

## RESELLER AGREEMENT

THIS AGREEMENT is dated this        day of

**BETWEEN:**

- (1) ContactMaker Databases Limited, a company registered with Company Number 06415201 and with registered Office at 20 Penlands Rise, Steyning, West Sussex BN44 3PJ (“CMD”); and
- (2) <Your details>

**WHEREAS:**

- (A) CMD owns particular software products as described in more detail within this Agreement; and
- (B) CMD wishes to use the marketing services of <YOU> to increase sales of the software products under the terms of this Agreement

In consideration of the mutual covenants and undertaking set out below, the Parties agree as follows:-

### 1 DEFINITIONS & INTERPRETATION

In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

CMD Terms & Conditions	means the current Terms & Conditions of CMD which apply to all sales and contracts to End Users pursuant to this Agreement, and a current copy of which is attached as Appendix 2.
Confidential Information	means all information not in the public domain which could reasonably be considered Confidential and includes but is not limited to information on finances, technology, trade secrets, other clients, suppliers of either party or any other commercial sensitive information
CONTACTfile	means a branding name given to the Software Products and under which <YOU> will sell the Software Products
End User	means the Customer/End User with whom <YOU> has contracted
Force Majeure	means an Act of God or other act that is outside the control of either of the parties but which prevents the party from performing the Contract
Intellectual Property Rights	means all copyright and other Intellectual Property Rights howsoever arising and in whatever media, whether or not registered including without limitation patents, trade names, trademarks, registered design and any applications for the registration of these rights throughout the world
New Licence	means a contract between <YOU> and an End User providing such End User with a password code in order to use the Software Products

Sale	means a contract between <YOU> and an End User resulting in a contract for the installation and use of the Software Products, Upgrade or Support
Software Products	means the current database software known as “CONTACTfile Pro” together with add-on modules Invoicer”, “Tracker” and “Helpdesk” which can be bundled in any permutation as required
Upgrade Assurance	means a formal agreement with <YOU> and the End User, which gives the End User entitlement to use upgraded versions of the Software Products for the term of that Agreement, as they are issued: the provision of a further pass code to the End User indicating the Sale for the upgrade

## 2 APPOINTMENT OF <YOU>

- 2.1 CMD hereby appoints <YOU> as its reselling agent under the terms of this Agreement and agrees that <YOU> shall, subject to clauses 2.2 and 2.3, have the exclusive marketing and selling rights to the Software Products under the logo and brand of “CONTACTfile”;
- 2.2 The Parties acknowledge that, should the Software Products be marketed and sold under a different brand, <YOU> shall have no rights to market and sell such products.
- 2.3 The Parties acknowledge that <YOU> has no right to permit third parties to market and sell the Software Product.
- 2.4 It is accepted between the Parties that sale of the Software Products to an End User in any sale of Software Products or other contract between <YOU> and an End User, constitutes that End User as a client of <YOU> and not CMD.
- 2.5 CMD will issue <YOU> with a software utility to register customers as exclusive users of the licence and to issue passcodes for this purpose.

## 3 PAYMENT

- 3.1 CMD will provide VAT chargeable invoices to <YOU> during the first week of each calendar month for all Sales that have taken place during the previous calendar month as notified to CMD pursuant to clause 7.
- 3.2 Settlement of all invoices is due from <YOU> within 30 days from date of invoice (“Due Date”);
  - 3.2.1 If payment is not made by <YOU> in accordance with clause 3.2, CMD may charge interest at the rate of 4% per annum above the National Westminster Bank base rate.
  - 3.2.2 If payment is not received by the Due Date, CMD reserves the right to treat non-payment as the basis of termination of this contract or the suspension of further services until full payment of all outstanding amounts is made by <YOU>.
- 3.3 The amount to be invoiced by CMD for the Sales shall be based on the following agreement:-
  - 3.3.1 For sale of Software Products with gross income on the sale to be split 40% <YOU> / 60% CMD;
  - 3.3.2 The following percentage splits apply for the different types of contract with the End User:-
 

- New licences	40/60 split <YOU>:CMD
- Upgrade assurance	50/50 split
- Upgrades (50% of new)	40/60 split
- Support contract (CMD to carry out)	40/60 split

- 3.4 Any change to the pricing or any discounts to be applied shall be agreed in writing between the Parties;
- 3.5 It is acknowledged that <YOU> has the right to determine the price for the sale of the Software Products which currently are set out at Appendix 1 to this Agreement but may be changed in <YOU>'s discretion. Any such changes shall be notified to CMD in advance of such change.
- 3.6 It is acknowledged that any change in pricing will not affect the amount invoiced to <YOU> by CMD, which will stay at 60% of the published price unless otherwise agreed.

