

THE WALLET GROUP, INC.

RESELLER AGREEMENT

This RESELLER AGREEMENT (the “*Agreement*”) is made as of the date stated below (“*Effective Date*”) by and between the person or entity named below (the “*Reseller*”), and The Wallet Group, Inc., a Delaware corporation (“*Company*”). Each, a “party,” and collectively, the “parties.” Any capitalized terms used but not defined in this Agreement or any applicable Order Form shall have the meanings ascribed to them in the attached appendices and Terms and Conditions.

WHEREAS, Company has the exclusive right to license its digital card (“*Card*”) technology, supporting Card infrastructure, or any successor platform, and its associated Documentation (the “*TWG Software*”) to Reseller for Reseller to market, promote, and resell access and use of the Software;

WHEREAS, Reseller wishes to market, promote, and resell access and use of the TWG Software to End Users of Reseller’s Customers, and Company agrees to permit such marketing, promotion, and resale in consideration of the Fees set forth in the applicable Order Form, as may be amended from time to time by the parties, and subject to the terms of the Agreement; and

WHEREAS, the Agreement consists of this form, order forms approved by both parties in substantially the same format as attached hereto as Appendix A (the “*Order Form*”), any applicable SOW for Professional Services, and the Terms and Conditions (“*Terms and Conditions*”) attached hereto as Appendix B.

[Appendices Follow.]

APPENDIX A

One-Time Fees:

- Reseller Onboarding: **\$3,000.00**

Subscriptions:

- MobileWallet.Cards MSRP Subscriptions: 25% commission
- Enterprise Subscriptions (starts at): **\$0.50 per Active Card/Year (minimum 10K Cards)**

Optional Services and Fees:

- White-Label Setup & Support: **\$5,500.00 (one-time)**
- API Access: **\$1,000.00 per year (unlimited access)**
- Professional Services: **\$150.00 an hour (billed in 30-minute increments)**

APPENDIX B

Terms and Conditions

These Terms and Conditions are made a part of the Reseller Agreement by and between Reseller and Company (as defined therein). These Terms and Conditions, together with the Reseller Agreement, and applicable Order Forms and SOWs constitute a legally binding agreement between the parties. Any capitalized terms used but not defined in these Terms and Conditions shall have the meanings ascribed to them in the Reseller Agreement.

DEFINITIONS

“Affiliate” of a party means any corporation or other entity that such party directly or indirectly controls, is controlled by, or is under common control with. In this context, a party “controls” a corporation or other entity if it or any combination of it and/or its Affiliates owns more than fifty percent (50%) of the voting rights for (i) the board of directors, or (ii) other mechanism of control for such corporation or other entity.

“Agreement” means, collectively, the Agreement, these Terms and Conditions, Order Forms, SOWs, and any other attached documents or schedules executed by the parties.

“Company IP Rights” means any writings, technology, inventions, discoveries, patents, copyrights, trademarks (together with the goodwill symbolized thereby), trade secrets, know-how, and other confidential or proprietary information, and other intellectual property rights embodied in or related to the Products.

“Confidential Information” means all business strategies, plans and procedures, business information, proprietary information, software, source and object code, customers, business partners and affiliations, prototypes, data, strategies, plans, processes, designs, specifications, methods and know-how, marketing and business information, financial information, budgets and forecasts, technology proposals or concepts, cost and pricing information, customer, sponsor and vendor lists, customer preferences, personnel matters, trade names, and Trade Secrets of either party, regardless of whether or not it is marked as confidential or registered with the U.S. Patent and Trademark Office or any other government office or regulatory agency. Confidential Information includes but is not limited to information communicated orally or by demonstration or in written, graphic, physical or electronic form or by other means, whether or not specifically marked “confidential” or with any similar notice. The parties acknowledge that Confidential Information constitutes a valuable commercial asset of the parties, and each party is willing to disclose such information to the other only on the terms and conditions contained herein.

“Customer(s)” means customers of Reseller, whether individuals or entities, to which Reseller has sold subscriptions for the Products.

“Customer Data” means all electronic data or information submitted by Customers for access and use of the Products.

“Deliverables” means the work product specified for Professional Services in any associated SOW(s) to be delivered to Reseller by Company or its Affiliates.

