

RESELLER AGREEMENT

This RESELLER AGREEMENT (the “*Agreement*”) is entered into and effective as of the ____ day of _____ 20____ (the “*Effective Date*”), by and between Xima, LLC d/b/a Xima Software, located at 10610 South Jordan Parkway, Suite 300, South Jordan, UT, 84095 (“*Xima*” or the “*Company*”), and _____ located at _____, on behalf of itself and its principals, representatives, agents, subsidiaries, affiliates, officers, and managers (collectively, “*Reseller*”). Each of Xima and Reseller may be referred to hereinafter individually as a “*Party*” and collectively as the “*Parties*.”

1. Appointment.

1.1 Appointment. Subject to the terms and conditions of this Agreement, Xima hereby appoints Reseller as a non-exclusive reseller of the Contact Center-as-a-Service product (“*CCaaS*” or “*Product*”) listed in the Product and Pricing List attached hereto as Exhibit A (the “*Product and Pricing List*”) in the Territory, and grants to Reseller a revocable, non-transferable, non-sublicensable and nonexclusive license during the term of this Agreement to resell the Product to End-Users in the Territory. Reseller shall promptly notify Xima of the names and locations of such End-Users and, if requested by Xima, forward a copy of any executed agreements and purchase orders to Xima. The Product and Pricing List is subject to change in Xima’s sole discretion, and may be updated via email or other communications from Xima to Reseller. Further, Xima hereby reserves the right to revoke or terminate Reseller’s license to resell any one or more of Xima’s Product, in Xima’s sole discretion, at any time and without notice. Xima reserves the right to sell Product to End-Users in the Territory both directly and through agents and master agents other than Reseller.

1.2 Compliance with Laws. Reseller shall be solely responsible for complying with all applicable laws (including anti-corruption laws), statutes, rules, regulations, ordinances, and legal requirements of the Territory with respect to the resale of the Product and Reseller’s performance under this Agreement and shall obtain all necessary licenses (including import/export licenses), approvals and permits in the Territory to resell the Product and perform its obligations under this Agreement. If Reseller receives any notice or becomes aware of any violation of any law, statute, rule, regulation or ordinance of the Territory by the Product or the resale thereof, Reseller shall promptly notify Xima of such notice or violation.

1.3 Restrictions. Reseller acknowledges that the Product contains trade secrets and proprietary rights of Xima. To protect them, Reseller shall not reverse engineer, disassemble, decompile, or otherwise attempt to derive the underlying algorithms or other aspects of the Product. Reseller shall not knowingly provide, resell, loan or make available the Product to Xima’s competitors or representatives of such competitors. Reseller shall not in its performance under this Agreement: (a) engage in any deceptive, misleading or unethical practices or activities; (b) make any representations, warranties or statements about Xima or the specifications, features or capabilities of the Product that are untrue, misleading, or inconsistent with the technical descriptions and specifications of the Product produced by Xima; or (c) sell, market, advertise or promote the Product through an internet portal, website, web store or the like.

1.4 Territory. For purposes of this Agreement, the term “*Territory*” shall be North America. Xima reserves the right to modify the Territory at any time, for any reason.

1.5 End-User. For purposes of this Agreement, the term “*End-User*” shall mean an entity or person that purchases Product directly from Reseller in accordance with the terms, conditions, and understanding of the parties set forth in this Agreement.

2. Reseller Obligations.

2.1 Taxes and Records. Reseller will be solely responsible for and will file on a timely basis all tax returns and payments required to be filed or made to any United States federal, state, regional or municipal tax authority, or any non-United States tax authority with respect to Reseller’s performance of its obligations under this Agreement in accordance with Section 7.1 below.

2.2 Equipment and Expenses. Except as expressly set forth in this Agreement, Reseller is responsible for all costs and expenses of operating Reseller’s office(s) and marketing the Product, including, but not limited to, all overhead costs, supplies, travel, promotional and other expenses, internet access, and charges for long distance phone service and calls relating to Reseller’s performance under this Agreement.

2.3 Sales Force. Reseller agrees to maintain at least one active sales office in the Territory and to provide a competent sales force and actively promote and resell the Product. Reseller agrees that all of its employees and contractors (“*Personnel*”) will execute written agreements that contain terms consistent with this Agreement. In connection with the performance of this Agreement, the entire management and direction of the Reseller’s Personnel, including the sales organization, shall at all times be under the exclusive control and management of Reseller, and as between the parties, Reseller shall have complete responsibility for the actions, statements

and omissions to act of its Personnel. Upon reasonable notice to Reseller by Xima, Reseller will provide copies of any written agreements signed by its employees and/or independent contractors.

