

This Agreement is enforceable as of the day of \_\_\_\_\_, (the “Effective Date”), by and between Alocet and \_\_\_\_\_ (“Reseller”).

Alocet has developed QXpress - management software specific to the Service Industry - for the purpose of sale to business owners in that industry and

Reseller desires to be recognized as a non-exclusive reseller of QXpress and related products hereinafter defined.

In consideration of the mutual covenants and agreements herein contained, Alocet and Reseller hereby agree as follows:

## **1. Definitions**

- 1.1 “Software” will be defined as (a) the object code of the computer program QXpress and module programs created by Alocet for QXpress together with (b) the object code versions of any enhancements, improvements, new releases and other modifications to such computer programs provided to the Reseller pursuant to the terms of this Agreement. Alocet shall have the right to add to or discontinue any or all of the computer programs comprising the Software, but only upon fifteen (15) days prior notice to Reseller.
- 1.2 “Purchase Price” will be defined as the full purchase price or the first rental payment price, of the Software, whichever is applicable, as listed on Alocet’s website. The Purchase Price is at Alocet’s sole discretion and may be changed at any time, but only upon fifteen (15) days prior notice to Reseller.
- 1.3 “Purchase Date” will be defined as the date that Reseller remitted either the Purchase Price to Alocet.
- 1.4 “Documentation” will be defined as (a) the user manuals, training manuals, and all other text prepared for the end users of the Software and (b) all text distributed to, and intended for the education of, the Reseller concerning Alocet and its Software and related products and services.

## **2. Recognition**

- 2.1 Subject to the limitations set forth below, Alocet hereby grants and Reseller hereby accepts a non-transferable, non-exclusive right to demonstrate, market, sell, distribute and train on the Software to end users for delivery, installation and use.

- 2.2 *Title and Ownership.* The Software will remain, at all times, the sole property of Alocet. The Reseller will have no right, title or interest in the Software or any proprietary materials and/or contained in or used in connection with, except as expressly set forth herein.
- 2.3 *No Agency.* The Reseller shall not be considered an agent of Alocet and shall not purport to legally bind Alocet.

### **3. Orders and Performance**

- 3.1 *Performance of a Sale.* Upon completion of a sale between Reseller and an end user, Reseller will notify Alocet via Internet or telephone and provide the company name, contact name, address, telephone number, and E-mail address of the end user. Reseller must also indicate the Software being purchased, the delivery option, if any, and remit payment equal to seventy (70) percent of the Purchase Price, in the form of a valid credit card or check to Alocet. Upon receipt of both the end user's contact information and the payment, Alocet will provide the end user with a password to allow full and complete use of the Software for a period of 45 days from the Purchase Date. Every 45 days following the Purchase Date, a new password will be provided to the end user, via Internet or telephone, allowing full and complete use of the Software.
- 3.2 *Performance of a Rental.* Upon completion of a rental between Reseller and an end user, Reseller will notify Alocet via Internet or telephone and provide the company name, contact name, address, telephone number and E-mail address of the end user. Reseller must also indicate the Software being rented, the delivery option, if any, and remit payment equal to seventy (70) percent of the Purchase Price. Upon receipt of both the end user's contact information and the payment, Alocet will provide the end user with a password to allow full and complete use of the Software for a period of 45 days from the Purchase Date. Each subsequent month, Reseller will remit payment equal to seventy (70) percent of the Purchase Price in the form of a valid credit card or check. Upon receipt of each monthly payment, Alocet will provide the end user with a password to allow full and complete use of the Software for a period of 45 days from the date of payment.

## 4. Commissions

- 4.1 Amount. Reseller is entitled to thirty (30) percent of the Purchase Price of Software sold to the end user. Reseller is entitled to zero (0) percent of revenue collected by Alocet from end user for support and training purposes. The list of support and training revenues to which Reseller is entitled zero (0) percent includes, but is not limited to, revenues derived from product upgrades, technical support, training seminars, training materials and support materials.
- 4.2 Taxes. Prices represented herein and on all notification issued by Alocet pursuant to this Agreement are exclusive of all government excise, sales, service, use, occupational, or like taxes and, accordingly, are subject to an increase equal in amount to any tax Alocet may be required to collect and pay upon the licensing or delivery of the Software marketed hereunder. Reseller is responsible for the payment of any taxes resulting from or imposed upon this Agreement.
- 4.3 Cancellation. All cancellation requests must be made within thirty (30) days of Purchase Date by the Reseller. Reseller must notify Alocet via Internet or telephone and provide the full name, address, telephone number, E-mail address and business name of the end user who has requested the cancellation. Upon receipt of the cancellation request from Reseller, Alocet will provide a full refund equal to the Purchase Price to Reseller. Once Alocet has refunded the Purchase Price to Reseller, Alocet will no longer provide passwords that allow full and complete use of the purchased Software to the end user.

