RESELLER AGREEMENT

This Reseller Agreement (the “**Agreement**”) is entered into on this \_\_\_\_\_\_\_\_, 201\_ (The "**Effective Date**"), by and between Observe IT Inc. (“**Company**”), and by \_\_\_\_\_\_\_\_, a company incorporated under the laws of \_\_\_\_\_\_\_\_\_\_\_ with its principal offices at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Reseller**”).

**Whereas** Company is the sole owner and proprietor of the Software (as defined below), and Reseller has substantial skill, knowledge and experience as a reseller of software products, and has substantial resources for the advertising, promotion, sale, and distribution of the Software throughout the Territory (as defined below); and

**Whereas** Company wishes to appoint Reseller as its non-exclusive reseller in the Territory with regard to the Software, and Reseller desires to accept such appointment, subject to the terms and conditions of this Agreement.

**NOW THEREFORE**, the parties hereby agree as follows:

1. **Definitions**
   1. “**Company Names**” - shall mean all of Company’s trademarks, trade-names, service marks, logos and domain names and such other names as may be communicated by the Company from time to time in connection with the Software, Documentation and activities hereunder.
   2. “**Documentation**” - shall mean any specifications, instructions, manuals or other materials provided by Company in connection with the Software.
   3. “**EULA**” – shall mean Company’s then-current terms and conditions regulating the End-Users’ use and operation of the Software.
   4. “**End-User(s)**” – shall mean any client who purchases a Software License from any Reseller.
   5. “**Intellectual Property**”**-** shall include any patents, patent applications, design-marks, trademarks, trademark applications, service-marks, service-mark applications, copyrights including moral rights, trade secrets, know-how, business methods or any other intellectual property rights in any relevant jurisdiction whether or not registered, copyrights, trade secrets, trademarks, trade names, patents, know-how, and other proprietary rights whether or not registered. all improvements thereto, patent applications, continuations, continuations-in- part, revisions, extensions, all trade secrets, hardware design, electronic schematics, all copies and tangible embodiments thereof.
   6. “**Partner Program Guide**” – shall mean a set of guidelines published set forth program criteria, discounts and benefits available to Reseller hereunder, as in effect from time to time.
   7. “**Software**” – shall mean Company’s proprietary software as developed and released to customers, including End Users, from time to time.
   8. “**Software License/s**” – shall mean a license to use and operate the Software in accordance with the terms of this Agreement or in case of an End-User, in accordance with the terms of the EULA.
   9. “Territory” shall mean the geographical regions identified in Exhibit A attached hereto.
2. **Reseller Appointment** 
   1. Appointment. Subject to the terms and conditions of this Agreement, Company hereby appoints Reseller as its non-exclusive reseller of the Software to End Users in the Territory under the terms of this Agreement and the Partner Program Guide.
   2. Reseller License. In order to effect the aforementioned appointment, and subject to the terms and conditions herein, Reseller shall have a nonexclusive, nontransferable, right and license (without right to sublicense)to market, promote, sell and distribute the Software in accordance with the provisions hereunder.
   3. End User Licenses. Reseller shall distribute Software to End Users only pursuant to the EULA. In addition, Reseller shall make available the Software to End Users for demonstration, evaluation and/or training purposes only pursuant to the Company’s then current click through End-User License Agreement – Temporary Trial (the “OIT Trial License” and together with the EULA, the “OIT License Agreements”) for the Licensed Software as provided by the Company from time to time. Reseller will use reasonable efforts to assist the Company to enforce the OIT License Agreements, to protect the Company’s proprietary rights and to cooperate, without charge, in the Company’s efforts to protect its proprietary rights. Reseller shall notify the Company of any known or suspected violation of any OIT License Agreement, or infringement or misappropriation of the Company’s proprietary rights.
   4. Marketing. Reseller shall have the right, subject to the terms and conditions of this Agreement to promote and market the Software in the Territory by (i) using Company Names; (ii) demonstrating the use of the Software to potential clients; (iii) initiating and/or participating in displays and exhibitions for the purpose of promoting the Software and (iv) rendering any other marketing assistance in connection with the performance of Reseller’s obligations herein upon Company’s request.
