by Company to Reseller will be governed exclusively by this Agreement, whether or not this Agreement is specifically mentioned. Reseller may, for purposes of administrative convenience, use Reseller’s standard form of purchase order to request Software or services. Any terms or conditions on a Reseller purchase order in any way different from or in addition to the terms and conditions of this Agreement will have no effect and Company hereby rejects these terms and conditions.

13.6 Nature of Relationship. Reseller is an independent contractor of Company. Reseller has no power or authority to accept offers or enter into or execute any contract on behalf of Company. This Agreement will not be construed to constitute Reseller or any of its employees or agents as an agent, employee, partner, or joint venturer of Company, nor to create any relationship between the Parties other than is expressly provided.

13.7 Notices. All notices under this Agreement, including notices of address change, must be in writing and will be deemed given when sent by (a) registered mail, return receipt requested, or (b) a nationally recognized overnight delivery service (such as Federal Express), to the [President or General Counsel] of the appropriate Party at the relevant address first listed above, or to a Party’s address as changed in accord with this Section.

13.8 Governing Law; Arbitration. This Agreement is governed by the laws of the State of [\_\_\_\_\_\_\_\_\_] and the United States of America, without regard to their conflict-of-laws principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. The Parties agree that any dispute arising out of or in relation to this Agreement or the rights and obligations hereunder must be arbitrated in the English language before [one/three] arbitrator[s] under the administration of the International Centre for Dispute Resolution, and according to its International Arbitration Rules. The seat of the arbitration will be [State], and the place of hearing will be \_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_. A Party may seek interim injunctive relief under these Rules and before any court having jurisdiction, and each Party hereby submits to the personal jurisdiction of any court reasonably chosen by the initiating Party for such purposes. The initiating Party shall reimburse the other Party’s costs if the court declines jurisdiction. The arbitral panel will be empowered to grant injunctive relief upon application. Awards of the arbitral panel will be enforceable in any court having jurisdiction, and each Party hereby submits to the personal jurisdiction of any court reasonably chosen by the enforcing Party for such purposes. The enforcing Party shall reimburse the other Party’s costs if the court declines jurisdiction.

13.9 Remedies Cumulative. Unless otherwise stated in this Agreement, each remedy of a Party is cumulative with each other remedy contained in this Agreement and with all other remedies available to that Party at law, in equity, and otherwise, and no pursuit of any particular remedy will constitute an exclusive election of any particular remedy.

13.10 Legal Expenses. If legal action is taken by either Party to enforce its rights under this Agreement, all costs and expenses incurred by the prevailing Party, including reasonable attorney fees and costs of litigation, will be paid by the other Party.

13.11 Severability. If a provision of this Agreement is broader or of greater scope than a court will enforce, the Parties intend that the court enforce the provision to the greatest extent permitted by law and modify the provision accordingly. If a provision of this Agreement (except for Section 9) is held by a court of competent jurisdiction to be illegal, unenforceable, or in conflict with any law of a federal, state, or local government, the validity of the remaining provisions will remain in full force and effect.

13.12 Counterparts; Electronic Copies. This Agreement may be signed in one or more counterparts, each of which is an original, and all of which together constitute only one agreement between the Parties. Delivery of an executed counterpart by facsimile, electronic mail in portable document format (.pdf), or any other electronic means intended to preserve the original graphic and pictorial appearance of a document has the same effect as delivery of an executed original of this Agreement.

13.13 Third-Party Beneficiaries. The Reseller Indemnified Parties and the Company Indemnified Parties are third-party beneficiaries to this Agreement and may enforce their respective rights under Section 10. No other party, including Reseller’s End Users, will be deemed a third-party beneficiary.