“Documentation” means any user documentation, including, without limitation, the Specifications, of the Software as prepared by Company.

“End User” means an individual or entity who is an end user of the Software and subject to the EULA, licensed solely for such end user's internal use and without the further right to sublicense, distribute, transfer or transmit the Software.

“EULA” means Company's then current end-user software license agreement setting forth the terms and conditions of an end user's permitted use of the Software.

“Fees” means the License Fees, the Professional Services Fees, and any other applicable fees for additional services to be provided by Company to Reseller.

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“**License Fees**” means the license fees (as specified in an applicable Order Form) payable by Reseller to Company for the licenses of the Products for resale.

“**Marks**” means the trademarks, service marks, or trade names of Company associated with the Products as designated by Company.

“**Order Form**” means the documents for placing orders pursuant to this Agreement that are entered into between Company and Reseller (or Affiliates of Company and Reseller) from time to time, including addenda and supplements thereto, initially as set forth in Appendix A to the Agreement. By entering into an Order Form pursuant to this Agreement, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party to this Agreement. Order Forms shall be deemed incorporated into this Agreement by reference.

“**Products**” means the Software and its associated Documentation.

“**Professional Services**” means support and maintenance services to be provided by Company to Reseller if and as described in an SOW, which may include, without limitation, engineering, hosting, installation, Customer support, design consulting, business planning, network planning and analysis.

“**Professional Services Fees**” means the Professional Services fees (as specified in an applicable SOW) payable by Reseller to Company for any requested Professional Services pursuant to an applicable SOW.

“**Reseller Data**” means all electronic data or information submitted by Reseller for the Services.

“**Software**” means the [INSERT NAME OF TWG SOFTWARE], as described in Exhibit A attached hereto, including any applicable Updates.

“**Specifications**” means the technical specifications for the Software.

“**Third Party Materials**” means proprietary third-party materials which are incorporated into the Products, as identified in the Documentation.

“**Trade Secret(s)**” means information of a party (and/or its affiliates) constituting a “trade secret” under applicable law.

“**Term**” means the Initial Term and each Renewal Term.

“**Updates**” means any updates, bug fixes, patches, maintenance releases, or other error corrections to the Software that Company generally makes available free of charge to all resellers of the Software.

ARTICLE I
SUPPORT AND SERVICES; WHITE LABELING

2.1 Company Services. Company shall provide the Updates and make the access to and use of Products available to Reseller for re-sale to End Users of Customers upon receipt of and in consideration for the Fees specified in applicable Order Forms executed by Company and Reseller. All Fees, including License Fees, are as determined by Company in its sole discretion. Reseller may request additional Professional Services to be provided by Company upon execution of a SOW and payment of the applicable additional Fees during the Term.

2.2 Additional Services. Reseller may retain Company to provide Professional Services (including the development of Deliverables) for Reseller, as set forth in and upon execution of a separate statement of work (each, a “SOW”), subject to the terms and conditions of the Agreement and any such additional terms as may be further set forth in the applicable SOW. If Reseller submits an order request for Professional Services, such order shall not be binding upon Company until accepted by Company in writing. Company shall respond to each such order submitted by Reseller within five (5) business days following receipt thereof. Once an order has been accepted, it shall be subject

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to the terms and conditions of this Agreement (such terms superseding any and all pre-printed terms and/or conditions within such order.

2.3 Support. Company shall provide basic support and Updates for the Products to Reseller at no additional charge and/or upgraded support if purchased separately by Reseller. Notwithstanding the foregoing, all support services for an End User's use of the Software shall be provided directly by Reseller to the End User unless otherwise set forth in an applicable Order Form.

2.4 Reseller Appointment. Subject to the terms of this Agreement, including timely payment of the applicable Fees, Company hereby appoints Reseller, and Reseller hereby accepts, for the Term (unless and until otherwise terminated in accordance with these Terms and Conditions), a non-exclusive appointment to act as a Company approved reseller of the Products.

2.5 Order Forms. Reseller will place its orders for the Products directly with Company, and will be responsible for payment of Fees to Company in accordance with the terms this Agreement and the applicable Order Form, as may be amended by the parties from time-to-time. Reseller will be responsible for all billing and Customer collections related to the sale of subscriptions for the Products. For purposes of clarity, failure of any particular Customer to make timely payment to Reseller will not relieve Reseller of its obligation to make timely payments to Company.

