

RESELLER AGREEMENT FOR SWIFTPAGE EMAIL

THIS RESELLER AGREEMENT (the "Agreement") is entered into this _____ day of _____, 2004 (the "Effective Date") by and between Summit 5, LLC, a limited liability corporation with principal offices at 383 Inverness Pkwy, Ste 240 Englewood CO 80112. ("Summit 5"), and _____, [an individual/a _____ corporation (choose individual or entity as appropriate)] with principal offices at _____ ("Reseller").

1. DEFINITIONS.

"Documentation" means the user guides and manuals provided by Summit 5 for distribution to Sublicensees.

"Price List" means Summit 5's fee schedule that is in effect and applicable when Software or Services are ordered by Reseller. Summit 5 reserves the right to change the fees in the Price List by giving thirty (30) days notice to Reseller.

"Serial Number" means the serial numbers provided by Summit 5 to Reseller that are required in order for a Reseller or Sublicensee to access and use the Solution.

"Services" means the provision by Summit 5 of access to and use of the Solution to Reseller and/or Sublicensees, with the availability and service levels set forth in Addendum B.

"Software" mean the software in object code form owned or distributed by Summit 5, as more specifically described in Addendum A, and any Updates to the Software supplied by Summit 5 under this Agreement.

"Solution" means the Summit 5's internet-based Rich E-mail optimization, marketing, and sales technologies and services collectively called SwiftPage Email, including, without limitation, the Software (as more specifically identified Addendum A).

"Sublicensee" means entities that intend to receive the Services for their own internal business purposes and not for further distribution.

"Summit 5 Marks" means all trademarks, service marks, trade names, logos or other words or symbols identifying or associated with the Solution, Software or the business of Summit 5.

"Update" means an error correction, patch, bug fix, minor modification, or new release of the Software that is generally made available to purchasers of the Solution at no additional charge, other than media and handling charges. Updates shall not include any major modifications, options or future Software that Summit 5, in its sole discretion, determines to license separately and charge a separate license fee.

2. SERVICES

2.1 Subject to the terms and conditions of this Agreement, Summit 5 shall provide the Reseller and Sublicensees the Services. Except for the Software, the Solution will at all times reside on a server owned and operated by or on behalf of Summit 5 and Reseller and Sublicensees shall be provided remote access to the Solution.

2.2 For the Solution, Summit 5 shall undertake appropriate server-related maintenance, such as periodic updates and enhancements to the networking software, server operating system, and database software.

3. APPOINTMENT AND LICENSES.

3.1 Subject to the terms and conditions of this Agreement and during the Term, Summit 5 hereby appoints Reseller as a non-exclusive reseller of the Services to Sublicensees.

3.2 Subject to the terms and conditions of this Agreement and during the Term, Summit 5 hereby grants Reseller the following non-exclusive, non-transferable, non-sublicensable licenses:

(a) a license to use internally the Documentation solely to receive the Services and solely for Reseller's internal business purposes;

(b) a license to grant sublicenses to the Documentation to Sublicensees through a written sublicense agreement which at a minimum contains contractual provisions substantially in the form set forth in Addendum C;

(c) a license to remotely access and use the Solution solely for Reseller's internal business purposes;

(d) a license to test and demonstrate the Services to potential Sublicensees;

(e) a license to grant sublicenses to remotely access and use the Solution to Sublicensees through a written sublicense agreement which at a minimum contains contractual provisions substantially in the form set forth in Addendum C; and

(f) a license to use Summit 5 Marks in accordance with the usage guidelines established by Summit 5 for the Summit 5 Marks for the sole purpose of marketing the Services to Sublicensees.

(g) a license to use the technical support documentation supplied by Summit 5 for Reseller to provide Level 1 Support in accordance with the terms of this Agreement.

3.3 In exercising the license grant in Section 3.2(e), Reseller may authorize Sublicensee to allow access and use of the Solution to Sublicensee's employees in accordance with the license grant of 3.2(e) and the license restrictions in this Section 3, provided, however, that Reseller ensures that such Sublicensee purchases a seat license for each employee who will access the Solution and provided further that Reseller ensures that Sublicensee shall be solely responsible for its employees' acts and omissions related to the use of the Solution and shall inform all employees who are authorized to access the Solution of the obligations and restrictions set forth in this Agreement.

