

Reseller Agreement

This RESELLER AGREEMENT (this "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 10653 South Riverfront Parkway, Suite 200, South Jordan, UT 84095-3545, USA ("Xima" or the "Company"), and

located at

_____ ("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 reseller of the hardware and software products (the "Products") listed in the example Products and Pricing List attached hereto as Exhibit A (the "Products 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 distribute the Products 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 Products and Pricing List is subject to change, in Xima's sole discretion, and may be frequently updated via email or other communications from Xima to Reseller. Further, Xima hereby reserves the right to revoke Reseller's license to resell any one or more of Xima's particular Products, in Xima's sole discretion.

1.2 Compliance with Laws. Reseller shall be solely responsible for complying with all applicable laws, statutes, rules, regulations and ordinances of the Territory with respect to the distribution of the Products and Reseller's performance under this Agreement and shall obtain all necessary licenses, approvals and permits in the Territory to distribute the Products 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 Products or the distribution thereof, Reseller shall promptly notify Xima of such notice or violation.

1.3 Restrictions. Reseller acknowledges that the Products contain trade secrets and proprietary rights of Xima, and to protect them, Reseller shall not reverse engineer, disassemble, decompile, or otherwise attempt to derive the underlying algorithms or other aspects of the Products. Reseller shall not knowingly provide, distribute, loan or make available the Products 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 Products that are untrue, misleading, or inconsistent with the technical descriptions and specifications of the Products produced by Xima; or (c) sell, market, advertise or promote the products through an internet portal, website, web store or the like.

1.4 Territory. For purposes of this Agreement, the term "Territory" shall include the entire world.

1.5 End User. For purposes of this Agreement, the term "End-User" shall mean an entity that, for its own internal business purposes (not for resale or use in a time-sharing arrangement with others) purchases Products 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, 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 6.2 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 distribute the Products. 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.

2.4 Communication. Reseller shall keep Xima informed as to any problems encountered with the Products of which Reseller becomes aware of and as to any resolutions discovered, and shall communicate promptly to Xima any End-User requirements or any other suggestions relating to the Products 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 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 Products, 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 distribute the Products 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 distribute the Products in the Territory.

2.6 Business Practices. Reseller shall (i) conduct business in a manner that reflects favorably at all times on the Products and Xima's good will and reputation, (ii) avoid deceptive, misleading, illegal and unethical practices in connection with marketing of the Products, and (iii) make no false or misleading representations with regard to Xima or the Products.

3. Product Pricing, Ordering and Cancellation.

3.1 Pricing. For each Product ordered by the Reseller under the terms of this Agreement, Reseller shall pay Xima the Company's then-current list price for the ordered Products as established by Xima's then-current Products and Pricing List. Reseller shall be entitled to retain as its sole profit, the difference between the designated list price and the sales price negotiated between Reseller and End-Users. Xima shall have the right, in its sole discretion, from time to time or at any time to change its list price for the Products by providing Reseller with an updated Products and Pricing List. New prices will only apply to orders accepted by Xima, after Reseller's receipt of such updated Products and Pricing List. Price changes will not apply to orders already accepted by Xima. Reseller acknowledges that the list price set forth on the then-current Products and Pricing List is the minimum price at which Reseller can advertise or promote the Products. Xima reserves the right without any liability, to cancel orders or refuse further orders from Reseller following Xima's determination, in its sole discretion, that Reseller has sold, advertised or promoted any of the Products at Prices which are inconsistent with the foregoing.

3.2 Order and Acceptance. To order the Products, Reseller shall provide purchase orders to Xima via mail or electronic mail. 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. Each purchase order for the Products shall be subject to Xima's acceptance. Xima will use reasonable efforts to accept purchase orders, within twenty-four (24) hours, via an order acknowledgement issued by electronic mail.

3.3 Cancellation. All orders for Product by Reseller, once accepted by Xima, shall be non-cancelable within thirty (30) days of the scheduled shipment date, except with Xima's written approval. Reseller will be responsible for paying all fees and taxes for all Products ordered by Reseller and accepted by Xima that are not cancelled at least thirty (30) days before the scheduled shipment date.

3.4 Books and Records. Reseller will keep accurate books and records in reasonable detail regarding its performance under this agreement. No more than once annually Xima shall have the right to audit the books and records of Reseller upon reasonable notice. 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.

4. Scheduling and Delivery.

4.1 Delinquent Payments. Xima reserves the right to refuse, cancel or delay shipment of Products to Reseller when Reseller is delinquent in payments so long as Xima shall first provide written notice of such delinquent payment.

4.2 Delivery. Xima shall use commercially reasonable efforts to promptly fill (by full or partial shipment) Reseller's purchase orders for the Products accepted by Xima, subject to Xima's then current lead time schedule, shipping schedule, access to supplies on acceptable terms, and allocation of available products and capacity among Xima End-Users. 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.