## 5. Reseller Obligations

- 5.1 Reseller's Promotion of the Software. Reseller shall use reasonable efforts to promote and market the Software and to develop a market demand for the same. Reseller should advertise the Software in appropriate advertising media and in a manner insuring proper and adequate publicity for the Software. Reseller shall maintain a marketing organization which can be best utilized for the promotion of the Software.
- 5.2 Promotional Materials. Alocet agrees to provide Reseller such promotional material with respect to the Software as Alocet generally makes available to its Resellers, including technical specifications, prices, advertisements, and demonstration products and Reseller may reproduce such materials as reasonably required, provided that all copyright, trademark and other property markings are reproduced.

- 5.3 No Impairment. Reseller agrees not to disable or impair any features of the Software that restrict its use to a particular computer system and/or number of users.
- 5.4 Compliance with Laws. Reseller shall comply with all applicable laws, rules and regulations in its performance of this Agreement.
- 5.5 Compliance with Alocet Policies. Reseller agrees to abide by the policies set out by Alocet in regards to the marketing, advertising, selling, support, and training of the Software. Alocet reserves the right, for the purpose of ensuring compliance to Alocet policies, to contact via telephone, E-mail, letter or fax, customers, employees, business associates or any other person involved in dealings with Reseller.
- 5.6 No Decompilation. Reseller shall not attempt to obtain the source code to the Software through reverse engineering, decompilation, disassembly or other means.
- 5.7 Reseller Liability. Reseller agrees to be solely liable for any and all claims, losses, liabilities, costs and expenses arising from or in connection with Reseller's distribution, selling, installation, training, or supporting of the Software.

## 6. Training and Support

- 6.1 Training. Reseller shall be responsible for training its personnel to meet Reseller's obligations under this Agreement.
- 6.2 Support by Alocet (to Reseller). Alocet agrees to provide direct support and maintenance services to Reseller, free of charge. In the event that Alocet deems Reseller's use of support services to be excessive or abusive, Alocet can either discontinue its provision of support services to Reseller or provide said services at Alocet's then-current support rates.
- 6.3 Support by Alocet (to End User). Alocet agrees to provide direct support and maintenance services to end users in accordance with Alocet's then-current support policies and support rates.

## 7. Protection of Intellectual Property Rights

- 7.1 Acknowledgement of Proprietary Materials. Reseller hereby acknowledges that the Software is protected by the copyright laws of Canada and other countries and that the Software embodies valuable confidential and trade secret information of Alocet, the development of which required the expenditure of considerable time and money by Alocet. Reseller hereby

agrees to hold any trade secrets or other confidential information embodied in the Software, together with any other confidential information and data made available to it by Alocet, in confidence and agrees not to use, copy, or disclose nor permit any of its personnel to use, copy or disclose the same for any purpose that is not specifically authorized herein.

- 7.2 *Proprietary Markings and Packaging.* Reseller hereby agrees to ensure that all copyright, trademark and other proprietary notices of Alocet affixed to or displayed on Software will not be removed or modified. Reseller shall distribute all packaging, warranties, disclaimers and Customer agreements in tact as shipped by Alocet. Reseller shall discontinue all use of trademarks, service marks, trade names and logos immediately upon the termination of, or expiration of, this Agreement or upon Alocet's specific instruction. After such termination, expiration or direction, Reseller will not use any name, title, or expression in conjunction with Alocet's business which, in the opinion of Alocet, so nearly resembles any Alocet marks that such use may lead to confusion or uncertainty on the part of the public.

## **8. Limitations of Alocet Liability**

- 8.1 Alocet makes no warranties of any kind, either express or implied, to Reseller, and Alocet disclaims all warranties, including but not limited to the implied warranties of merchantability, title, non-infringement, and fitness for a particular business. Alocet does not warrant that use of the Software will be uninterrupted and error-free. No oral or written information or advice given by Alocet, its agents or employees shall create a warranty. Neither Alocet nor anyone else who has been involved in the creation, production or delivery of the Software shall be liable for any direct, indirect, consequential or incidental damages (including damages for loss of business profits, business interruption, loss of business information and the like) arising out of this Agreement of the use or inability to use the Software even if advised of the possibility of such damages. In no case shall the subject matter of this Agreement, whether in contract, tort or otherwise, exceed the amount actually received by Alocet hereunder.

## **9. Records**

- 9.1 *Keeping of Records.* Reseller shall maintain copies of all documentation relating to the marketing, sale, and distribution of Software under this Agreement.
- 9.2 *Disclosure of Records.* Reseller shall disclose such documentation at Reseller's place of business during normal business hours given twenty-four (24) hours prior notice.