2.4 Communication. Reseller shall keep Xima informed as to any problems encountered with the Product of which Reseller becomes aware and any resolutions discovered, and shall communicate promptly to Xima any End-User requirements or any other suggestions relating to the Product recommended by any entity or person, where requested by the End-User, entity or person. Reseller further agrees that to the extent that any interest in the same is held by Reseller, Xima shall acquire, and Reseller hereby assigns and otherwise transfers, any and all right, title and interest in and to any such actual or suggested modifications, design changes or improvements of the Product, without the payment of any additional consideration therefore either to Reseller, its Personnel or agents.

2.5 Promotion. Reseller shall use its best efforts to (i) actively promote and resell the Product and solicit and procure End-User orders on a continuing basis; and (ii) provide such sales service to End-Users as is necessary to adequately market and resell the Product in the Territory.

2.6 Business Practices. Reseller shall (i) conduct business in a manner that reflects favorably at all times on the Product and Xima's good will and reputation; (ii) not engage in deceptive, misleading, illegal and unethical practices in connection with marketing of the Product; and (iii) make no false or misleading representations with regard to Xima or the Product.

2.7 Third Party Agents. Reseller shall not sell/license the Product through third parties (such as distributors, sub-resellers, dealers, or agents) without Xima's prior written consent.

2.8 Insurance. Reseller shall put in place and at all times maintain during the Term, at its own cost and expense, appropriate and sufficient commercial general liability insurance in the amount of at least One Million Dollars (\$1,000,000.00) with a reputable insurance company to cover the activities of Reseller contemplated hereunder. Reseller agrees to name Xima an additional insured under the policy within thirty (30) days after this agreement is executed by the parties, and to provide Xima with an appropriate insurance declaration showing Xima as an additional insured.

3. **Product Purchase and Payment.**

3.1 Offer and Acceptance. To order the Product, Reseller shall provide a purchase order to Xima via mail, electronic mail, or other method prescribed by Xima, which purchase order shall specify: (i) which Product is being ordered and (ii) the desired Reseller Subscription Term (defined below) for such purchase order. Each purchase order for the Product is subject to Xima's acceptance. The Reseller shall pay the initial payment for services at the time the purchase order is accepted by Xima. Following acceptance by Xima and payment in advance for the initial month's services by Reseller, each month's services thereafter will be paid in advance by Reseller to Xima. As indicated in section 3.5 below, Reseller is responsible for invoicing and collected all fees, charges and taxes it charges to the End-User relating to the Product.

3.2 Pricing. For each Product ordered by Reseller, Reseller shall pay Xima the Reseller's then-current Reseller Subscription Price, as established by Xima in Reseller's then-current Product and Pricing List, (the "**Subscription Reseller Price**") for the ordered Product, on a monthly basis throughout the entire Reseller Subscription Term, and continuing thereafter for so long as the Product is being made available to the applicable End-User. Reseller may charge and invoice the End-User its own price, including any mark-up, applicable taxes, etc.

3.3 Payment Terms. Reseller must provide Xima their bank account information for purposes of establishing an Electronic Funds Transfer ("**EFT**"), which will be used by Xima to collect automatic subscription payments on a monthly basis. To the extent that Reseller is authorized to sell the Product, Reseller agrees to provide Xima with such information, and hereby consents to Xima charging automatic payments to Reseller's business account on a monthly basis throughout the Reseller Subscription Term, and continuing for so long as the Product is being made available to the applicable End-User. These automatic payments may include the Subscription Reseller Price for each month, plus all applicable, taxes, customs, duties and tariffs assessed to Xima that should otherwise be payable by Reseller in conjunction with the transactions contemplated in this Agreement, and all applicable shipping charges actually incurred by Xima, should they occur. To the extent that that Xima cannot obtain payment from Reseller by virtue of a changed account number, stop payment order by Reseller or otherwise, Xima shall send Reseller an invoice for all outstanding amounts. All amounts are due in full in United States currency within thirty (30) days after the date of Xima's invoice. Reseller shall be assessed a late fee equal to one and one-half percent (1.5%) of all outstanding amounts not paid within thirty (30) days after the date of the invoice, and all amounts not paid within thirty (30) days after the date of the invoice, including said late fee, shall accrue interest until paid in full at the lesser of (i) two percent (2%) per month or (ii) the maximum interest rate allowed by law in the State of Utah. To the extent that any amounts payable by Reseller hereunder exceed sixty (60) days past-due, Xima reserves the right to terminate services and access to the Product by the End-User with respect to whom Reseller has failed to make payments. In order to re-activate the Product's services for such End-User, Reseller will be required to pay all outstanding amounts due, together with a reactivation fee of \$250.00. In the event a Reseller defaults on its payment obligations more than three (3) times in any twelve (12)