4.3 Delivery and Shipping Charges. The Products shall be delivered F.O.B. Xima's designated shipping point. Risk of loss for the Products shall pass from Xima to Reseller upon delivery, at Xima's designated shipping point. Xima shall select the forwarders, brokers, transportation suppliers and insurance carriers; provided however, that if Reseller has previously notified Xima of preferred forwarder, brokers, transportation suppliers and insurance carriers, Xima may elect to use such preferred entities. Reseller shall pay, or reimburse Xima, for all freight and insurance charges. Insurance for Product Delivery and Shipping can be arranged by Xima at Reseller's request.

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

5. Maintenance and Technical Support Services.

5.1 Xima shall not be responsible for providing any support to End Users of the Products, but may continue to provide electronic support to End Users through its website <http://www.ximasoftware.com/support> 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.

5.2 Xima Care. For a purchase price equal to ten percent (10%) of the list price for each Product purchased by EndUsers, Xima offers Xima Care, a subscription-based technical support service for End-Users. Reseller is expected to market and promote Xima Care in conjunction with marketing and promoting the Products. As with the Products, Reseller may keep, as its profit margin, the difference between the Xima Care list price, and the actual sales price for Xima Care negotiated between Reseller and End-Users. Reseller shall also be entitled to any profit margin above the then-current Xima Care list price on any Xima Care subscription renewals.

6. Payment Terms and Taxes.

6.1 Payment Terms. Xima shall send Reseller an invoice for each of Reseller's purchase orders, however such invoices may cover multiple purchase orders, in Xima's sole discretion. As will be detailed in each invoice, Reseller shall pay to Xima (i) the list price for each Product (including Xima Care) ordered by Reseller; (ii) any 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 (iii) all third-party order shipment related charges actually incurred by Xima and invoiced by Xima to Reseller. All amounts are due in United States currency and in full, thirty (30) days after Reseller's receipt of Xima's invoice. Late Payment to Xima under this Agreement shall accrue interest at two percent (2%) per month for amounts not paid within thirty days after the date of invoice.

6.2 Taxes. The fees payable under this Section 6 are exclusive of and 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. Intellectual Property Rights.

7.1 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 Products, marketing materials, and documents, materials, and information generally relating to the Products; 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 under or in connection with this Agreement.

7.2 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 in the Territory. Should Reseller fail to abide by the terms of this Section and register a domain name 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, and the registration thereof, together with the goodwill connected with and symbolized by such domain name. 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.

8. Confidentiality; Non-Solicitation.

8.1 Confidential Information. Any information disclosed by one Party (the "Disclosing Party") to the other Party (the "Receiving Party") in connection with this Agreement or otherwise relating to the business or technology of Disclosing Party and which the Receiving Party knows or has reason to know is regarded as confidential information by the Disclosing Party including, without limitation, manufacturing, advertising and obtaining End-Users, or confidential or secret ideas, designs, processes, plans, EndUser lists or material, quantity or products shipped, pricing, product returns, unannounced products, 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 or Reseller shall be considered "Confidential Information". Without limiting the generality of the foregoing, any information related to the Products shall be considered Confidential Information of Xima. Notwithstanding the foregoing and anything to the contrary in this Agreement, 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.

8.2 Non-Use and Non-Disclosure. Except as (i) expressly permitted or required in carrying out this Agreement or (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, the Receiving Party of any Confidential Information shall not use the Disclosing Party's Confidential Information or disclose such Confidential Information to any third party, either during the term of this Agreement or thereafter, without the prior written consent of Disclosing Party. Thus, the Receiving Party shall use the Confidential Information of the Disclosing Party only to perform its obligations under this Agreement and to the extent expressly permitted under this Agreement. Nothing in this Agreement shall prohibit either party from disclosing Confidential Information of the other party 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 disclosing party shall (i) give the other party prompt notice of such Required Disclosure prior to disclosure, (ii) cooperate with the other party in the event that it 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, neither party shall use, reproduce, duplicate, copy, or otherwise disclose, distribute, or disseminate any part of the other party's Confidential Information except for internal use by employees both standard employees and temporary employees), consultants or contractors of such party, 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.

8.3 Exceptions. The obligations specified in this Section 8 shall not apply to any Confidential Information to the extent that it is (a) already known to the Receiving Party without restriction prior to the time of disclosure by the Disclosing Party, (b) acquired by the Receiving Party from a third party without confidentiality restriction, (c) independently developed or acquired by the Receiving Party by employees or contractors without access to such Confidential Information, (d) approved for release by written authorization of the Disclosing Party, (e) in the public domain at the time it is disclosed or subsequently falls within the public domain through no wrongful action of the Receiving Party, or (f) disclosed pursuant to the requirement of a governmental agency or disclosure is permitted or required by operation of law, provided that the Receiving Party use its best efforts to notify the Disclosing Party in advance of such disclosure and seeks confidential treatment for such Confidential Information.

8.4 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.

8.5 Ownership of Confidential Information. All Confidential Information shall remain the property of the respective Disclosing Party and shall be returned to the owner thereof upon written request, except as expressly permitted or required in carrying out this Agreement or upon Receiving Party's determination that it no longer has a need for such Confidential Information in which case Receiving Party shall destroy copies of Confidential Information in its possession. Receiving Party's duty to protect 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 Receiving Party. None of the Confidential Information which may be disclosed by Disclosing Party shall constitute any representation, warranty, assurance, guarantee, or inducement by Disclosing Party of any kind, and, in particular, with respect to the non-infringement of any intellectual property rights, or other rights of third persons or of Disclosing Party.