2.6 White Labeling. If mutually agreed-upon in writing by the parties, Company shall brand the Products and Reseller's online administrative portal ("**Reseller Portal**") with Reseller-specific branding prior to making the Products available for re-sale by Reseller. The Products shall in all cases retain any relevant patent, copyright and/or other intellectual property notices as may be determined to be appropriate by Company. Reseller shall provide, in softcopy/electronic format as reasonably specified by Company, the Reseller-specific branding to be used to white-label the Products. Company shall provide Reseller with access to the white-labeled Products to review prior to making any production versions of the white-labeled Products commercially available for re-sale by Reseller. Reseller shall use commercially reasonable efforts to promptly review the white-labeled Products. The Reseller-specific branding will be applied to the services by Company for the fees specified in the applicable SOW for such Professional Services. Company shall only use any Reseller-specific branding materials provided to Company for the purposes of re-branding the Services as contemplated in this Section and for the operation of the white-labeled services. Except for the foregoing limited rights, Reseller shall retain all right, title and interest in the Reseller-specific branding provided to Company.

**ARTICLE II
LICENSES; END-USER SUBSCRIPTIONS**

2.1 License to Resell. In connection with the foregoing appointment as an approved reseller, Company grants to Reseller a non-exclusive, non-sublicensable, non-transferable, revocable license to market, promote and re-sell subscriptions for the Software to Customers for such Customer's End Users in the Territory, at Reseller's own expense and using its own efforts with its own sales force (the "*License*").

2.2 Internal Use License. Subject to the terms of the Agreement including the payment of fees, Company grants Reseller, the limited, non-exclusive, nontransferable subscription license within the Territory for the subscription term set forth in the Order to (a) use the executable version of the Software for the number of End Users set forth in the applicable Order Form for Reseller's Customers for actual and potential End Users; (b) make a reasonable number of backup copies of the Software as needed for archival use only; and (c) make copies of the Documentation for Reseller's internal use. Reseller may not use the Software with more than the authorized number of End Users under each applicable Order Form.

2.3 Restrictions. Reseller shall not (and shall not authorize any third party to): (a) modify, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Products except to the extent that enforcement of the foregoing restriction is prohibited by applicable law; (b) circumvent any End User limits or other timing, use or functionality restrictions built into the Products; (c) remove any proprietary notices, labels, or marks from the Products (except to the extent Reseller is so permitted to for the purposes of re-branding the Products through a white label Reseller Portal); (d) frame or mirror any content forming part of the Products; or (e) access the Products in order to (i) build a competitive product or service, or (ii) copy any ideas, features, functions or graphics of the Products.

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Reseller shall be responsible to ensure its Customers are subject to the same restrictions for access and use of the Products.

2.4 Company Marks. Company grants to Reseller during the Term a nonexclusive, nontransferable right to use the Marks in the Territory solely for the purpose of promoting the Software as authorized herein and in accordance with Company's then-current trademark usage guidelines. Reseller shall accompany each use of the Marks with a conspicuous notice that the Marks are owned by Company and any other proprietary legend that Company determines necessary to protect its rights. Reseller acknowledges that Marks whether or not registered, belong exclusively to Company. Reseller shall not (a) contest or assist anyone in contesting, in any manner, the validity of any Marks or their registration(s), (b) register or attempt to obtain an ownership interest in any Mark, or any trademark confusingly similar to any of the Marks, anywhere throughout the world, or (c) otherwise take any actions that will adversely affect Company's rights in the Marks.

2.5 Reseller Agents. Reseller may, without the prior written consent of Company, appoint Reseller Agents to market, promote and/or re-sell the Products within the Territory, provided that Reseller shall continue to be responsible for all of its duties and obligations under this Agreement and for any acts or omissions of any of its Reseller Agents, and any acts or omissions of any of its Reseller Agents shall be attributed to Reseller, and Reseller shall: (a) be liable to Company for all losses, costs, damages and expenses of whatsoever nature, that Company may sustain or incur as a result or in connection with any act or omission of any Reseller Agent, provided that Reseller shall be entitled to the benefit of any limitations in this Agreement to the same extent as if such acts or omissions had been those of Reseller and (b) indemnify Company, its officers, directors, employees, agents and Affiliates (including their officers, directors, employees, agents) from and against any and all actions, causes of action, claims and demands of whatsoever nature caused by, arising directly or indirectly out of, or in connection with any acts or omissions of any Reseller Agent, provided that Reseller shall be entitled to the benefit of any limitations in this Agreement to the same extent as if such acts or omissions had been those of Reseller.