#### **4 TERM OF THE AGREEMENT**

- 4.1 This Agreement shall, subject to breach under clause 9 continue until notice is given by either Party.
- 4.2 Either Party may give the other 3 months written notice of its wish to terminate the Agreement.

#### **5 INTELLECTUAL PROPERTY RIGHTS AND LICENCE**

- 5.1 The Parties acknowledge that CMD is the owner of all Intellectual Property Rights within the Software Products and the name *CONTACTfile*.
- 5.2 The Parties acknowledge that the logo of *CONTACTfile* is owned by CMD and CMD hereby gives the right and Licence for <YOU> to use the logo *CONTACTfile* under the terms of this Agreement.

#### **6 CONFIDENTIAL INFORMATION**

- 6.1 All information obtained by either party under or during the performance of the Agreement that could reasonably be considered as Confidential Information shall be treated as confidential.
- 6.2 It is the responsibility of the parties to ensure that such Confidential Information is kept Confidential by them or their employees, Sub-contractors and consultants and is maintained and stored in a manner to ensure that confidentiality is maintained.
- 6.3 Both parties shall not and shall procure that both their employees, subcontractors or consultants do not disclose Confidential Information to any party except as shall be necessary to effect the Services or unless agreed in writing beforehand by the other party except to the extent that:-
  - 6.3.1 It is in or comes into the public domain otherwise than through a breach of this Agreement;
  - 6.3.2 It is already known to the other party of this Agreement;
  - 6.3.3 It is required to be disclosed by law, any Court of competent jurisdiction or by any governmental official or regulatory body which is lawfully entitled to require any such information.

#### **7 OBLIGATIONS OF <YOU>**

<YOU> agrees that, throughout the term of the Agreement, it shall:

- 7.1 not represent itself as being the owner of any Intellectual Property Rights in connection with the Software Products; or
- 7.2 at all times represent itself as a "reseller" of CMD and in no other way connected with CMD;
- 7.3 not offer any guarantees or attest to any standard that the Software Products may achieve in the future, without the express written permission of CMD;
- 7.4 provide accurate information and lists of all Sales made in any calendar month during the last week of that calendar month including customer details;

- 7.5 make every effort to promote, market and sell the Software Products;
- 7.6 ensure that all sales and contracts with its End Users shall be pursuant to the current CMD terms & conditions as made known to <YOU> from time to time.

## **8 OBLIGATIONS OF CMD**

CMD agrees that, throughout the term of the Agreement, it shall:

- 8.1 supply the Software Products in a timely manner and with reasonable endeavour to comply with any reasonable timeframe which <YOU> has obligated itself to achieve in its contract to its End User provided same are made known to CMD;
- 8.2 expressly agree that, in the event that where there is any opportunity where both CMD and <YOU> are represented, CMD will allow <YOU> freedom to complete the sale.
- 8.3 CMD will issue <YOU> with a software utility to register customers as licensees of the software and to issue passcodes for this purpose.