3.4 Reseller acknowledges and agrees that in order for Reseller or Sublicensees to access and use the Solution, Reseller must download and install the Software to Reseller's or Sublicensee's computer. Reseller further acknowledges and agrees that in order to download and install the Software, Reseller and Sublicensees must agree to the terms and conditions of a software license agreement ("**Clickthrough EULA**") that will be between Summit 5 and Reseller or Sublicensee, as the case may be, and that the terms and conditions of the Clickthrough EULA will control Reseller's and Sublicensee's use of the Software.

3.5 Reseller acknowledges that the Solution, Software and their structure, organization, and source code constitute valuable trade secrets of Summit 5. The Software is licensed and not sold. Except as expressly permitted in this Agreement, Reseller shall not, nor permit others to, (a) alter, enhance or otherwise modify, or create derivative works of the Solution, or decompile, reverse assemble or

otherwise reverse engineer the Solution or Software, (b) make copies of the Documentation, except for one copy for back-up or archival purposes or as expressly allowed in this Agreement, and (c) allow use of or access to the Solution, or sublicense, transfer or assign its rights to access and use the Solution, in whole or in part, to a third party.

3.6 Summit 5 reserves the right, from time to time, to add, change or discontinue Software or aspects of the Solution. Except as otherwise provided in this Agreement, Reseller shall not alter, modify or change the Software or the Solution.

4. RESELLER RESPONSIBILITIES AND ACTIVITIES.

4.1 Reseller shall provide Summit 5 access to the necessary information, resources, people and facilities so that Summit 5 can successfully provide Reseller and Sublicensees with the Services.

4.2 Upon entering a contract for Services with a Sublicensee, Reseller shall promptly establish an account for such Sublicensee with Summit 5 in accordance with Summit 5's then-current policies and procedures so that Sublicensee may receive Services.

4.3 Reseller shall acquire, install, provide and properly maintain, at its own cost, the hardware and software necessary or appropriate to receive the Services for its internal business use as permitted by this Agreement and as directed by Summit 5 from time to time. Reseller is solely responsible for ensuring that Sublicensees are aware of the hardware and software requirements needed to use the Software and access and use the Solution.

4.4 Reseller agrees not to make any reference or claim about Summit 5 or the Services other than presenting current information that has been published by Summit 5 or approved by Summit 5 in writing.

4.5 Reseller agrees not to use deceptive, misleading, illegal or unethical practices in marketing, sublicensing and supporting the Services to Sublicensees.

4.6 Reseller agrees and acknowledges that the Services (including the related e-mail distribution services provided to Reseller and Sublicensees within the Services) may be governed by and subject to the various laws and regulations of governmental entities, including, without limitation, laws related to consumer privacy, advertising, and the commercial use of e-mail. Reseller shall be solely responsible for complying with all applicable laws and regulations in performing its duties under this Agreement and in using the Services.

4.7 Foreign Corrupt Practices Act Compliance. The Reseller agrees that, in connection with its performance of its duties hereunder, it shall not make any payments, in money or any other item of value or make any offers or promises to pay any money or any other item of

value to (a) any government official, (b) any foreign political party, (c) any candidate for foreign political officer or (d) any other person or entity, with the knowledge that such payment, offer or promise to pay will be made to any government official for the purpose of influencing such government official to make one or more business decisions favorable to Reseller in connection with the resale of Summit 5 Software or the Solution. Reseller further represents that no government official is a principal, owner, officer, employee or agent of any entity in which Reseller has an interest, and no government official has any material financial interest in the business of the Reseller.

4.8 Reseller shall cause each Sublicensee to enter into a sublicensee agreement containing at a minimum all of the provisions set forth in Addendum C. Reseller shall be responsible for all account management issues for Sublicensees.

4.9 Reseller shall provide the maintenance and support services, if any, selected by Reseller in Addendum A.

4.10 Reseller agrees to maintain complete and accurate books and records in connection with the activities under this Agreement. Such records shall include executed sublicense agreements.

4.11 Upon Summit 5's request, Reseller shall provide Summit 5 with a copy of the Reseller's standard sublicense agreement for the Services.

4.12 Reseller agrees to keep Summit 5 informed as to any problems encountered with the Software or the Solution and any resolutions arrived at for those problems.

4.13 Reseller shall be solely responsible for account management matters with Sublicensees, including, without limitation, all billing, invoicing and collection responsibilities from Sublicensees.

4.14 Reseller shall provide each Sublicensee with the appropriate number of Serial Numbers (as obtained as set forth in Section 5.3) as determined by the number of Sublicensee's individuals who will be authorized by Reseller to access the Solution.