2.6 End User Subscriptions. Unless otherwise specified in the applicable Order Form, (i) the Products for resale are purchased by Reseller for Customers as End User license subscriptions and may be accessed by no more than the specified number of End Users, (ii) additional End User subscriptions may be added at any time during the Term at the then-applicable pricing and License Fees upon execution of a written change order, and (iii) the added End User subscriptions shall terminate on the same date as the pre-existing subscriptions. End User subscriptions are for designated End Users only and cannot be shared or used by more than one End User but may be reassigned to new End Users replacing former End Users who no longer require ongoing use of the Products.

2.7 End User Agreement. Use of the Software by End Users will be subject to Company's standard EULA. Reseller shall not modify the terms of the EULA or assist any End User in circumventing or violating the EULA.

2.8 Third-Party Materials. The Documentation identifies all Third Party Materials. In addition to the terms set forth in this Agreement, all Third Party Materials are provided according to the license terms set forth in the Documentation regarding such Third Party Materials; if there is a conflict between the license terms for such Third Party Materials and this Agreement, the Third Party Materials license terms control with respect to such Third Party Materials.

**ARTICLE III
PRICING, FEES, AND PAYMENTS**

3.1 Fees. All Fees payable by Reseller shall be set forth in an applicable Order Form and determined in Company's sole discretion. Reseller agrees to pay Company the applicable Fees in a timely manner in accordance with the terms of each applicable Order Form.

3.2 End User Pricing. Reseller has the sole and exclusive right to set the prices Reseller charges to End Users for access and use of the Products. Reseller will be responsible for paying all taxes of any nature which become due with regard to the Products it resells, except for taxes on Company's income, irrespective of which party may be responsible for reporting or collecting such taxes. Reseller will be responsible for all billing and End User collections related to the resale of access to and use of the Products.

3.3 Change Order Fees. In the event Reseller requests changes to an outstanding Order Form or SOW, additional fees may apply (“*Change Order Fees*”).

3.4 Term of End User Subscriptions. End User subscriptions purchased by Reseller commence on the start date specified in the applicable Order Form and continue for the subscription term specified therein. Except as otherwise specified in the applicable Order Form, all End User subscriptions shall automatically renew for additional periods equal to the expiring subscription term or one (1) year (whichever is shorter), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. The per-End User License Fees during any such renewal term shall be the same as that during the prior term unless Company has given Reseller written notice of a pricing increase at least sixty (60) days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter.

3.5 Payment Schedule. Reseller shall pay all Fees specified in each applicable Order Form pursuant to the terms of this Agreement. Except as otherwise specified in this Agreement or in an applicable Order Form, (i) Fees are based on Appendix A, and (ii) payment obligations are non-cancelable and Fees paid are non-refundable. End User subscription Fees are based on active End Users.

3.6 Invoices. Company shall deliver invoices to Reseller for Professional Services in accordance with each SOW (“*Invoice(s)*”). All Invoices are payable within thirty (30) days of receipt by Reseller unless otherwise agreed upon in writing by the parties. Invoices shall list any Expenses and Additional Costs as separate items.

3.7 Payment Terms. All payments under this Agreement shall be made (i) within thirty (30) days after the receipt of the applicable invoice for Professional Services, and (ii) in accordance with the fee schedule for End User subscriptions. All amounts are payable in United States dollars unless specified otherwise on the applicable Order Form or SOW. Any amounts not paid when due shall accrue interest at the lesser of one and three percent (3%) per month or the maximum rate allowed by law. If Reseller has been delinquent in its payments, Company may condition future subscription renewals and Order Forms on prepayment or payment terms shorter than those specified in this [Section 3.7](#). Reseller will be responsible for all billing and Customer collections related to the sale of End User licenses.