month period, then in addition to any other remedy available to Xima under this Agreement or applicable law, Xima may terminate this Agreement and begin to collect monthly amounts due directly from End-User.

3.4 Reseller Subscription Term. Every purchase order submitted to Xima by Reseller shall specify the term for such subscription (the “**Reseller Subscription Term**”), which may be one (1), two (2), three (3), four (4), or five (5) years. At the conclusion of the Reseller Subscription Term, Reseller/End-User’s specific Product subscription shall automatically renew for successive one (1) year periods until terminated by either Xima or Reseller with at least one (1) month’s prior written notice.

3.5 Independent Payment Obligation. THE RESELLER IS RESPONSIBLE FOR BILLING THE END-USER AND COLLECTING FROM THE END-USER FOR ITS OWN ACCOUNT, ALL CHARGES MADE BY RESELLER TO THE END-USER FOR USE OF THE SPECIFIC PRODUCT, INCLUDING ANY TAXES, DUTES, FEES OR OTHER CHARGES THAT THE END-USER IS REQUIRED TO PAY OR COLLECT. ONCE A PURCHASE ORDER IS ACCEPTED BY XIMA, THE PURCHASE ORDER WILL REPRESENT RESELLER’S BINDING CONTRACTUAL OBLIGATION TO PAY XIMA THE SUBSCRIPTION RESELLER PRICE FOR EACH MONTH THROUGHOUT THE RESELLER SUBSCRIPTION TERM. THIS CONTRACTUAL OBLIGATION OF RESELLER IS INDEPENDENT OF RESELLER’S ABILITY TO COLLECT SUBSCRIPTION PAYMENTS FROM THE APPLICABLE END-USER, REGARDLESS OF WHETHER OR NOT THE END-USER CONTINUES TO ACCESS/USE THE PRODUCT THROUGHOUT THE DURATION OF THE RESELLER SUBSCRIPTION TERM. IN THE EVENT RESELLER FAILS TO TIMELEY TENDER ALL SUBSCRIPTION PAYMENTS REQUIRED PURSUANT TO A PURCHASE ORDER, XIMA RESERVES THE RIGHT TO (i) TERMINATE THE END-USER’S SUBSCRIPTION/LICENSE TO USE THE PRODUCT/SERVICES COVERED BY SUCH PURCHASE ORDER; (ii) TERMINATE THIS AGREEMENT; AND (iii) TAKE ANY OTHER ACTION AGAINST RESELLER AVAILABLE TO XIMA AT LAW OR EQUITY.

3.6 Early Termination Penalty. In the event Reseller desires to terminate any given subscription prior to the conclusion of the applicable Reseller Subscription Term, Reseller shall be entitled to terminate such subscription only upon (a) written notice to Xima of its intent to so terminate and (b) payment in full to Xima in an amount equal to the lesser of: (i) the sum total of all remaining monthly subscription payments due and payable to Xima prior to the conclusion of the applicable Reseller Subscription Term at the applicable Subscription Reseller Price; or (ii) the sum total of twelve (12) monthly subscription payments at the applicable Subscription Reseller Price.

4. Product Pricing, Additional Terms, and Cancellation.

4.1 Pricing Changes. Xima shall have the right, in its sole discretion, from time to time or at any time to change its Subscription Reseller Price for the Product by providing Reseller with an updated Product and Pricing List. New prices will only apply to orders accepted by Xima after Reseller’s receipt of an updated Product and Pricing List. Xima reserves the right, in its sole discretion, to charge different Product prices to different resellers, independent sales contractors, and master agents.

4.2 Additional Terms. Each purchase order placed by Reseller shall be governed by the terms of this Agreement, and any terms set forth in Reseller’s purchase orders that are additional to, or inconsistent with, this Agreement shall be deemed stricken from such purchase order.