5. SUMMIT 5 RESPONSIBILITIES AND ACTIVITIES.

5.1 Summit 5 shall provide Reseller's sales staff with three (3) hours of telephone and internet training, covering the installation and use of the Solution, at no additional charge ("**Initial Training**"). After the Initial Training, Reseller may request ongoing training in the marketing, sale and use of the Services, at Summit 5's then current rates for such services. Any such training services will be provided under a separate professional services agreement. For any on-site training services requested by

Reseller and accepted by Summit 5, Reseller shall pay Summit 5 for all agreed to fees and for actual, reasonable travel and out-of-pocket expenses.

5.2 Summit 5 shall make available to Reseller Second Level Support as described in Addendum B if Reseller chooses to provide First Level Support to Sublicensees, as set forth in Addendum A. Summit 5 shall provide Sublicensees both First Level Support and Second Level Support if Reseller chooses not to provide First Level Support as set forth in Addendum A.

5.3 Summit 5 shall make available to Reseller via a password protected page on Summit 5's website Serial Numbers solely for Reseller to access and deliver to its Sublicensees. Within a reasonable time after the Effective Date, Summit 5 shall deliver to Reseller an ID and password which shall be used by Reseller to access Serial Numbers.

6. FEES, PAYMENT, AND TAXES. In consideration of the Services and accompanying licenses provided to Reseller by Summit 5 hereunder, Reseller shall pay Summit 5 the fees set forth in Summit 5's then-current Price List minus any Reseller Discounts set forth in Addendum A (the "**Fees**"). All Fees are quoted in U.S. dollars and Reseller shall pay the Fees in U.S. dollars. Summit 5 shall invoice Reseller for all Fees due hereunder, and unless otherwise specified in the Price List, all amounts billed will be due and payable within thirty (30) days of date of invoice. Any payments not received by Summit 5 by the due date will be considered past due and interest will accrue at the rate of one and one-half percent (1.5%) per month or, if less, the highest rate permitted under applicable law. Summit 5 may suspend or terminate the licenses granted under this Agreement, may refuse to distribute Serial Numbers, may market the Services and the Solution directly to existing Sublicensees, and may suspend or terminate Reseller's Sublicensees' access to the Solution if the Fees remain unpaid for more than sixty (60) days from payment due date, and if Summit 5 takes any of the foregoing actions but does not terminate this Agreement, upon payment by Reseller of all past-due Fees owed to Summit 5 by Reseller, Summit 5 shall cease the foregoing action to the extent it is possible. All Fees specified in this Agreement are exclusive of, and Reseller shall be solely responsible for, all value-added, sales, use, import, duties, customs or other taxes applicable to the transactions contemplated by this Agreement, except for any taxes based upon Summit 5's net income. If Reseller is not subject to any or all applicable taxes, then Reseller is responsible for submitting the applicable documentation to Summit 5. If this document is not provided at the time of the execution of this Agreement, applicable taxes will be calculated and included on the Reseller's invoice.

7. TERM. Agreement shall commence on the Effective Date and shall continue for a period of one (1) year ("**Initial Term**"). Thereafter, unless terminated as provided herein, this Agreement shall be automatically renewed for additional one (1) year terms unless either

party provides written notice, at least thirty (30) days prior to the expiration of the then-current term, to the other party of its intention not to renew (“**Renewal Term**”). In the event of a Renewal Term, all pricing for the Solution shall be in accordance with the Price List in effect at that time. Together the Initial Term and any Renewal Terms shall constitute the “**Term**.”

8. INTELLECTUAL PROPERTY. “**Summit 5 Property**” means (a) Summit 5’s e-mail optimization and business process management technologies, including formats, structure, design, tools, databases, and all related software (including the Software and the Solution), documentation, ideas, methods, methodologies, (b) any tools, databases, software, invention, development, methodology, Serial Numbers, or innovation conceived, developed or supplied by Summit 5 in providing the Services and the deliverables resulting from the Services, and (c) any and all derivative works, enhancements or other modifications to any of the above. Subject only to the licenses expressly granted in this Agreement, as between Summit 5 and Reseller, Summit 5 shall be the sole owner of all intellectual property rights in and to the Summit 5 Property. Summit 5 may utilize all ideas, suggestions, feedback, improvements data, reports or the like that Reseller provides to Summit 5 or otherwise makes with respect to the Software or the Services without any obligation to Reseller. To the extent that Reseller has or later obtains any intellectual property rights in and to the Software or Services or any future enhancement or modification thereto or any part thereof, by operation of law or otherwise, Reseller hereby disclaims such rights, assigns and transfers such rights exclusively to Summit 5, and agrees to provide reasonable assistance to Summit 5, to give effect to such assignment and to protect, enforce and maintain such rights. Reseller shall not remove any of Summit 5’s or its licensor’s copyright, trademark and other proprietary notices contained on or in the Software, Services, Documentation or any other materials delivered to Reseller, and Reseller will reproduce all such notices on all copies permitted to be made by Reseller under this Agreement.