3.8 Suspension of Access; Acceleration of Payment. If any amount owing by Reseller under this or any other agreement for the End User subscriptions for the Products is thirty (30) or more days overdue, Company may, without limiting Company’s other rights and remedies, accelerate Reseller’s unpaid Fees obligations so that all such obligations become immediately due and payable, and suspend providing access to the Products to Reseller and the Customers until such amounts are paid in full. Company will give Reseller at least seven (7) days prior notice that its account is overdue before taking any such action.

3.9 Recordkeeping; Audit. Reseller shall maintain accurate and complete books and records necessary to demonstrate compliance with this Agreement. Company may, at its expense, conduct an audit to verify that Reseller is using and reselling the Software in accordance with this Agreement. Any such audit shall be conducted during regular business hours, not more than once per year, and shall not unreasonably interfere with Reseller’s business activities. If an audit reveals that Reseller has used, distributed or allowed use of the Software in excess of the use permitted by the Order Form and this Agreement, then Reseller shall pay Company for such unauthorized use based on the Company retail price list in effect at the time the audit is completed. If the unpaid license fees exceed five percent (5%) of the license fees paid, then Reseller shall pay Company’s reasonable costs of conducting the audit.

ARTICLE IV RESELLER RESPONSIBILITIES

4.1 Reseller shall use its best efforts to (i) market, advertise and otherwise promote and sell subscriptions for the Products in the Territory; (ii) perform its obligations under this Agreement in a timely and professional manner; and (iii) further and preserve the goodwill and reputation of the Company and Products.

4.2 Reseller shall be responsible for (i) Customers’ and End Users’ compliance with all Company’s policies and procedures applicable to the Products, including, without limitation, the EULA; and (ii) the accuracy, quality and legality of the Customer Data and of the means by which it was acquired.

4.3 Reseller shall promptly notify Company of any known or suspected infringement or misappropriation of Company IP Rights that comes to Reseller's attention.

4.4 Reseller shall not: (i) make the Products available to anyone other than Customers and End Users; (ii) sell, resell, rent or lease the Products and/or Services outside the Territory; (iii) use the Products to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (iv) use the Products to store or transmit malicious code; (v) interfere with or disrupt the integrity or performance of the Products or third-party data contained therein; (vi) attempt to gain unauthorized access to the Products or their related systems or networks; (vii) reverse engineer, decompile, disassemble, modify, or adapt the Products or create derivative works based on the Products except as may be preapproved by Company in writing; (viii) make any representation or warranty regarding the Products to any third party other than those previously made to Reseller by Company regarding the Products or otherwise authorized by Company to be made by Reseller to third parties; or (ix) make improvements or changes to the Products.

ARTICLE V OWNERSHIP

5.1 Ownership. Company retains all right, title and interest (including without limitation all patent rights, copyrights, trademark rights, trade secret rights and other intellectual property rights), in and to the Products, including any Updates. Reseller agrees that only Company shall have the right to maintain, enhance or otherwise modify the Services. If Reseller provides Company with reports of defects in the Services or proposes or suggests any changes or modifications (collectively "**Feedback**"), Company shall have the right to use and exploit such Feedback including, without limitation, the incorporation of such Feedback into Company's software products and/or services, including, without limitation, the Software, without any obligation to Reseller. Except as expressly set forth in this Agreement, Company reserves all rights and grants Reseller no licenses of any kind, whether by implication, estoppel, or otherwise. Reseller hereby assigns to Company all other intellectual property rights it may now or hereafter possess in the Products and all derivative works and improvements thereof, and agrees to execute all documents, and take all actions, that may be necessary to confirm such rights.

5.2 Customer and Reseller Data. Company shall have the limited right to use the Customer Data and Reseller Data to provide the Services in accordance with this Agreement and Reseller shall obtain such rights from its Customers for Company. Subject to the limited rights granted to Company pursuant to this Agreement, Company acquires no right, title or interest from Reseller or any Customers under this Agreement in or to Customer Data and Reseller Data, including any intellectual property rights therein.