   5. Restrictions. Except for the rights expressly granted to Reseller hereunder, no other rights or interest whatsoever to or in the Software are transferred or granted to Reseller. Without limiting the foregoing, Reseller has no authority (i) to bind Company to any undertaking or performance with regard to the Software, other than as expressly provided hereunder and/or in the EULA; (ii) to make any statements or representations concerning the Software that exceed or are inconsistent with the Documentation provided to Reseller by the Company, or with Company’s commitments, warranties and/or other representations expressly provided in the EULA; (iii) to appoint resellers or any other sub-contractors in connection with the Software; (iv) to initiate and/or perform, directly or indirectly any sale and/or other disposition of the Software, and/or Software Licenses outside the Territory; (v) reverse engineer, disassemble, decompile, modify, or alter the Software, or any part thereof, or otherwise attempt to reconstruct or discover any source code or underlying ideas or algorithms of the Software or any portion thereof by any means whatsoever. (vi) use the Software for any purpose other than the purposes of this Agreement; (vii) copy the Software, develop any derivative works, improvements or modifications thereof or include any portion of the Software in other products; or (viii) assign, sublicense, transfer, lease or share the rights granted under this Agreement. In the event Reseller obtains knowledge that a third party is attempting or may attempt to take any of the foregoing actions prohibited by this Section 2.5, Reseller shall so notify Company in writing immediately.
3. **Reseller Obligations**
   1. Marketing and Promotion. Subject to the terms and conditions herein, Reseller shall use its best efforts to actively promote and market the Software to potential clients in the Territory, including without limitation, by identifying and contacting potential clients, providing demonstrations of the Software in trade-shows, and performing any other marketing activities as shall be reasonable requested by the Company from time to time. It is expressly agreed that Reseller shall be responsible for the marketing and promotion of the Software in the Territory under this Agreement, and shall bear all costs associated therewith.
   2. Sales Reviews. As Company’s request, Reseller must participate on biweekly calls to update status on joint leads and opportunities. Company maintains ownership of all sales leads generated by Company and sent to Reseller. If Reseller does not contact leads in a timely way in the sole discretion of Company, Company reserves the right to provide the leads to another Reseller or sell to End Users directly.
   3. Support to End-Users:
      1. Training: Reseller may be responsible for completing sales training provided by Company within thirty (30) days from the Company’s request. Such training shall cover (a) pre-sales, (b) sales process and include online training, phone training, and examinations.
      2. Support by Reseller. Reseller shall reasonably cooperate with the Company in communicating with End Users for contracting directly with the Company for continued provision of technical support and maintenance services for the Software.
      3. Support by the Company. The Company will use commercially reasonable efforts to provide End Users that are entitled to maintenance under the EULA or Reseller (in the event that Reseller installs the Software and runs it on an End User’s behalf) with technical support and maintenance services for the Software in accordance with the terms of the EULA. The Company shall have no obligation to support any version of the Software or Documentation other than the then current version and the immediately preceding version. Without limiting the Company’s right to charge for maintenance services in general, Reseller agrees that the Company will have the right to charge in accordance with its then current policies for any support services resulting from (a) problems, errors or inquiries relating to computer hardware or software other than the Software or (b) use of any version of the Software other than the then current or immediately preceding version.
      4. Updates. The Company shall have no obligation to revise or update the Software or Documentation (any such revisions and updates, “Updates”). Any Update delivered by the Company shall be treated for all purposes under this Agreement as Software or Documentation as the case may be, and all intellectual property rights therein shall be retained by the Company.
      5. Certified Personnel. Reseller shall train, maintain and dedicate, for the performance of its obligations under this Agreement, highly qualified technical, professional and sales personnel, which will be trained and certified by Company, all services provided hereunder to End-User by the Reseller shall be performed solely by such certified personnel.
      6. Training and Assistance. To ensure the Reseller is competent in demonstrating, selling, and supporting the Software, the Reseller may from time to time be required to attend the Company training sessions.
   4. Compliance with Laws and Government Authorizations. Reseller shall comply, at its own expense, with the applicable laws and with all governmental approvals, licenses, permits and authorizations necessary for the performance of Reseller’s undertakings hereunder.
   5. Quality Checks. From time to time, upon Company’s request, Reseller shall provide Company with randomly selected samples of Promotional Materials (as defined hereunder). Reseller will amend such Promotional Materials at the Company's request.
   6. Expense of Doing Business. It is hereby clarified, for the avoidance of any doubt, that except as otherwise specifically provided herein, Reseller shall bear all costs and expenses associated with its performance of this Agreement, including (but not limited to) amounts due to employees or agents of Reseller, advertising, bad debt expense, inventory losses, licensing fees, regulatory fees and taxes. In no event shall the company be liable, for any expenses incurred by Reseller unless the Company has agreed in writing to pay such expenses.
4. **Purchase Orders And Delivery**