9. CONFIDENTIAL INFORMATION.

“**Confidential Information**” means (a) any business or technical nonpublic information of Reseller or Summit 5, including but not limited to Serial Numbers and any information relating to the Software, Services, prices, marketing plans, business opportunities, or personnel, (b) any other information of Reseller or Summit 5 that is specifically designated by the disclosing party as confidential or proprietary, and (c) the terms and conditions of this Agreement. Confidential Information shall not include information that (i) is in or enters the public domain without breach of this Agreement through no fault of the receiving party, (ii) the receiving party was demonstrably in possession of prior to first receiving it from the disclosing party, (iii) the receiving party can demonstrate was developed by the receiving party independently and without use of or reference to the disclosing party’s Confidential Information, or (iv) the receiving party

receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation. Each party shall maintain the Confidential Information of the other party in strict confidence during the term of this Agreement and, until such Confidential Information falls into one of the categories (i) – (iv) above. Each party shall exercise no less than reasonable care with respect to the handling and protection of such Confidential Information. Each party shall use the Confidential Information of the other party only during the term of this Agreement and as expressly permitted herein, and shall disclose such Confidential Information only to its employees, independent contractors, and Sublicensees as is reasonably required in connection with the exercise of its rights and obligations under this Agreement (and only subject to binding use and disclosure restrictions at least as protective as those set forth herein). Notwithstanding the above, the receiving party may disclose Confidential Information of the disclosing party pursuant to a valid order or requirement of a court or government agency, provided that the receiving party first gives reasonable notice to the disclosing party to contest such order or requirement. Any such disclosure by the receiving party of the Confidential Information of the disclosing party, shall, in no way, be deemed to change, affect or diminish the confidential status of such Confidential Information.

10. WARRANTIES AND DISCLAIMERS.

10.1 Reseller Warranties. Reseller represents and warrants that neither this Agreement (or any term hereof) nor the performance of or exercise of rights under this Agreement, is restricted by, contrary to, in conflict with, ineffective under, requires registration or approval or tax withholding under, or affects Summit 5’s proprietary rights (or the duration thereof) under, or will require any termination payment or compulsory licensing under, any law or regulation of any organization, country, group of countries or political or governmental entity.

10.2 Summit 5 Warranty. Summit 5 makes no warranty, express or implied, with respect to the Services, Solution or the Software provided by Summit 5 under this Agreement. SUMMIT 5 HEREBY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, CONDITIONS AND OTHER TERMS, WHETHER STATUTORY, ARISING FROM COURSE OF DEALING, OR OTHERWISE, INCLUDING WITHOUT LIMITATION TERMS AS TO QUALITY, MERCHANTABILITY, FITNESS FOR PURPOSE AND NONINFRINGEMENT.

10.3 Mutual Warranty. The parties have the power and the authority to execute and perform this Agreement.

11. INDEMNIFICATION.

11.1 By Summit 5. Summit 5 agrees to defend Reseller from and against any third party claims alleging that the Software furnished and used within the scope of

this Agreement infringe or misappropriate a U.S. patent issued as of the Effective Date, copyright, trademark or trade secret and will pay all final judgments awarded or settlements entered into on such claims. The foregoing indemnity obligation shall not extend to any claims of infringement arising out of or related to (i) a modification of the Software by anyone other than Summit 5 or its duly authorized agents; (ii) the incorporation into the Software of any information provided by or requested by Reseller; (iii) a combination of the Software with any third party software or equipment where such combination is the cause of such infringement; or (iv) the use of a version of the Software other than the then-current version if infringement would have been avoided by using of the then-current version. In the event the Software is held or are believed by Summit 5 to infringe, Summit 5 may, at its sole option and expense, elect to (a) modify the Software so that it is non-infringing; (b) replace the Software with non-infringing Software which is functionally equivalent; (c) obtain a license for Reseller to continue to use the Software as provided hereunder. This Section 11.1 states Summit 5's entire liability and Reseller's sole and exclusive remedy for any infringement of third party proprietary rights of any kind.