4.3 Acceptance. Xima will use reasonable efforts to accept purchase orders via an order acknowledgment within twenty-four (24) hours of receiving said purchase orders.

4.4 Cancellation. All orders for Product by Reseller, once accepted by Xima, shall be non-cancellable. Xima reserves the right to cancel any order for any reason, in its sole discretion.

4.5 Books and Records. Reseller will keep accurate books and records in reasonable detail regarding its performance under this agreement. Xima shall have the right, upon at least twenty-four (24) hours written notice, to audit the books and records of Reseller regarding the Product, including without limitation financial information maintained through accounting software, no more frequently than twice in a calendar year. Such audit will be performed at Xima’s cost and expense. Notwithstanding the foregoing, Reseller shall have the duty to reimburse Xima for any expenses or fees incurred in connection with the audit, plus any liabilities associated therewith, if valid discrepancies are found in Reseller’s reporting obligations, pricing practices, or anything associated therewith.

5. Scheduling and Delivery.

5.1 Delinquent Payments. Xima reserves the right to refuse, cancel or delay access to the Product by Reseller and/or End-Users when Reseller is delinquent in its payments required hereunder or for any other reason at the discretion of Xima.

5.2 Delivery. Xima shall use commercially reasonable efforts to promptly fill Reseller's purchase orders for the Product accepted by Xima, subject to Xima's then current lead time schedule. Xima will use commercially reasonable efforts to meet Reseller's requested delivery schedule, but in no event shall Xima be liable for failure to meet such schedule.

5.3 Modifications. Xima reserves the right to modify the Product from time to time. Upon notification of such modification, Reseller shall immediately cease to market and sell the outdated Product and shall only market and sell the modified Product under the terms and conditions of this Agreement.

6. Support Services.

Xima shall not be responsible for providing any support to End-Users of the Product, but may continue to provide electronic support to End-Users through its website <http://www.xima.cloud> or any successor website thereto, which support consists exclusively of access to frequently asked questions, a searchable knowledge base, forums, and the opportunity to provide feedback. **XIMA DISCLAIMS ANY REPRESENTATIONS OR EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE INFORMATION PROVIDED THROUGH ITS WEBSITE, INCLUDING WITHOUT LIMITATION, WARRANTIES WITH RESPECT TO QUALITY, ACCURACY, FREEDOM FROM ERROR, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. FURTHERMORE, NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY XIMA, ITS AGENTS, REPRESENTATIVES OR EMPLOYEES SHALL CREATE OR EXPAND ANY SUCH WARRANTY. XIMA FURTHER RESERVES THE RIGHT TO DISCONTINUE THE SUPPORT SERVICES PROVIDED THROUGH ITS WEBSITE AT ANY TIME, IN XIMA'S SOLE DISCRETION.**

7. Taxes and Security Interests.

7.1 Taxes. Reseller shall pay and hold Xima harmless from any local, state, federal or foreign sales, use, value-added, excise, customs, export, import or similar taxes or duties that may be imposed by any jurisdiction (other than taxes on the net income of Xima). Should Reseller be required to deduct or withhold any taxes from any payment to Xima, Reseller shall promptly furnish Xima with an official tax certificate as evidence of such tax payment in order to support Xima's claim for any tax refund or tax credit with respect to any such taxes so withheld and paid by Reseller on Xima's behalf.

7.2 Security Interest. Notwithstanding the passage of title with respect to the Product, Xima shall retain a security interest in all Product delivered to Reseller/End-User until all amounts for which Reseller is responsible under this Agreement have been received by Xima. Xima shall have all rights of a secured party, including the right to file one or more financing statements under the Uniform Commercial Code or comparable law to protect its security interests.

8. Intellectual Property Rights.

8.1 Proprietary Rights. Reseller acknowledges and agrees that as between Reseller and Xima, Xima and its licensors, if any, retain all right, title and interest in, to and under: (i) Xima's Confidential Information (defined below); (ii) all copyrights, patent rights, trade secret rights and other proprietary intellectual property rights in and to XIMA's Confidential Information, the Product, marketing materials, and documents, materials, and information generally relating to the Product; and (iii) all of Xima's service marks, trademarks, trade names, logos and other trade designations (collectively ("**Intellectual Property**"). Except for the rights expressly granted under this Agreement, no right, title, ownership, interest or license in or to the Intellectual Property, whether by implication, estoppel or otherwise, is granted, assigned or transferred to Reseller or End-User under or in connection with this Agreement.