## 10. Term and Termination

- 10.1 Initial Term. The initial term of this Agreement (“Initial Term”) shall be from the Effective Date until the first anniversary thereof unless earlier terminated in accordance with the terms of this *section 10*.
- 10.2 Additional Terms. Upon the conclusion of the Initial Term, this Agreement will automatically renew for additional one year terms (each, an “Additional Term”) unless either party gives written notice to the other party within thirty (30) days of the end of the current Initial Term or Additional Term of its intention not to renew the Agreement.
- 10.3 Termination by Either Party. Either party may, at its discretion, terminate this Agreement at any time by notifying the other party of its decision to such effect in writing not less than thirty (30) days prior to the proposed termination date.
- 10.4 Termination by Alocet. In addition, and without limiting any other rights available under law, Alocet may, at its option, terminate this Agreement and/or suspend delivery of the Software:
- (a) Immediately upon notifying Reseller of its decision to such effect, in the event that Reseller is delinquent on any amount then due to Alocet for longer than fifteen (15) days following demand for payment;
  - (b) In the event that Reseller defaults on its obligations hereunder and fails to cure its default within ten (10) days after having been given notice of such default;
  - (c) Effective immediately and without requirement of notice, in the event that (i) Reseller files a petition in bankruptcy; files a petition seeking any reorganization, arrangement, composition or similar relief under law regarding insolvency or relief from debtors; or makes an assignment for the benefit of creditors; (ii) a receiver, trustee, or similar officer is appointed for the business or property of Reseller; (iii) any involuntary petition or proceeding under bankruptcy or insolvency laws is instituted against such party and not stayed, enjoined or discharged within sixty (60) days; or (iv) Reseller adopts a resolution for, or undertakes to effect, discontinuance of its business or dissolution.
  - (d) By providing written notice to Reseller of its decision to such effect at least fifteen (15) days prior to the proposed termination date, in the event that Alocet discontinues its distribution of the Software.

10.5 Effect of Termination. Unless otherwise expressly provided in this Agreement, any termination hereunder shall not be deemed a cancellation of any orders submitted before the effective date of such termination. Notwithstanding any termination of this Agreement, in addition to those provisions which specifically provide for the survival beyond expiration or termination, all provisions regarding indemnification, warranty, liability and limits thereon, and confidentiality and/or protection of proprietary rights and trade secrets shall survive indefinitely or until the expiration of any time period specified elsewhere in this Agreement with respect to the provision in question. Any termination of this Agreement shall be without prejudice to any other rights or remedies available under this Agreement or at law.

## 11. Miscellaneous

11.1 Force Majeure. In the event that Alocet's performance is delayed, prevented, obstructed or inhibited because of any Act of God, fire, casualty, delay or disruption in transportation, or shut-down of production facilities, shortage or curtailment, riot, destruction, governmental acts or directives, or any other cause beyond the reasonable control of Alocet, including financial requirements or manufacturing limitations imposed by third-party manufacturers, suppliers or vendors, Alocet may give notice to Reseller, via Email, mail, fax or telephone and thereupon Alocet's performance shall be excused and the time for performance shall be extended for the period of delay or inability to perform resulting from such occurrence. The occurrence of such an event shall not constitute grounds for default under this Agreement.

11.2 Notices. Except as otherwise set forth herein, all notices shall be in writing, and deemed given (i) upon delivery, if delivered in person or by prepaid mail, (ii) ten days after being mailed if sent registered mail, (iii) the next business day if sent overnight courier (unless returned undelivered or the courier reports a late delivery). Notices should be addressed to each party at its address set forth in this Agreement or such addresses as the recipient may have specified by earlier notice to the sender.

11.3 Assignment. This Agreement shall not be assigned by Reseller to any person in any case.

11.4 Entire Agreement. This Agreement constitutes the entire Agreement between Alocet and Reseller with respect to the subject matter; unless provided herein, all other prior agreements, representations, statements, negotiations and undertakings are terminated and superseded hereby.

11.5 Independent Contractors. The parties shall at all times be independent contractors with respect to each other in carrying out this Agreement.

- 11.6 Amendments. No amendment to this Agreement shall be effective unless it is in writing and signed by an authorized representative of each party. The term “Agreement” is meant to include any future written amendments, modifications or supplements made in accordance herewith.
- 11.7 Headings not Controlling. Headings used in this Agreement are for reference and classification only and are not intended to be deemed part of this Agreement.
- 11.8 Survival. After expiration or termination of this Agreement, all provisions relating to payment shall survive until completion of required payments. In addition to those provisions which specifically provide for survival beyond expiration or termination, all provisions regarding indemnification, warranty, liability and limits thereon, and confidentiality and/or protection of proprietary rights and trade secrets shall survive, unless and until the expiration of any time period specified elsewhere in this Agreement with respect to the provision in question.
- 11.9 Consent to Breach not Waiver. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of or excuse for any other different or subsequent breach.
- 11.10 Severability. In the event that any provision of this Agreement is held to be illegal, void, unenforceable, to any extent, in whole or in part, as to any situation or person, the balance shall remain in effect and the provision in question shall remain in effect as to all other persons or situations, as the case may be.
- 11.11 Governing Law. This Agreement shall be deemed to have been made in jurisdiction of the province of Ontario and shall be governed by and construed in accordance with the laws of the province of Ontario, exclusive of its rules governing choice of law and conflict of laws. The parties stipulate to jurisdiction in the Superior court of Toronto, Ontario or Canada as appropriate.

Recognized reseller: \_\_\_\_\_

Representative's signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Alocet Representative's signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