   1. Purchase Orders. To obtain Software and Software Maintenance Services from the Company, the Reseller shall place purchase orders with the Company (the "**Purchase Order/s**"). Each Purchase Order shall detail the items of Software, number of Software Licenses purchased, the Software Maintenance Services fees for the first year, the applicable prices from the Price List and the total purchase amount per each End-User separately.
   2. Purchase Order Acceptance. Purchase Orders shall be considered accepted upon the date that the Company confirms its acceptance.
   3. Delivery. The Company shall deliver the Software electronically through a secure FTP server or other means of electronic delivery supported by the Company from time to time. Software delivered in this manner shall be deemed delivered for all purposes of this Agreement upon the date that the Company notifies Reseller that the ordered Software is available for download.
   4. Title. Title in the Software License shall only pass to Reseller upon full payment for such Software License.
5. **Prices and Payments**
   1. Price List and Discounts. The Reseller shall pay the Company for the Software and related Software Maintenance Services the Company’s list prices less the partner margin stated in Exhibit A (the "**Margin**"), unless the Company and Reseller agree in Writing on a different price for any particular order. The Company is entitled to change the prices in its price list at its sole discretion at any time. The prices in the Price List are exclusive of any taxes.
   2. Payment Terms. As shall be detailed in Exhibit A attached hereto. Payment terms may be different upon the mutual written consent of the Company and Reseller. All payments shall be made in US Dollars without deduction of exchange, collection or other charges. Reseller will reimburse ObserveIT for all reasonable costs (including attorneys’ fees) incurred by ObserveIT in collecting late payments. Any payment which is delayed for more than thirty (30) days beyond the due date shall be subject to an interest and service charge of one and one-half percent (1.5%) per month (or the highest rate permitted by applicable law if lower), compounded monthly from the date such payment first became due until paid.
   3. Reseller Consideration. Reseller shall be responsible for collection of sums due from End-Users and an End-User’s non-payment of Reseller shall not be a reason to withhold payment from Company for any reason whatsoever.
   4. Taxes. All payments required by this Agreement are exclusive of federal, state, local and foreign taxes, duties, tariffs, levies, withholdings and similar assessments (including without limitation, sales taxes, use taxes and value added taxes), and Reseller agrees to bear and be responsible for the payment of all such taxes and charges, excluding taxes based upon the Company’s net income.
6. **Proprietary Rights**
   1. Title; Ownership. The Company owns and shall retain all rights, including Intellectual Property rights in the Software, including any derivatives, updates, enhancements, modifications or improvements made thereto. As between the parties Reseller acknowledges the Company’s exclusive ownership rights in the Software and further acknowledges that that the Software is unique and original to the Company. The parties agree to execute any documents reasonably requested by the Company to effect any of the foregoing.
   2. Protection of Rights. Reseller shall cooperate fully with Company in protecting Company’s proprietary rights, including Intellectual property rights in the Software. Additionally, without derogating from any other obligations hereunder, Reseller shall ensure that all End-Users are aware of the Company’s rights, including without limitation, vis-à-vis the Company’s Intellectual Property rights under the EULA. Reseller shall ensure that all End-Users execute the EULA prior to download of the Software.
   3. Company Names in Promotional Materials. Reseller shall include in all marketing, advertising and promotional materials utilized for the promotion of the Software (the “**Promotional Materials**”) any Company Names as shall be requested by Company in writing, in accordance with Company’s instructions, and subject to the Company’s prior written consent. For that purpose, Company hereby grants to Reseller a limited, non-exclusive, personal, non-transferable license to use any such Company Names solely in connection with activities related to the promotion of the Software. Reseller shall not remove, alter, obscure or obliterate any Company Names, or other proprietary notices incorporated in, marked or affixed to the Software, Documentation and any Promotional Materials provided by Company to Reseller. Reseller agrees not to attach or apply to the Software and any promotional materials related thereto, any label, marking or other information which has not been approved by Company in writing in advance.
   4. Ownership Rights: Reseller acknowledges that all rights in Company Names are and shall remain the sole property of Company. Without limiting the above, all use by Reseller of Company Names and logo (including domain names) shall inure to the benefit of Company, and Reseller shall not obtain any rights thereto. Reseller undertakes not to embody Company Names into any and all trademarks, service marks domain names or similar applications, and/or otherwise to register Company Names as trademarks, service marks, domain names or similar instruments. Reseller hereby irrevocably assigns to Company title and interest, if any, owned or obtained by Reseller in any of the Company Names, and in any markings, if any, applied by Reseller in connection with the Software.
7. **Confidential Information**