8.2 Trademark and Benchmarks. Subject to all the terms and conditions of this Agreement, Xima hereby grants to Reseller a limited, revocable, non-exclusive, non-transferable, and non-sublicensable license to use any service marks, trademarks, trade names, logos or other trade designations provided by Xima to Reseller under this Agreement (the "**Xima Marks**") solely in the Territory and solely in connection with Reseller's performance of its obligations hereunder, provided that any use of any Xima Mark shall be subject to Xima's prior written approval and be in accordance with Xima's terms of use for such Xima Marks, if any. Upon request Xima shall have the right to review specific uses of any Xima Mark. Reseller shall not register any of the Xima Marks, in whole or in part or in any foreign language versions, as a domain name or trademark in the Territory. Should Reseller fail to abide by the terms of this Section and register a domain name or trademark using the Xima Marks, Reseller hereby agrees that Reseller will transfer and assign to Xima all of Reseller's right, title and interest in and to any such domain name or trademark, and the registration thereof, together with the goodwill connected with and symbolized by such domain name or trademark. Reseller agrees not to apply to register or register any Xima Marks or any mark or logo similar to or containing any Xima Mark except when such mark or logo is registered in Xima's name with Xima's prior written consent (which Xima may grant or withhold in its sole discretion). All usage of the Xima Marks shall inure to Xima's benefit. Further, in no event is Reseller permitted to publish any of Xima's benchmarks or performance results without the express written consent of Xima. Xima reserves the right to terminate Reseller's license to use the Xima Marks at any time for any reason, in Xima's sole discretion. Upon such termination, Reseller shall discontinue immediately all use of the Xima Marks, and shall remove the same from all websites, marketing materials, etc. used by Reseller.

9. Confidentiality; Restrictive Covenants.

9.1 Confidential Information. Any information disclosed by Xima to Reseller in connection with this Agreement or otherwise relating to the business or technology of Xima and which Reseller knows or has reason to know is regarded as confidential information by Xima including, without limitation, information relating to manufacturing, advertising, obtaining End-Users, confidential or secret ideas, designs, processes, plans, End-User lists, material, quantity, Product shipped, pricing, product returns, unannounced Product, confidential product and process information, methodologies, know-how, and in general such information which if disclosed to others would be detrimental to the best interest of Xima shall be considered “**Confidential Information**”. Without limiting the generality of the foregoing, any information related to the Product shall be considered Confidential Information. Xima shall be entitled to use without restriction any End-User information, provided by Reseller or otherwise, in its dealings with such End-User and otherwise.

9.2 Non-Use and Non-Disclosure. Except as (i) expressly permitted or required in carrying out this Agreement; (ii) required by law or by any competent government authority; or (iii) such limited disclosures in confidence as may be reasonably necessary to either party’s attorneys and accountants, Reseller shall not use the Confidential Information or disclose the Confidential Information to any third party, either during the term of this Agreement or thereafter, without the prior written consent of Xima. Reseller shall use the Confidential Information only to perform its obligations under this Agreement and only to the extent expressly permitted under this Agreement. Nothing in this Agreement shall prohibit Reseller from disclosing the Confidential Information if legally required to do so by judicial or governmental order or by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process in a judicial or governmental proceeding (“**Required Disclosure**”), provided that the Reseller shall (i) give Xima prompt notice of such Required Disclosure at least ten (10) business days prior to disclosure; (ii) cooperate with Xima in the event that Xima elects to contest such disclosure or seek a protective order with respect thereto; and (iii) in any event only disclose the exact Confidential Information, or portion thereof, specifically requested by the Required Disclosure. Except as otherwise provided in or permitted by this Agreement, Reseller shall not use, reproduce, duplicate, copy, or otherwise disclose, resell, or disseminate any part of the Confidential Information, except for internal use by employees (both standard employees and temporary employees), consultants or contractors of Reseller on a need-to-know basis solely for the purposes of this Agreement, provided such employees, consultants or contractors are bound to written confidentiality obligations consistent with and at least as restrictive as those set forth under this Agreement.