11.2 By Reseller. Except for claims covered by Section 11.1, Reseller agrees to indemnify and defend Summit 5 from and against all third party claims arising out of or related to this Agreement (including Reseller's or Sublicensee's use of the Software and the Solution). Without limiting the generality of the foregoing, Reseller shall indemnify, defend, and hold harmless Summit 5 from all third-party claims alleging the Services or the Solution violate any law, regulation or rule.

11.3 Indemnification Procedure. The indemnifying party's indemnification obligations under this Section 11 are conditioned upon the indemnified party (a) giving prompt notice of the claim to the indemnifying party; (b) granting sole control of the defense or settlement of the claim or action to the indemnifying party; and (c) providing reasonable cooperation to the indemnifying party and, at the indemnifying party's request and expense, assistance in the defense or settlement of the claim.

12. LIMITATION OF LIABILITY. EXCEPT FOR BREACHES OF OBLIGATIONS IN SECTIONS 3.2, 3.4, 8, AND 9, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, SUFFERED BY THE OTHER PARTY, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS INTERRUPTIONS OR OTHER ECONOMIC LOSS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY USE OF OR FAILURE TO BE ABLE TO USE THE SOFTWARE, SERVICES OR THE SOLUTION. WITHOUT LIMITING THE FOREGOING, SUMMIT 5 SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATED TO (i) THE ACCURACY OR COMPLETENESS OF INFORMATION OR THE DATABASES IN THE

SOLUTION; (ii) MODIFICATIONS TO THE SOFTWARE, SERVICES OR THE SOLUTION BY RESELLER OR SUBLICENSEES, WHETHER SUFFERED BY RESELLER OR ANY THIRD PARTY; (iii) VIOLATION OF ANY APPLICABLE LAW, RULE OR REGULATION ARISING FROM OR RELATED TO RESELLER'S OR SUBLICENSEES' USE OR RECEIPT OF THE SOLUTION OR THE SERVICE; OR (iv) INTERRUPTIONS, DISRUPTIONS OR OTHER INTERFERENCE WITH RESELLER'S OR ANY SUBLICENSEE'S ABILITY TO RECEIVE AND USE THE SOLUTION DUE TO EVENTS AND/OR CIRCUMSTANCES OUTSIDE OF SUMMIT 5'S REASONABLE CONTROL. Summit 5's total aggregate liability for any damages arising out of or related to this Agreement will not exceed the Fees paid by Reseller hereunder, for the Services that are the subject of the action, for the six (6) months immediately preceding the breach for which the damages are claimed. The existence of one or more claims will not enlarge this limit. Reseller acknowledges that Summit 5's pricing reflects this allocation of risk and the limitation of liability specified in this section will apply regardless of whether any limited or exclusive remedy specified in this Agreement fails of its essential purpose.

13. TERMINATION.

13.1 This Agreement may be terminated by either party by providing at least thirty (30) days written notice to the other party of the date of termination. This Agreement will terminate automatically if all or a substantial portion of the assets of the other party are transferred to an assignee for the benefit of creditors, to a receiver or to a trustee in bankruptcy, a proceeding is commenced by or against the other party for relief under bankruptcy or similar laws and such proceeding is not dismissed within sixty (60) days, or the other party is adjudged bankrupt.

13.2 Upon the expiration or termination of this Agreement, Reseller shall immediately cease using the Solution and the Software and shall cease reselling the Solution.

13.3 Upon termination of this Agreement by either party or naturally at the end of the Term (i) all rights and licenses of Reseller and obligations of and restrictions on Summit 5 hereunder shall terminate, except as provided herein, and Reseller shall immediately cease marketing and selling the Solution; (ii) Reseller will, at the option of Summit 5, destroy or return all Software, Confidential Information, catalogues and literature in its possession, custody or control in whichever form held (including all copies or embodiments thereof) and will cease using Summit 5 Marks, (iii) the provisions of Sections 1, 4.1, 4.4, 4.5, 4.6, 4.7, 4.9, 4.10, 4.11, 4.12, 5.2, 6, 8, 9, 10, 11, 12, and 14 of this Agreement shall remain in effect, and (v) for each license agreement in effect between Reseller and Sublicensees upon termination or expiration of this Agreement that continue to remain in effect pursuant to (i) above, Reseller shall pay Summit 5 Fees pursuant to the

terms and conditions contained herein. Upon termination of this Agreement by Summit 5 for reasons (as such reasons are set forth in Summit 5's written notice to Reseller as required in Section 13.1) *other than* Reseller's breach of Reseller's obligations set forth in this Agreement, Summit 5 shall continue to provide the Solution to those Sublicensees of Reseller who have a contract with Reseller for the Solution at the time of termination, provided that Reseller continues to fulfill its payment and services obligations set forth in this Agreement, for one (1) year after the date of termination of this Agreement.