13.14 Compliance with Laws. Reseller shall comply with all applicable laws and regulations, including those relating to this Agreement and to the testing, production, importation, transportation, packaging, labeling, use, sale, sublicensing, or other distribution of the Software, or otherwise applicable to Reseller’s activities. Reseller understands and acknowledges that the transfer of certain commodities and technical data, including the transfer of products made with the use of technical data, is subject to U.S. laws and regulations controlling the export of commodities and technical data, including all Export Administration Regulations of the U.S. Department of Commerce. Reseller understands that computer software is included in the definition of technical data. These laws and regulations prohibit or require a license for the export of certain types of products and technical data to certain specified countries, individuals and/or organizations. Reseller shall comply with all U.S. laws and regulations controlling the export of commodities and technical data and to be solely responsible for any violation of these laws and regulations by Reseller or its sublicensees. Each Party shall comply with all applicable data protection, privacy, and similar laws and regulations of the United States of America, the European Union, and other countries, including the Gramm-Leach-Bliley Act and the Health Insurance Portability and Accountability Act. Neither Party shall take any actions that would cause either Party to violate the U.S. Foreign Corrupt Practices Act or similar laws or regulations.

13.15 Force Majeure. Except with regard to any obligation to pay money, neither Party will be held responsible for any delay or failure in performance caused by fire, flood, embargo, strike, labor dispute, delay or failure of any subcontract, telecommunications failure or delay, act of sabotage, riot, accident, delay of carrier or supplier, voluntary or mandatory compliance with any governmental act, regulation or request, act of God or by public enemy, pandemic, or any act or omission or other cause beyond that Party’s reasonable control. If any of these events does occur, the time to perform an affected obligation will be extended by the length of time the event continues.

13.16 Construction.

(a) The word “including” is not intended to be exclusive and means “including, but not limited to” and the word “or” is not intended to indicate exclusivity.

(b) Each of the Parties and their counsel have carefully reviewed this Agreement, and, accordingly, no rule of construction to the effect that any ambiguities in this Agreement are to be construed against the drafting Party will apply in the interpretation of this Agreement.

14. DEFINITIONS. For the purposes of this Agreement, the following terms will be defined as set forth below:

14.1 “Additional Charges” has the meaning given to it in Section 6.4.

14.2 “Additional Services” means services provided by Company beyond those specifically described in this Agreement.

14.3 “Calendar Quarter” means the periods ending on March 31, June 30, September 30, and December 31 of each year during the Term.

14.4 “Commencement Date” means the date on which Company provides to Reseller a particular version of the Software.

14.5 “Company Indemnified Party” has the meaning given to it in Section 10.3.

14.6 “Company Sales Materials” has the meaning given to it in Section 4.2.

14.7 “Confidential Information” has the meaning given to it in Section 11.1.

14.8 “Discloser” has the meaning given to it in Section 11.1.

14.9 “Documentation” means all user documentation pertaining to the use of the Software and provided by Company.

14.10 “End User” means a Reseller customer who has been granted a license to use the Software pursuant to an End User Agreement.

14.11 “End User Agreement” means the Company license agreement attached as Exhibit C, as the same may be updated from time to time by Company in accordance with Section 5.3.

14.12 “Initial Term” has the meaning given to it in Section 12.1.

14.13 “IP Action” has the meaning given to it in Section 10.1.

14.14 “Maintenance and Support Agreement” means Company’s agreement by which it provides Software Maintenance and Technical Support to End Users.

14.15 “Recipient” has the meaning given to it in Section 11.1.

14.16 “Reseller Indemnified Party” has the meaning given to it in Section 10.1.

14.17 “Secondary Support” has the meaning given to it in Exhibit B.

14.18 “Software” means the Company software programs listed in Exhibit A, including any Updates provided by Company to Reseller.

14.19 “Software Maintenance” means the Software maintenance services provided by Company directly to End Users that have executed Company’s Maintenance and Support Agreement.

14.20 “Technical Support” means the technical support services provided by Company directly to End Users that have executed Company’s Maintenance and Support Agreement.

14.21 “Technical Support Representative” means a Reseller employee, as listed on Exhibit D, who is authorized to request Secondary Support.

14.22 “Term” means the Initial Term and any extension of this Agreement.

14.23 “Territory” means outside of North America.

14.24 “Transaction Taxes” has the meaning given to it in Section 6.5.

14.25 “Updates” means any bug fixes, patches, modifications, or enhancements to the Software that Company may make generally available to Software Maintenance subscribers at no additional charge (other than media and handling charges). Updates do not include any Version Releases, options, or future products that Company licenses separately for a fee.