9.3 Exceptions. The obligations specified in this Section 9 shall not apply to any Confidential Information to the extent that it is (a) already known to Reseller without restriction prior to the time of disclosure by Xima; (b) acquired by Reseller from a third party without confidentiality restriction; (c) independently developed or acquired by Reseller by employees or contractors without access to such Confidential Information; (d) approved for release by written authorization of Xima; (e) in the public domain at the time it is disclosed or subsequently falls within the public domain through no wrongful action of Reseller; or (f) disclosed pursuant to the requirement of a governmental agency or disclosure is permitted or required by operation of law, provided that Reseller use its best efforts to notify Xima in advance of such disclosure and seeks confidential treatment for such Confidential Information.

9.4 Confidentiality of Agreement. The parties shall mutually agree on any press release announcing this business relationship. The specific terms of this Agreement shall not be disclosed by either party to any third party without the prior written approval of the other party except as (i) may be required by law or by any competent government authority or (ii) such limited disclosures in confidence as may be reasonably necessary to either party’s bankers, investors or potential investors, attorneys and accountants.

9.5 Ownership of Confidential Information. All Confidential Information shall remain the exclusive property of Xima, and shall be returned to Xima upon termination of this Agreement or upon written request, except as expressly permitted or required in carrying out this Agreement or upon Reseller’s determination that it no longer has a need for such Confidential Information in which case Reseller shall destroy copies of all Confidential Information in its possession. Reseller’s duty to protect the Confidential Information commences upon receipt of the Confidential Information. Except as otherwise provided in this Agreement, no license under any Intellectual Property right is granted or implied by the conveying of Confidential Information to Reseller. None of the Confidential Information which may be disclosed by Xima shall constitute any representation, warranty, assurance, guarantee, or inducement by Xima of any kind, and, in particular, with respect to the non-infringement of any intellectual property rights, or other rights of third persons.

9.6 Non-Solicitation. During the term of this Agreement, and for a period of two (2) years following the termination of this Agreement, Reseller shall not induce or attempt to induce, either directly or indirectly (i) any client, customer or supplier, persons, businesses or entities from continuing to do business with Xima or from entering into a business relationship with Xima; or (ii) any employee, consultant, sales representative, reseller, agent, master agent, or distributor of Xima, to leave the employ of, or otherwise terminate its relationship with Xima.

9.7 Non-Competition. During the term of this Agreement, and for a period of two (2) years following the termination of this Agreement, Reseller shall not, within the Territory, directly, or indirectly, own, organize or take preparatory steps for the

organization of, build, design, acquire, operate, manage, invest in, work or consult for or otherwise affiliate with, any business in competition with or otherwise similar to Xima.

9.8 **Injunctive Relief.** The parties acknowledge that Xima would be irreparably damaged if any of the provisions of this **Section 9** are not performed by Reseller in accordance with its specific terms. Accordingly, Xima is entitled to an injunction or injunctions to prevent breaches of this Section by Reseller and has the right to specifically enforce this Section against Reseller in addition to any other remedy to which Xima may be entitled at law or in equity. If any court determines that the restraints provided in this Section are too broad, the restraints may be reduced to whatever extent the court deems reasonable and appropriate. The obligations of this **Section 9** will survive any termination of this Agreement.

10. Warranties and Disclaimers.

10.1 **Reseller's Warranty.** Reseller represents and warrants that (i) it has the right, power and authority to enter into this Agreement and to fully perform its obligations under this Agreement; (ii) the entering into and performance of this Agreement by Reseller do not and will not violate, conflict with, or result in a default under any other contract or agreement to which Reseller is a party, or by which it is bound; (iii) it will comply with all applicable laws, rules and regulations concerning the marketing and sale of the Product; and (iv) it has all rights and licenses necessary to market and resell the Product.

10.2 **Limited Product Warranty and Warranty Disclaimer.** Warranties for Xima's Product are made to End-Users only and will be as contained in the Xima End-User License Agreement. Any Product delivered by Xima to Reseller or End-Users which do not comply with such warranty may be returned to Xima during such warranty period (with proof of the date of delivery). Such returned Product will be repaired or replaced and the repaired or replaced Product will be delivered to Reseller under the delivery terms set forth in this Agreement. The foregoing remedy will be Reseller and/or End-User's sole remedy in the event of Xima's breach of the Xima's limited warranty contained in the End-User License Agreement. **EXCEPT FOR THE FOREGOING LIMITED WARRANTY, ALL PRODUCT ARE PROVIDED "AS IS", AND XIMA MAKES NO WARRANTIES, EXPRESS OR IMPLIED, TO RESELLER OR ANY OTHER THIRD PARTY WITH RESPECT TO THE PRODUCT AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.**