14. GENERAL TERMS.

14.1 Force Majeure. If the performance of any obligation under this Agreement, except the making of payments, is prevented or interfered with by a Force Majeure (any act or condition whatsoever beyond the reasonable control of and not occasioned by the fault or negligence of the affected party), the party so affected shall be excused from such performance to the extent of such prevention or interference.

14.2 Dispute Resolution. Any unresolved disputes between the parties relating to or arising from this Agreement shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "AAA Rules") before a single neutral and competent arbitrator selected in accordance with the AAA Rules. Such arbitration shall be held in Denver, Colorado and conducted in the English language. The cost and expense of arbitration shall be shared equally by the parties to the arbitration, regardless of which party or parties prevail. The arbitration shall be conducted in accordance with the following time schedule unless otherwise mutually agreed to in writing by the parties: (i) no later than thirty (30) days after the appointment of the arbitrator, the arbitrator shall schedule a hearing on the dispute and (ii) within thirty (30) business days after the date of the hearing referenced in clause (i), the arbitrator shall render a decision. The decision or award of the arbitrator shall be final and binding upon the parties, and to the same extent and to the same degree as if the matter had been adjudicated by a court of competent jurisdiction and shall be enforceable under the Federal Arbitration Act. However, the parties agree that any breach of a party's confidentiality obligations and the license grant and restrictions set forth in this Agreement will result in irreparable injury to the other party for which there is no adequate remedy at law. Therefore, in the event of any breach or threatened breach of such obligations, the nonbreaching party will be entitled to seek equitable relief

in addition to its other available legal remedies without submitting such matter to arbitration. Each party hereby irrevocably submits to the exclusive jurisdiction and venue of the state and federal courts located in Denver, Colorado for any action seeking injunctive relief hereunder.

14.3 Miscellaneous. The parties are independent contractors and nothing in this Agreement shall be construed to create a partnership, joint venture or employment relationship between the parties. This Agreement and the Addenda, which are incorporated herein by reference, sets forth the entire agreement between the parties and supersedes any and all prior proposals, agreements or communications, written or oral, of the parties with respect to the subject matter hereof. This Agreement may not be modified, altered or amended, except by written instrument duly executed by both parties. In the event there are conflicting terms in the body of this Agreement and the Addenda, the terms in the body of this Agreement shall control. No failure or delay by either party in exercising any right hereunder will operate as a waiver thereof. If Reseller wishes to assign or otherwise transfer this Agreement to anyone, Reseller must obtain Summit 5's prior written consent. This Agreement will be binding on the parties, their successors and permitted assigns. This Agreement will be construed under the laws of the State of Colorado, without regard to its conflicts of law principles. The parties hereby disclaim the application of the 1980 U.N. Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act. The English language version of this Agreement shall be controlling in the interpretation or application of the terms of this Agreement. If any provision of this Agreement is found invalid or unenforceable by an arbitrator or a court of competent jurisdiction, the remaining portions shall remain in full force and effect. All notices required under this Agreement shall be (a) in writing, (b) deemed to have been duly made and received when (i) personally served, (ii) delivered by commercially established courier service, or (iii) ten (10) days after deposit in mail via certified mail, return receipt requested, to the addresses specified on the first page of this Agreement or at such other address as the parties shall designate in writing from time to time, and, (c) for notices to Summit 5, marked "Attention: Contracts Department". Each person executing this Agreement and the Addenda on behalf of any entity hereby represents and warrants that he or she is duly authorized and has full authority to execute and deliver this Agreement and the Addenda. This Agreement and the Addenda may be executed simultaneously in two or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

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

SUMMIT 5

:

RESELLER:

By: _____
(Authorized Signature)

By: _____
(Authorized Signature)

Printed Name

Printed Name

Title

Title

Addendum A

I. **Software**

The Solution includes Swiftpage Email and the Software which is comprised of the software applications owned or licensed by Summit 5 which Sublicensees must download from Summit 5's website and install on Sublicensee's computer in order to access and use the Solution. The Software will be licensed to Reseller and Sublicensees under a separate end user license agreement solely for Reseller's and Sublicensee's internal business list.