8.6 Non-Solicitation. During the term of this Agreement, and for a period of one (1) year, following the termination of this Agreement, Reseller shall not induce or attempt to induce (i) any customer or supplier of Xima to reduce the business done by such customer or supplier with Xima; or (ii) any employee, consultant, sales representative, reseller or distributor of Xima, to leave the employ of, or otherwise terminate its relationship with Xima.

8.7 Injunctive Relief. The parties acknowledge that each other would be irreparably damaged if any of the provisions of this Section 8 are not performed by them in accordance with their specific terms. Accordingly, the other party is entitled to an injunction or injunctions to prevent breaches of this Section by the other party and has the right to specifically enforce this Section against the other party in addition to any other remedy to which it 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 8 will survive any termination of this Agreement.

9. Warranties and Disclaimers.

9.1 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 Products.

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

10. 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 attorney's 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 Products, which deviate from Xima's then current marketing materials, literature, or other documentation; or (iv) any claim related to or arising from Reseller's reselling of the Products under this Agreement.

11. Liability Limitation. EXCEPT FOR A BREACH OF SECTION 8 (CONFIDENTIAL INFORMATION) OR A MISAPPROPRIATION OF XIMA'S INTELLECTUAL PROPERTY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY 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 PRODUCTS OR THIS AGREEMENT, WHETHER OR NOT EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR COSTS. XIMA'S AGGREGATE LIABILITY TO RESELLER UNDER THIS AGREEMENT SHALL NOT EXCEED FEES PAID BY RESELLER TO XIMA UNDER THIS AGREEMENT.

12. Term and Termination.

12.1 Term. The term of this Agreement shall commence as of the Effective Date and continue in perpetuity until terminated pursuant to the terms hereof.

12.2 Termination for Cause. This Agreement may be terminated immediately 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 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.

12.3 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.

12.4 Effect of Termination. In the event of termination or expiration of this Agreement, (i) Reseller shall remain responsible for all payments due under Section 6 and (ii) Reseller shall have a ninety (90) day period following the effective date of termination ("Wind Down Period") to complete pending orders and distribute any inventory of the Products. The following provisions shall survive expiration or termination of this Agreement for any reason: Sections 4 (until all payable fees have been paid by Reseller), 6, 7, 8, 9, 10 and 11 and 13.6. 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 Products.

13. Miscellaneous.

13.1 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.

13.2 Third Party Agreements. Reseller hereby acknowledges and agrees that certain software included in the Products 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 are available at the website <http://www.ximasoftware.com/licenses> 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. The Third Party Agreements may permit Reseller and/or third parties to copy, modify, redistribute and have access to the source code of the Third Party Software portions of the licensed software included in the Products. 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 Products. 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.

13.3 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.

13.4 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 and any purported transfer or assignment, including by operation of law, shall be void. 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.

13.5 Governing Law; Dispute Resolution. This Agreement shall be governed by and construed under, and the legal relations between the parties hereto shall be determined in accordance with, the laws of the State of Utah, without giving effect to such state's conflicts of law principles. The parties hereby submit to the personal jurisdiction of, and agree that any legal proceeding with respect to or arising under this Agreement shall be brought in, the United States District Court for the District of Utah or the state courts of the State of Utah for the County of Salt Lake.

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

13.7 Arbitration. Any dispute between the parties relating to this Agreement shall be subject to binding arbitration, administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules and its Optional Procedures for Large, Complex Commercial Disputes. The arbitration shall be heard and determined by an arbitrator mutually agreed upon by the parties and such arbitrator shall be a former Utah judge who served for not less than five years, and who has experience and familiarity with information technology disputes. The arbitration proceeding shall occur in Salt Lake City, Utah. Each Party shall bear its own costs relating to such arbitration, and the parties shall equally share the arbitrators' fees, and the arbitration and all related proceedings and discovery shall take place pursuant to a protective order entered by the arbitrators that adequately protects the confidential nature of the parties' proprietary and confidential information. Any decision entered by the Arbitrator must be supported by existing Utah law (case law and statutory law). To the extent the Arbitrator does not support his/her decision with Utah law, the final decision entered by the Arbitrator can be appealed to Utah courts. In no event shall any arbitration award provide a remedy beyond those permitted under this Agreement, and any award providing a remedy beyond those permitted under this Agreement shall not be confirmed, no presumption of validity shall attach, and such award shall be vacated. Either Party may, without waiving any remedy under this Agreement, seek from any court of competent jurisdiction within the State of Utah any interim or provisional relief that such Party deems necessary to protect its Confidential Information and property rights, including without limitation rights accruing to or secured by such Party under Section 8 "Confidentiality" hereof, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the claim).

13.8 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.

13.9 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.

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

13.11 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.

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

13.13 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 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: _____