7.1. Definition. “Confidential Information” means all non-public and/or confidential information of either the Company or Reseller that has been or may be disclosed by one party to the either hereunder. Confidential Information does not include information (i) already rightfully in the possession of the receiving party without an obligation of confidentiality to the disclosing party, (ii) hereafter rightfully furnished to the receiving party by a third party without a breach of any separate nondisclosure obligation to the disclosing party, (iii) publicly available without breach of this Agreement or (iv) independently developed by the receiving party without reliance on such information.

7.2. Confidentiality. Except for the specific rights granted by this Agreement, neither party shall use or disclose any Confidential Information of the other party without the written consent of the disclosing party. A party receiving Confidential Information from the other shall use commercially reasonable care to protect it. Each party shall bear the responsibility for any breach of confidentiality by its employees and contractors. Promptly after request by the disclosing party, and in the disclosing party’s sole discretion, the receiving party shall return to the other or, if so directed by the other party, destroy all originals and copies of any Confidential Information and all information, records and materials developed therefrom.

7.3. Compelled Disclosure. Nothing herein shall prevent a receiving party from disclosing the other’s Confidential Information as necessary pursuant to any court order, lawful requirement of a governmental agency or when disclosure is required by operation of law (including disclosures pursuant to any applicable securities laws and regulations); provided, that prior to any such disclosure, the receiving party shall use reasonable efforts to (a) promptly notify the disclosing party in writing of such requirement to disclose, and (b) cooperate with the disclosing party in protecting against or minimizing any such disclosure or obtaining a protective order.

7.4. Relief. Any breach or threatened breach of this Section 7 will cause irreparable harm to the disclosing party for which money damages would not be an adequate remedy. Therefore, the disclosing party shall, in addition to any other legal or equitable remedies, be entitled to an injunction against any such breach or threatened breach without the necessity of posting any bond.

1. **Indemnification**
   1. Reseller Indemnification. Reseller shall indemnify and hold the Company harmless from and against any and all claims, demands, or actions arising out of Reseller’s failure to act or perform in accordance with the terms of this Agreement, including without limitation: (i) activities outside the express authorization provided to Reseller under this Agreement; and (ii) the installation, integration and implementation of the Software**.**
   2. Misrepresentations by Reseller. Without limiting the foregoing in Section 8.1, Reseller shall be liable for any representations or warranties made by it or its personnel, without the prior approval of the Company, including without limitations, in any of its Promotional Materials, whether in writing or orally.
2. **Disclaimer; Limitation of Liability; Insurance**
   1. COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS AS TO ITS SOFTWARE OR ANY OTHER SERVICES RENDERED TO RESELLER, ITS CUSTOMERS OR ANY OTHER PERSON. EXCEPT TO THE EXTENT PERMITTED BY APPLICABLE LAW, COMPANY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, ORAL OR WRITTEN, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF THE TRADE.
   2. Limitation of Liability. OTHER THAN WITH RESPECT TO EVENTS OF GROSS NEGLIGENCE AND/OR WILLFUL MISCONDUCT THE COMPANY WILL NOT BE LIABLE TOWARDS THE RESELLER FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT OR PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE RESELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT COMPANY’S LIABILITY UNDER OR FOR BREACH OF THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE CONSIDERATIONS ACTUALLY RECEIVED BY COMPANY FROM RESELLER HEREUNDER UNDER AN APPLICABLE PURCHASE ORDER FOR A SPECIFIC END-USER DURING THE SIX MONTH TERM PRIOR TO OCCURRENCE OF SUCH DAMAGES.
   3. Insurance. Reseller shall be solely responsible to obtain sufficient insurance as required in order to cover any liabilities incurred due to activities hereunder.
3. **Term and Termination**
   1. Term. Unless terminated earlier in accordance with the provisions hereof, this Agreement shall commence upon the Effective Date and shall remain in effect unless terminated earlier pursuant to the provisions of Section 10.2 or Section 10.3.
   2. Termination for convenience. Each party shall be entitled to terminate this Agreement for any reason upon prior written notice of ninety(90) days to the other party.
   3. Termination for Cause. Either party may terminate this Agreement: (i) in case of material breach by the other party that has not been cured within thirty (30) days following a written notice thereof from the non-breaching party; and/or (ii) immediately upon a written notice to the other party upon the occurrence of any of the following events: (a) any assignment of either party’s assets for the benefit of creditors, (iii) any dissolution of or substantial attachment or execution of judgment against either party, (iv) any voluntary or involuntary act of bankruptcy which is not resolved in either party’s favor within thirty (30) days of filing.
   4. EffectsofTermination**/**Expiration.Immediately upon the termination or expiration of this Agreement:
      1. Reseller shall immediately (i) cease the marketing, promotion, sale or distribution of the Software, and/or any other use of any kind thereof.
      2. Reseller shall immediately remit to Company all payments due to Company.
      3. Reseller shall, if so requested by Company, provide the Company with any information in connection with End-Users.