II. **Support Options and Reseller Discounts**

Check the box indicating which support option Reseller desires:

- Reseller will provide First Level Support as further described in Addendum B and Summit 5 will provide Second Level Support as further described in Addendum B. Reseller shall receive a 40% discount from the prices on the Price List.
- Reseller will provide no support services and Summit 5 will provide all support services to Sublicensees as described in Addendum B. Reseller shall receive a 30% discount from the prices on the Price List.

Addendum B

I. Support Services

A. First Level Support services means:

1. Help Desk support provided by Reseller or Summit 5, as set forth in Addendum A (“**Support Provider**”) to Sublicensees for the purpose of providing advice and assistance to Sublicensees on the use of the Solution and the Software.
 - a. “Help Desk” means basic telephone and/or e-mail information and instructions provided to Sublicensee by Support Provider’s representatives who have an adequate knowledge of the Solution and the Software. The telephone support will include:
 - i. the general use of the Solution and the Software;
 - ii. optimization of the use of available functions;
 - iii. installation of the Software; and
 - iv. expected functionality in future.
2. If Support Provider is Reseller, then Reseller shall collect Sublicensee’s diagnostics as requested by Summit 5 to assist Summit 5 in providing Second Level Support services.
3. Providing telephone assistance or if applicable on-site assistance in researching and finding solutions to problems in the use of the Solution and the Software.
4. Having resources available who are able and capable of giving instruction and training in the use of the Solution and the Software to existing and new Sublicensees.
5. Coordinating all Second Level Support requirements with Summit 5 (if necessary) and working directly with Sublicensees on all matters pertaining to First Level Support requirements.
6. Providing Sublicensees with Updates.

During the term of this Agreement, Support Provider shall provide First Level Support to Sublicensees. If Reseller is the Support Provider, then Reseller shall designate one (1) member of its technical staff as Reseller’s sole representative for contact with Summit 5 regarding Summit 5 technical support obligations under this Addendum (“**Technical Contacts**”). The Technical Contacts shall also be the main contacts for First Level Support requests by Sublicensees.

B. Second Level Support: Second Level Support means online and telephone technical support provided by Summit 5 to Reseller for the purpose of providing advice and assistance to Reseller to support Sublicensees on the operation and use of the Software and the Solution.

1. Second Level Support by Summit 5 will consist of the following:
 - a. advice and assistance to support Reseller’s Sublicensees on Software and Solution functionality, debugging and troubleshooting in accordance with then-current Summit 5 support policies;
 - b. research problems reported by Reseller; and
 - c. provide Reseller with Updates developed by Summit 5.
2. Second Level Support will be provided in the English language only. Reseller’s Technical Contacts must speak, write and understand English.

3. Second Level Support shall be available to Reseller between the hours of 9:00 a.m. and 5:00 p.m., U.S. MST, weekdays, excluding U.S. holidays observed by Summit 5 (the “**Hours of Operation**”).

Addendum C

Minimum Terms for Reseller's End User License Agreement

Reseller shall insert the following terms and conditions in its customer agreement with Sublicensees