ARTICLE VI CONFIDENTIALITY

6.1 Confidentiality and Nondisclosure. A party receiving Confidential Information (the "**Receiving Party**") shall maintain the confidentiality of all Confidential Information of the party disclosing the Confidential Information (the "**Disclosing Party**") and shall not release, disclose, divulge, sell or distribute any Confidential Information, without the prior written consent of the Disclosing Party. The Receiving Party may only use and copy the Disclosing Party's Confidential Information as is necessary to carry out its activities contemplated by this Agreement and for no other purpose. The Receiving Party may disclose the Disclosing Party's Confidential Information to its employees on a "need to know basis", provided that it shall first instruct such employees to maintain the confidentiality thereof. Reseller may disclose Confidential Information to End Users to the extent necessary to carry out the intent of this Agreement, but such End Users shall have entered into an EULA. The confidentiality obligations under this Agreement shall indefinitely survive any expiration or earlier termination of this Agreement.

6.2 Exclusions. Notwithstanding the foregoing paragraph, "Confidential Information" shall not include any information or materials that: (a) are or become known to the general public through no act or omission of the Receiving Party, (b) is received by the Receiving Party from a third-party without a restriction on disclosure, or (c) are disclosed to the general public by the Disclosing Party.

ARTICLE VII

RELATIONSHIP OF THE PARTIES

7.1 Independent Contractor: The relationship of the parties hereunder is that of independent contractors, and no agency, partnership, joint venture, or employee-employer relationship is intended or created by this Agreement. Neither party is authorized to act as agent or bind the other party except as expressly stated in this Agreement. All rights granted to hereunder are contractual in nature and are expressly defined by this Agreement.

7.2 No Exclusivity. 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.

ARTICLE VIII WARRANTIES; DISCLAIMER

8.1 Software Warranties. Company warrants for thirty (30) days from delivery that the Software will perform substantially in accordance with the Company's published specifications and any accompanying user documentation when used under normal operation and maintenance conditions. ANY RELATED THIRD-PARTY SOFTWARE, PROVIDED WITH THE SOFTWARE, AND DATA AND PRE-RELEASE VERSIONS OF THE SOFTWARE, ARE SUPPLIED ON AN "AS IS" BASIS WITHOUT CONDITION OR WARRANTY OF ANY KIND, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, EITHER EXPRESS OR IMPLIED. Any software warranty in any software license agreement between the parties will take precedence over this software warranty.

8.2 Accessibility Warranty. Subject to the terms this Agreement, Company warrants that it shall use commercially reasonable efforts to assure that the Software is accessible twenty-four (24) hours a day, seven (7) days a week. Notwithstanding the foregoing, Reseller acknowledges that from time to time the Software may not be available or may be inaccessible or inoperable due to (i) hardware or software malfunctions; (ii) periodic maintenance procedures or repairs which Company may undertake from time to time; or (iii) causes beyond the control of Company and which are not reasonably foreseeable by Company, including, without limitation, 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 the foregoing warranty, Company's sole responsibility and Reseller's sole and exclusive remedy, is, at Company's option, (a) to repair and restore access to the Software, or (b) correct any error or omission in the Software.

8.3 Exclusions. The above warranties specifically exclude defects resulting from: (i) modifications made to the Software by anyone other than Company; (ii) Reseller's failure to install the most recent Updates; (iii) Reseller's use of the Software in connection with any computer equipment or devices that do not meet the minimum requirements set forth in the Documentation; or (iv) Reseller's use of the Software in a manner that is not authorized in this Agreement. Company does not warrant that use of the Software will be uninterrupted or error free. The Warranty Period only applies to the initial delivery of Software to Reseller; delivery of Updates shall not restart or have any other effect on the Warranty Period.

8.4 Disclaimer of Warranties. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS AGREEMENT, THE SERVICES, DELIVERABLES, AND OTHER WORK PRODUCT ARE PROVIDED "AS IS" AND "AS AVAILABLE." THE EXPRESS WARRANTIES IN THIS AGREEMENT SHALL BE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND/OR COMPLIANCE WITH LAWS OR GOVERNMENT RULES OR REGULATIONS APPLICABLE TO A PROJECT.

ARTICLE IX INDEMNIFICATION; LIMITATION OF LIABILITY

9.1 Indemnification by Reseller: Reseller agrees to indemnify, defend and hold harmless Company, its affiliates, and their directors, officers, shareholders, employees and agents from and against any claims, suits, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees, arising out of or resulting from: (a) any actions or omissions on the part of Reseller in marketing or reselling the Software (other than claims for which Company

indemnifies Reseller pursuant to Section 8.1 above); (b) any breach of its obligations set forth in this Agreement; or (c) any failure on the part of Reseller to pay any taxes, duties or assessments due hereunder or other amounts as required by law.