14.26 “Use Action” has the meaning given to it in Section 10.3.

14.27 “Version Release” means a new version of the Software identified by a change of the first digit in the Software numbering format, e.g., the “6” in “Version 6.1.”

|  |  |
| --- | --- |
| [COMPANY] | [RESELLER] |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

EXHIBIT A

SOFTWARE PRODUCTS AND PRICES

1. The Software products are identified below:

|  |  |  |
| --- | --- | --- |
| Description | Price (USD) | Discount |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

Notes: Licenses for “Additional Site” are for End Users that purchase multiple site licenses to support additional physical locations. The “Software Update” fees above are annual charges.

2. MANNER OF PAYMENT

All payments by Reseller under this Agreement must be in U.S. Dollars and remitted by wire transfer of immediately available funds to the following account:

Bank: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Customer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Account No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Routing No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

or to any other account as Company may designate in accordance with Section 13.7.

3. COLLECTIONS RESPONSIBILITY

Reseller is responsible for all collections from End Users and shall pay Company on a timely basis regardless of whether it has collected the corresponding amounts from End Users.

EXHIBIT B

COMPANY’S SECONDARY SUPPORT OBLIGATIONS

1. Secondary Support to Reseller

After Reseller has used its commercially reasonable efforts to resolve any technical support issues raised by an End User, Reseller may seek technical support services related to issues from Company either online or telephonically during the hours of 8:00 a.m. to 5:00 p.m., Eastern Time, Monday through Friday, excluding Company holidays (“Secondary Support”).

Reseller agrees that no person other than a Technical Support Representative will initiate contact with Company regarding Secondary Support; provided, however, that the Parties agree that other Reseller personnel may initiate contact with Company in an emergency situation.

Notwithstanding anything to the contrary, Reseller acknowledges and agrees that Secondary Support does not include any assistance, troubleshooting, or correction services related to any configurations of the Software created by Reseller or an End User or any integrations of the Software with other applications, software, or hardware not provided by Company; and should Company provide any services described in this sentence, these services will be provided only upon submission by Reseller of a purchase order agreeing to pay for the services on a time and materials basis.

2. Direct Contact with End Users

Reseller is responsible for answering all End User technical support questions. Company is not obligated to communicate directly with any End User unless the End User has entered into a Maintenance and Support Agreement with Company. Company may, at its election, provide support services on a time and materials basis to End Users who request these services but have not entered into a Maintenance and Support Agreement.

3. On-Site Services

Company is not obligated to provide any technical support services on site at the facilities of Reseller or any End User. If Company agrees, in its sole discretion, to provide any technical support services on site, these services will be provided only upon submission by Reseller of a purchase order agreeing to pay for the services on a time and materials basis.

4. Exclusions

4.1 Company is not responsible for providing, maintenance, or technical support services (including bug corrections) or Upgrades under this Agreement to or for the benefit of any End User: (1) if the Software has been altered, revised, changed, enhanced, or modified in any manner not authorized in writing in advance by Company; (2) in connection with any bug if Company has previously provided corrections for the bug; (3) in connection with any bugs or problems caused by errors, defects, problems, alterations, revisions, changes, enhancements, or modifications in the database, operating system, third-party software (other than third-party software bundled with the Software by Company), hardware, or any system or networking utilized by an End User; (4) if the Software or related software or systems have been subjected to abuse, misuse, improper handling, accident, or neglect; or (5) if any party other than Company or Reseller (or a person or entity authorized by Company) has provided any services in the nature of maintenance and technical support services to the End User with respect to the Software.

4.2 Except for the Software, Company is not responsible for the maintenance or support of any software, hardware, or equipment of any kind or nature.

EXHIBIT C

END USER AGREEMENT

EXHIBIT D

RESELLER CONTACT INFORMATION

|  |  |
| --- | --- |
| RESELLER NAME: |  |
| CONTACT PERSON: |  |
| STREET ADDRESS: |  |
| CITY, STATE, ZIP CODE, COUNTRY: |  |
| PHONE NUMBER: |  |
| FAX NUMBER: |  |
| CONTACT EMAIL: |  |
| TECHNICAL SUPPORT REPRESENTATIVES: |  |