1. Customer acknowledges and agrees that in order to receive and access the services provided by Licensor ("Services"), Customer must install certain third party software ("Software") on its computers. Customer further acknowledges and agrees that its installation and use of the Software will be governed by a license agreement that Customer must agree to prior to downloading, installing and using the Software ("Clickthrough License"). Customer acknowledges and agrees that the Clickthrough License contains important terms and conditions that dictate what the Customer can and cannot do with the Software, and Customer acknowledges that it will be bound to the terms and conditions of the Clickthrough License.
2. Subject to the terms and conditions of this EULA, Licensor hereby grants to Customer a license remotely access and use the Solution solely for Customer's internal purposes and a license to use internally any associated documentation provided by Licensor ("Documentation") solely to receive the Services and solely for Reseller's internal business purposes.
3. Except as expressly permitted in this EULA, Customer shall not, nor permit others to, (a) alter, enhance or otherwise modify, or create derivative works of the Solution, or decompile, reverse assemble or otherwise reverse engineer the Solution, (b) use the Solution for third party transactions, commercial time-sharing, rental or service bureau use, or, except as expressly authorized herein, publicly perform or publicly display the Solution, (c) make copies of the Documentation, except for one copy for back-up or archival purposes or as expressly allowed in this Agreement, (d) allow use of or access to the Solution, or sublicense, transfer or assign its rights to access and use the Solution, in whole or in part, to a third party.
4. "Summit 5 Property" means (a) Summit 5's e-mail optimization and business process commonly known as Summit 5 Email management technologies, including formats, structure, design, tools, databases, and all related software (including the Software and the Solution), documentation, ideas, methods, methodologies, (b) any tools, databases, software, invention, development, methodology or innovation conceived, developed or supplied by Summit 5 in providing the Services and the deliverables resulting from the Services, and (c) any and all derivative works, enhancements or other modifications to any of the above. Subject only to the licenses expressly granted in this Agreement, as between Summit 5, Licensor and Customer, Summit 5 shall be the sole owner of all intellectual property rights in and to the Summit 5 Property. Summit 5 may utilize all ideas, suggestions, feedback, improvements data, reports or the like that Customer provides to Reseller or Summit 5 or otherwise makes with respect to the Solution or the Services without any obligation to Customer. To the extent that Customer has or later obtains any intellectual property rights in and to the Solution or Services or any future enhancement or modification thereto or any part thereof, by operation of law or otherwise, Customer hereby disclaims such rights, assigns and transfers such rights exclusively to Summit 5, and agrees to provide reasonable assistance to Summit 5, to give effect to such assignment and to protect, enforce and maintain such rights. Customer shall not remove any of Summit 5's or its licensor's copyright, trademark and other proprietary notices contained on or in the Software, Services, Documentation or any other materials delivered to Customer.
5. Customer acknowledges and agrees that Summit 5 may terminate Customer's access to and use of the Summit 5 Property upon the occurrence of certain acts or omissions by Licensor, including, without limitation, Licensor's non-payment of fees owed to Summit 5.
6. Customer shall agree that (a) Summit 5 is a third-party beneficiary of this EULA, and (b) the provisions of the EULA are made for the express benefit of Summit 5 and are enforceable by Summit 5 as well as Licensor.
7. **[Maintenance and Support: If Reseller chooses to provide maintenance and support services, there must be maintenance and support clause that reflects what support services, if any, Reseller will provide to Customer.]**
8. Except for express warranties provided by Summit 5 to Customer via the Clickthrough License, Licensor disclaims on behalf of Summit 5 and its licensors and suppliers all express, implied, statutory and other warranties, including, without limitation, warranties of performance, non-infringement, merchantability and fitness for a particular purpose.

9. Customer acknowledges and agrees that Summit 5 and its licensors and suppliers shall not be liable to Customer for any special, indirect, incidental, or consequential damages, or damages for loss of profits, savings, revenue, use, damaged files or data, or business interruption, regardless of how arising, regardless of the cause of action, in tort, contract or otherwise, and regardless of whether advised beforehand of the possibility of such damages. Customer agrees that Summit 5's total liability to Customer with respect to any claim arising out of or related to this Agreement or the Summit 5 Application shall not exceed the amounts actually received by Summit 5 attributable to Customer's access to and use of the Summit 5 Application. SUMMIT 5 WILL NOT BE LIABLE TO CUSTOMER FOR ANY LOSS OR HARM ARISING FROM OR RELATED TO: (I) SUMMIT 5'S SUSPENSION OR TERMINATION OF CUSTOMER'S ACCESS TO THE SOLUTION DUE TO LICENSOR'S FAILURE TO PAY SUMMIT 5 FEES OWED TO SUMMIT 5 OR (II) INTERRUPTIONS, DISRUPTIONS OR OTHER INTERFERENCE WITH SUBLICENSEE'S ABILITY TO RECEIVE AND USE THE SOLUTION DUE TO EVENTS AND/OR CIRCUMSTANCES OUTSIDE OF SUMMIT 5'S REASONABLE CONTROL
10. Customer acknowledges and agrees that the Solution (including the related e-mail distribution services provided to Reseller and Sublicensees within the Services) may be governed by and subject to the various laws and regulations of governmental entities, including, without limitation, laws related to consumer privacy, advertising, and the commercial use of e-mail. Customer shall be solely responsible for complying with all applicable laws and regulations in performing its rights and obligations under this Agreement and in using the Solution.
11. Customer agrees to indemnify and defend Summit 5 from and against all third party claims arising out of or related to Customer's use of the Software and the Services. Without limiting the generality of the foregoing, Customer shall indemnify, defend, and hold harmless Summit 5 from all third-party claims alleging Customer's use of the Services violate any law, regulation or rule. Summit 5 shall give prompt notice of the claim to the Customer; (b) granting sole control of the defense or settlement of the claim or action to Customer; and (c) providing reasonable cooperation to the Customer and, at the Customer's request and expense, assistance in the defense or settlement of the claim.

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