Each party understands that the rights of termination hereunder are absolute. Upon expiration of this Agreement or termination in accordance with this Section 10, Reseller shall not be entitled to any separation compensation or separation damages of any kind, including indemnification, compensation, reimbursement, or damages for loss of prospective compensation, goodwill or loss thereof, or expenditures, investments, leases, or any type of commitment made in connection with Reseller’s and/or any customers’ business, or in reliance on the existence of this Agreement including, but not limited, to advertising and promotion costs, costs of supplies, termination of employees, employee salaries, and other such costs and expenses.

* 1. Survival. Any Sections that, by their nature or otherwise, should reasonably survive any termination or expiration of this Agreement, including without limitation, Sections ‎‎‎6, ‎7, ‎8, ‎‎9, ‎10.4 and ‎11, shall so survive the termination or expiration of this Agreement and shall remain in full force and effect thereafter.

1. **Miscellaneous** 
   1. Independent Contractor. Reseller is an independent contractor of the Company under this Agreement, and nothing herein shall be construed to create a partnership, joint venture, or agency relationship between the parties hereto. Reseller has no authority to enter into agreements of any kind on behalf of the Company with regard to the subject matter of this Agreement or otherwise to bind or obligate such other party in any manner to any third party.
   2. Non-Solicitation. During this Agreement and continuing through the first anniversary of the termination of this Agreement, neither party (or its affiliates, subsidiaries, partners, third parties) will actively solicit to employ or employ any employee of the other party, its affiliates or business partners, without the other party’s written consent.
   3. No Conflict of Interest. Reseller represents and warrants that (1) it has full power and authority to undertake the obligations set forth in this Agreement, and (2) it has not entered into any other agreements that would render it incapable of satisfactorily performing its obligations hereunder or that would place it in a position of conflict of interest or be inconsistent or in conflict with its obligations hereunder.
   4. No Assignment. Reseller represents that it is acting on its own behalf, and not as a Reseller for, or on behalf of, any third party, in entering into this Agreement, and further agrees that it may not assign its rights or obligations under this Agreement without the prior written consent of the Company.
   5. Notices. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be considered effective when deposited in the mail, postage prepaid, and addressed to the other party at the address noted above, unless by such notice a different address shall have been designated.
   6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and the United States, without regard to its conflicts of law provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.
   7. No Waiver. It is expressly understood that in the event either party shall, on any occasion, fail to perform any term of this Agreement and the other party shall not enforce that term, the failure to enforce on the occasion shall not constitute a waiver nor prevent enforcement of that or any other provision on any other occasion.
   8. Publicity. Reseller hereby grants Company a non-exclusive license to list Reseller’s name and display Reseller’s logo on Company’s website and to use Reseller’s name and logo in Company’s reseller and partner lists and related marketing materials. Any other use by Company of Reseller’s name, logo or trademark requires Reseller’s prior written consent. Company may also publicly issue and distribute a press release relating to this Agreement, with prior written consent from Reseller, such consent not to be unreasonably withheld or delayed. Reseller also agrees to act as a “reference account” with respect to Company’s marketing and promotional initiatives from time to time.
   9. Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto and supersedes all prior representations, proposals, discussions, conditions, warranties, covenants and all other communications between the parties relating thereto. This Agreement may only be amended by a written document signed by the authorized representatives of both parties.
   10. Counterparts. This Agreement may be signed in two or more counterparts, none of which need contain the signatures of each of the parties, each of which shall be deemed to be an original, and all of which taken together shall constitute one and the same instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than the number of counterparts containing the respective signatures on behalf of and the parties hereto. Facsimile signatures shall be binding as original signatures.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives:

|  |  |
| --- | --- |
| **OBSERVEIT INC.** | **RESELLER:** |
|  |  |
|  |  |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: Title: | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: Title: |

**Exhibit A**

**Reseller Terms**

**Name of Reseller:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Territory:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Product Discounts**:

* Base product + initial maintenance discount for sales-qualified and approved opportunities actively introduced and worked by partner: 25%
* Base product + initial maintenance discount for sales-qualified opportunities actively introduced to a partner and worked by ObserveIT: 10%

**Maintenance and Support Renewal Margin**: 5%

**Payment Terms**: 30 days as of acceptance of a Purchase Order by the Company. All payment requests are electronic via ACH or wire.

**Taxes:** To be paid by the Reseller or, to the extent required by applicable law to be paid by the Company, to be added to the purchase price of the applicable order.