## **9 TERMINATION FOR BREACH**

- 9.1 Either party may terminate this Agreement immediately by giving notice to the other in writing if the other party:
  - 9.1.1 if the other party commits a material breach of any of the provisions of this Agreement; and
  - 9.1.2 if the breach is capable of remedy fails to remedy the breach within a reasonable period of time of notice in writing requiring the breach to be remedied, and giving notice of the breach and notice of its intention to terminate;
  - 9.1.3 commits a material breach of any of the provisions of this Agreement that is not capable of remedy;
  - 9.1.4 proposes a voluntary arrangement within the meaning of Section 1 of Section 253 of the Insolvency Act 1986, or an interim order is made in relation to the Supplier under Section 252 of the Insolvency Act 1986, or any other steps are taken or negotiation commenced by that party or any of its creditors with a view to proposing any kind of composition, compromise or arrangement involving the other party and any of its creditors;
  - 9.1.5 passes a resolution for winding up or has a petition to wind up presented against it or goes into liquidation, whether voluntary or compulsory (except for the purposes of a solvent amalgamation or reconstruction which has been given the prior written consent of the first party);
  - 9.1.6 has a receiver, administrative receiver or administrator appointed over the whole or a material part of its undertaking or assets;
  - 9.1.7 is unable to pay its debts (as defined by Section 123 of the Insolvency Act 1986);
  - 9.1.8 suspends or ceases to carry on its business; or
  - 9.1.9 enters into any composition or arrangement with its creditors.
- 9.2 The rights to terminate this Agreement pursuant to this Clause 12, and the exercise of such rights shall not prejudice any other right or remedy of either party in respect of any breaches of this Agreement.

## **10 CONSEQUENCES OF TERMINATION**

- 10.1 Upon termination of this Agreement for any reason whatsoever:
- 10.1.1 if notice was provided under clause 4.3, the Parties agree that <YOU> shall continue to resell up to the end of the notice period and <YOU> will make full payment for those Sales;
  - 10.1.2 If notice is given for breach under clause 9, then the Parties agree that the relationship of each party shall cease on the giving of that notice and any monies due from <YOU> up to that point shall remain due and owing;
  - 10.1.3 within 30 days of the expiry and termination of this Agreement, CMD shall submit its final invoice to <YOU> setting out the full amounts outstanding, and <YOU> agrees to pay this amount within 30 days of the date of that invoice.
- 10.2 <YOU> shall return or notify CMD of the destruction of any CONTACT*file* licence generation software within 7 days of expiry of this agreement.

## **11 ASSIGNMENT**

- 11.1 Save in the context of any change of ownership, or sale of business or part thereof, it is agreed that neither party can assign without the consent of the other party which shall not be unreasonably withheld.

## **12 FORCE MAJEURE**

- 12.1 If either party is affected by Force Majeure it shall immediately notify the other party in writing of the matters constituting the Force majeure and shall keep that party fully informed of the continuance and of any relevant change of circumstances whilst such Force Majeure continues. For the purpose of this clause, Force Majeure shall mean an act or happening outside of the control of either party.
- 12.2 The party affected by Force Majeure shall take all reasonable steps available to it to minimise the effects of Force majeure on the performance of its obligations under this Agreement.
- 12.3 Unless Force Majeure shall continue for longer than three months, it shall not entitle either party to terminate this Agreement and neither party shall be in breach of this Agreement, or otherwise liable to the other by reason of any delay in performance or non-performance of any of its obligations.

## **13 GENERAL**

- 13.1 Nothing in this Agreement shall create or be deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between the parties and no employee of CMD shall be deemed to be or have become an employee of the <YOU>/End user.
- 13.2 Any notices sent under this Agreement must be in writing and may be served by personal delivery or by sending the notice by registered post.
- 13.3 No purported alteration or variation of this Agreement shall be effective unless it is made in writing;
- 13.4 The waiver by either party of any breach of this Agreement shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.
- 13.5 If at any time any part of this Agreement is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from this Agreement and the validity and/or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired as a result of that omission.

**14 LAW AND JURISDICTION**

14.1 This Agreement and any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with the Laws of England and all disputes or claims arising out of or relating to this Agreement shall be subject to the non-exclusive jurisdiction of the English Courts to which the parties irrevocably submit.

**15 ENTIRE AGREEMENT**

15.1 This Agreement together with all documents referred to herein, whether appended or not, constitutes the whole agreement between the parties and supersedes all previous agreements between the Parties relating to its subject matter

**IN WITNESS WHEREOF THIS AGREEMENT** has been duly executed the day and year first Before Written

Signed By .....

For and On Behalf of ContactMaker Databases Limited

Signed By .....

For and On Behalf of <YOU>