11. Indemnification by Reseller.

Reseller shall defend, indemnify, and hold Xima and its directors, officers, employees, agents, shareholders, partners and representatives harmless from and against any and all claims, losses, actions, demands or damages (including reasonable attorneys' fees, court costs and costs of other professionals), resulting from (i) any breach of the representations and warranties made by Reseller hereunder; (ii) Reseller's, its Personnel or any of its agent's performance under this Agreement; (iii) any material false representation by Reseller, its Personnel, or its agents regarding any representations, warranties or guarantees to End-Users with respect to the specifications, features, or capabilities of the Product, which deviate from Xima's then current marketing materials, literature, or other documentation; (iv) Reseller's conduct or services that infringe, violate or misappropriate a patent, copyright, trademark, trade secret or other intellectual property or proprietary right of any third party; (v) the performance by Reseller of any action contrary to any federal, state or local law, ordinance, code, rule or regulation or any other law that may impose liability in any fashion on Xima based on Reseller's actions; or (iv) any claim related to or arising from Reseller's reselling of the Product under this Agreement.

12. Liability Limitation.

IN NO EVENT SHALL XIMA BE LIABLE TO RESELLER FOR ANY CONSEQUENTIAL, EXEMPLARY, PUNITIVE, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES (INCLUDING LOST PROFITS AND LOST DATA) OR COSTS HOWSOEVER ARISING OUT OF OR RELATED TO THE PRODUCT OR THIS AGREEMENT, WHETHER OR NOT XIMA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR COSTS. XIMA'S AGGREGATE LIABILITY TO RESELLER UNDER THIS AGREEMENT SHALL NOT EXCEED AMOUNTS PAID BY RESELLER TO XIMA FOR PRODUCT, PURSUANT TO THIS AGREEMENT.

13. Term and Termination.

13.1 **Term.** The term of this Agreement shall commence as of the Effective Date and shall continue for a period of two (2) years (the "**Initial Term**"), provided however, that this Agreement shall automatically renew for successive one (1) year terms (each a "**Renewal Term**," and together with the Initial Term, collectively, the "**Term**"), unless either party provides the other party with at least sixty (60) days written notice of its intent to not renew then-current Initial Term or Renewal Term, as applicable.

13.2 **Termination for Cause.** This Agreement may be terminated for cause by either party upon written notice if the other party breaches any material term or condition of this Agreement and fails to remedy said breach within fourteen (14) days after being

given written notice thereof. In addition, Xima may terminate this Agreement immediately for cause if Reseller ceases to function as a going concern or to conduct operations in the normal course of business, or has a petition filed by or against it under any state or federal bankruptcy or insolvency laws which petition has not been dismissed or set aside within sixty (60) days of filing.

13.3 Termination without Cause. This Agreement may be terminated by Xima without cause upon written notice to Reseller given at least thirty (30) days prior to the effective date of termination.

13.4 Effect of Termination. In the event of termination or expiration of this Agreement, Reseller shall remain responsible for all payments due and payable under this Agreement. Upon termination or expiration of this Agreement for any reason, Reseller shall (a) immediately cease using the Xima Marks and return all Xima Confidential Information and other Xima materials, including but not limited to, literature, sales aids, sales and marketing materials, purchase order files, and other documentation in its possession to Xima; (b) immediately discontinue all representations that it is a Xima reseller; and (c) cease soliciting orders for or reselling the Product. Moreover, following termination of this Agreement, Xima may, in its discretion, re-assign any of Reseller's contracted End-Users (particularly those End-Users paying pursuant to this Agreement to the oversight of another Xima preferred reseller, or work directly with such End-Users to continue to provide desired Product and services.

14. Miscellaneous.

14.1 Independent Contractor. In performing this Agreement, each of the parties will operate as, and have the status of, an independent contractor. This Agreement does not create any agency, employment, partnership, joint venture, franchise or other similar or special relationship between the parties. Neither party will have the right or authority to assume or create any obligations or to make any representations, warranties or commitments on behalf of the other party or its affiliates, whether express or implied, or to bind the other party or its affiliates in any respect whatsoever.