9.2 Indemnification by Company: Company shall indemnify Reseller from any and all damages, liabilities, costs, losses, or expenses (including reasonable attorneys' fees) arising out of any claim, demand, or action by a third party arising out of (i) any breach of Company' responsibilities or obligations, representations or warranties under this Agreement; or (ii) any claim for infringement or violation of any intellectual property rights of a third party arising from or related to the Software. Reseller shall promptly notify Company in writing of any third-party claim or suit. Company shall have the right to fully control the defense and any settlement of such claim or suit.

9.3 Limitation of Liability. EXCEPT FOR A BREACH BY COMPANY OF ITS CONFIDENTIALITY OBLIGATIONS UNDER THIS AGREEMENT, UNDER NO CIRCUMSTANCES WILL COMPANY, ITS DIRECTORS, OFFICERS, EMPLOYEES, DESIGN AGENTS AND AFFILIATES (“**COMPANY PARTIES**”) BE LIABLE TO RESELLER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT, UNDER ANY CONTRACT, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE) OR OTHER THEORY, FOR: (A) ANY INCIDENTAL, PUNITIVE, INDIRECT, SPECIAL, EXEMPLARY, EXTRAORDINARY, RELIANCE, OR CONSEQUENTIAL DAMAGES OR LOST PROFITS; (B) LOST DATA OR CONTENT, OR BUSINESS INTERRUPTION; OR (C) ANY OTHER DAMAGES THAT IN THE AGGREGATE EXCEED ALL AMOUNTS PAID OR PAYABLE BY RESELLER TO COMPANY HEREUNDER IN THE 12-MONTH MONTH PERIOD PRECEDING THE INITIAL FILING OR NOTIFICATION OF THE CLAIM OR ACTION. THE FOREGOING LIMITATION OF LIABILITY WILL APPLY TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW REGARDLESS OF WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ANY REMEDY OF ITS ESSENTIAL PURPOSE. THIS IS THE ENTIRE LIABILITY OF COMPANY, AND RESELLER'S SOLE AND EXCLUSIVE REMEDY.

ARTICLE X TERM AND TERMINATION

10.1 Term. The Agreement shall commence as of the Effective Date and shall continue in effect for an initial term of three (3) years (the “**Initial Term**”). Thereafter, the term of the Agreement shall be automatically renewed annually on the anniversary of the Effective Date for additional one (1) year renewal terms (any such subsequent renewal terms referred to in this Agreement as a “**Renewal Term**”), unless either party gives written notice of non-renewal to the other party at least thirty (30) days prior to the end of the Initial Term or any Renewal Term hereof. Collectively, the Initial Term and any subsequent Renewal Terms shall constitute the “**Term**”.

10.2 Termination for Cause: Either party may terminate this Agreement immediately, upon written notice to the other party if the other party breaches any of its material responsibilities or obligations under this Agreement and fails to cure that breach within five (5) days following the notice of termination for cause.

10.3 Termination for Insolvency: Company may terminate this Agreement at any time, effective upon written notice to Reseller, if Reseller ceases to conduct business in its normal course; makes an assignment for the benefit of creditors; is liquidated or otherwise dissolved; becomes insolvent; files a petition in bankruptcy; or a receiver, trustee, or custodian is appointed for it.

10.4 Termination by Mutual Agreement: This Agreement may be terminated immediately at any time by the mutual written agreement of the parties, effective on the date of execution of such writing, unless an alternative effective date of termination is otherwise specifically agreed upon therein.

10.5 Termination for Convenience: Either party may terminate this Agreement at any time and for any reason on thirty (30) days prior written notice to the other party.