14.2 Third Party Agreements. Reseller hereby acknowledges and agrees that certain software included in the Product may be subject to terms and conditions contained in open source license agreements and similar third party agreements (collectively "**Third Party Agreements**"), which terms and conditions may expand or restrict Reseller's and/or third parties' rights to use certain portions of such software ("**Third Party Software**"). Third Party Agreements, any related on-line documentation, source code, or other information about Third Party Software may be available at the website or its successor website(s). Reseller acknowledges and agrees that it has been informed of and agrees to comply with the terms and conditions of each such Third Party Agreement. To the extent that the terms and conditions of the Third Party Agreements are inconsistent with or contradictory to the terms and conditions of this Agreement, the terms and conditions of the Third Party Agreement shall control, only insofar as they apply to any Third Party Software included within the licensed software included within the Product. Nothing in this Section shall permit Reseller or any third party to use the Intellectual Property or Xima Marks in connection with exercising rights granted under the Third Party Agreements.

14.3 Notice. All notices required or permitted under this Agreement will be in writing and will be deemed given when: (i) delivered personally; (ii) sent by confirmed email communication; (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one (1) business day after deposit with a commercial overnight carrier specifying next day delivery, with written verification of receipt. All communications will be sent to the respective addresses set forth in the preamble on the first page of this Agreement or to such other address as may be designated by a Party by giving written notice to the other Party pursuant to the terms hereof.

14.4 Assignment; Binding Effect. Neither this Agreement nor any right or obligation hereunder is capable of being assigned by Reseller without the prior written consent of Xima, which consent shall not be unreasonably withheld, and any purported transfer or assignment, including by operation of law, shall be void. Xima may assign the rights contained in this paragraph at any time. Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties.

14.5 Governing Law. This Agreement shall be governed by and construed under the laws of the State of Utah and the United States without regard to conflicts of law provisions thereof. The parties hereby consent to exclusive jurisdiction, venue and personal jurisdiction in the state and federal courts located in Salt Lake County, Utah, for purposes of any request for temporary or interim relief as allowed in Section 14.7 herein or for purposes of enforcing or confirming any interim or final arbitration award made in accordance with Section 14.7 herein.

14.6 Entire Agreement. This Agreement supersedes all prior agreements or discussions between the parties with respect to the distribution and marketing of the Product. This Agreement is the sole agreement between the parties with respect to the subject matter hereof.

14.7 Arbitration. Any dispute between the parties relating to or arising out of this Agreement shall be subject to binding arbitration, administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules or its

International Arbitration Rules and Procedures (for foreign-based Customers) then existing, as appropriate based on the business address of the Customer. The arbitration shall be heard and determined by a single arbitrator selected in accordance with the AAA Rules, who has experience and familiarity with information technology disputes. The arbitration proceeding shall occur in Salt Lake City, Utah. Each Party shall initially bear its own costs and shall initially equally share the arbitrators' fees; however, the arbitrator shall award attorneys' fees, costs, and the fees of the arbitration to the prevailing party in accordance with the AAA Rules. In the event either Party fails to timely pay its share of the arbitration fees as set forth by the AAA, the nonpaying party thereby waives all defenses and claims it may have asserted in the case and the arbitrator may enter a final award in favor of the non-defaulting party. The arbitration shall be conducted confidentially and in a manner to protect and preserve the confidential nature of the parties' proprietary and confidential information. Any decision entered by the Arbitrator shall be reasoned and must be supported by Utah law (case law and statutory law). Either Party may, without waiving any remedy under this Agreement, seek from any court specified in Section 14.5 above any interim or provisional relief that such Party deems necessary, including without limitation rights accruing to or secured by such Party under Section 9 "Confidentiality" hereof, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the claim).

14.8 Modification. Except as otherwise expressly provided herein, any provision of this Agreement may be amended and the observance of any provision of this Agreement may be waived (either generally or any particular instance and either retroactively or prospectively) only with the written consent of the party against whom such modification or waiver will be enforced.

14.9 Severability. If any provision of this Agreement is held to be illegal or unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

14.10 Headings. The section headings used in this Agreement are intended for reference purposes only and shall not affect the interpretation of this Agreement.

14.11 Remedy for Breach. Termination of this Agreement shall not be an exclusive remedy for breach of this Agreement and, whether or not termination is effected, all other remedies shall remain available.

14.12 Force Majeure. Neither party shall be liable for any loss, damage or penalty arising from delay due to causes beyond its reasonable control.

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

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective and binding upon the parties as of the Effective Date.

XIMA:

XIMA, LLC, a Utah limited liability company
d/b/a Xima Software

By: _____
Name: _____
Title: _____
Date: _____

RESELLER:

Name of Entity or Individual

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A

PRODUCT AND PRICING LIST