10.6 Effects of Termination. Upon termination of this Agreement for any reason, (i) all direct EULA licenses granted to then-existing End Users survive in accordance with their terms and such subscriptions shall be transferred from Reseller to Company, and (ii) Reseller shall immediately (a) cease all use of the Products; (b) discontinue any use of

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the Marks, including any service marks and slogans of Company and the Products; (c) discontinue all representation or statements from which it might be inferred that any relationship exists between Reseller and Company; (d) cease to promote, market, solicit orders for or procure orders for the Products (but Reseller shall not act in any way to damage the reputation or goodwill of Company or the Products); and (e) promptly return all Confidential Information and related materials to Company. Upon any termination for cause by Company, termination for insolvency of Reseller, or termination for convenience by Reseller, Reseller shall pay any unpaid Fees covering the remainder of the term of all Order Forms after the effective date of termination. In no event shall any expiration or termination relieve Reseller of the obligation to pay any Fees payable to Company for the period prior to the effective date of termination.

10.7 Return of Confidential Information. On expiration or termination of this Agreement: (i) each party shall return or, at the disclosing party's request, destroy the Confidential Information of the other party, and (ii) all rights and obligations regarding Confidential Information shall survive.

**ARTICLE XI
RESTRICTIVE COVENANTS**

11.1 Limited Non-Competition. During the Term, Reseller shall not: (a) directly or indirectly market, promote, or solicit customers or subscriptions for, supply, sell or re-sell any product or service in competition with the Software; (b) have any controlling interest in any entity that markets, promotes, sells or provides any product or service in competition with the Software; (c) enter into any agreements with any provider to resell, redistribute, sub-license or otherwise commercialize any product or service that competes with the Software; or (d) display on its website or elsewhere any advertising or marketing materials of any provider of any product or service that compete with the Software. Company shall have the continuing right to market and sell the Software and any other products or services to any third parties, including but not limited to current, future and potential Customers.

**ARTICLE XII
DISPUTE RESOLUTION**

12.1 Negotiation. The parties agree to first attempt to resolve any dispute by negotiation between the parties.

12.2 Arbitration/Mediation. If parties are unable to resolve the dispute by negotiation, either party may start mediation and/or binding arbitration in a forum mutually agreed to by the parties.

12.3 Litigation. In all other circumstances, the parties specifically consent to the local, state and federal courts located in the state of Delaware. The parties waive any jurisdictional or venue defenses available to them and further consent to service of process by mail.

12.4 Attorney Fees. The prevailing party shall be entitled to recover its attorneys' fees and costs in any dispute resolved by binding arbitration or litigation.

**ARTICLE XIII
GENERAL**

13.1 Modification/Waiver: Modifications to this Agreement must be in writing and signed by both parties. Failure by either party to enforce any right or seek to remedy any breach under this Agreement shall not be construed as a waiver of such rights nor shall a waiver by either party of default in one or more instances be construed as constituting a continuing waiver or as a waiver of any other breach.

13.2 Notices. All notices under this Agreement shall be given in writing either by: (a) Fax or Email, with return confirmation of receipt; (b) Certified or Registered mail, with return receipt requested. Notice will be effective when received, or in the case of email or fax, on confirmation of receipt.

13.3 Assignment. Except as may otherwise be provided in this Agreement, Reseller may not assign, transfer, or delegate any rights or obligations under this Agreement without Company's prior written consent, which consent will not be unreasonably withheld. Notwithstanding anything to the contrary herein, Company may assign this Agreement

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and its rights and obligations hereunder to any successor to all or substantially all of Company' assets, whether by merger, consolidation, reorganization, reincorporation, sale of assets or stock, or otherwise without consent of Reseller.

13.4 Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware.

13.5 Joint and Several Liability. If and to the extent the Reseller is not a legal business entity, each individual who executes the Agreement shall be jointly and severally liable for any and all Fees and other costs or damages recoverable from Reseller arising pursuant to this Agreement.

13.6 Severability. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect. Where possible the invalid or unenforceable provision shall be interpreted in such manner as to be effective and valid under applicable law.

13.7 Survival. Any rights or obligations of the Parties in this Agreement which, by their nature, should survive termination or expiration of this Agreement will survive any such termination or expiration.

13.8 Force Majeure. Company is not liable for failure to perform any of its obligations if caused by an event outside its reasonable control.

13.9 Headings. Headings and numbering used in this Agreement are for convenience and reference only and shall not affect the scope, meaning, intent or interpretation of this Agreement, and shall not have any legal effect

13.10 Complete Agreement. This Agreement is the entire understanding of the parties and supersedes all prior understandings and documents relating to the subject matter of this Agreement.

13.11 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

[End of Terms and Conditions]