



Smartware

C o r p o r a t i o n

AGREEMENT

FOR THE APPOINTMENT OF

INDEPENDENT REPRESENTATIVE

PARTIES

Between

Smartware Corporation Pty Ltd, of Suite 3, Level 10 Cairns Corporate Tower, 15 Lake Street, Cairns, Queensland, 4870, Australia (hereafter "Smartware")

And

You, the person reading and understanding this Agreement and completing the accompanying Smartware Reseller Application Form

Of

the address nominated on the accompanying Smartware Reseller Application Form (Hereafter the "IR")

INTRODUCTION

Smartware develops software for, and supplies goods and services to, businesses and individuals for applications such as managed Public Internet Access and Computer Gaming Centers (hereafter the "Service") and wishes to sell the Service with the assistance of independent representatives. The parties have agreed to the appointment of the IR as a non-exclusive independent representative of Smartware on the terms and conditions contained in this Agreement.

IT IS AGREED

1. Appointment and duties of the IR

- (a) Smartware grants to the IR, during the term of this Agreement, the non-exclusive right to introduce, establish and maintain Customers of the Service.
- (b) The IR will use its best endeavors to familiarize itself with the Service, promote the Service to potential customers and, assist customers in the set up and final use of the Service.
- (c) The IR will provide Smartware with such information as Smartware may reasonably require in relation to licensing, processing orders, and maintenance of Customers of the Service introduced by the IR.
- (d) The IR will notify Smartware of any Customer complaint within 24 hours of learning of any such complaint.
- (e) The IR will not, during the term of this Agreement, sell or offer for sale any services competitive to, or with, the Service without first obtaining the written consent of Smartware.

2. Delivery of Service by Smartware

- (a) Smartware will provide the Service to the Customer as set out in the website www.smarttimer.com, or by other material published by Smartware. Smartware may alter the nature of the Service at any time.
- (b) Smartware will also provide the Service to any Designated Person or Designated Corporation nominated by the Customer on the License Order Form or subsequently notified to Smartware by the Customer in writing.
- (c) Smartware may provide the IR and/or the Customer with an initial database of Personal Identification Numbers (PINs) to enable utilization of the Service requiring PIN authentication.
- (d) Smartware will process and activate Customers introduced by the IR within 5 working days of Smartware receiving and accepting a completed License Order Form, License Agreement or other applicable documentation.
- (f) Smartware may suspend the provision of the Service to a Customer if the credit card provider does not meet any charges passed to the Customer's credit card or if their account has not been paid in accordance with License Agreement Terms and Conditions. The Service will be re-instated upon payment of the fees and charges by the Customer and, if the credit card notified to Smartware for the payment of charges is no longer to be available for that purpose, the provision by the Customer of the particulars of a credit card for the future payment of charges.

3. Charges

- (a) The Customer will be liable to pay for Service provided by Smartware to the Customer and to any Designated Person or Designated Corporation at the rate(s) charged by Smartware from time to time. The Customer will not permit the Service to be used by any other person or company. If the Customer, whether through act or omission, permits any other person or company to use the Service, the Customer's Service will be suspended and/or the Customer will be held liable to pay Smartware the rate(s) charged by it from time to time for such use of the Service.
- (b) Smartware will charge the credit card account, or any substituted credit card account, nominated by the Customer, for the provision and delivery of Service. If the credit card provider does not meet the charges, the Customer will pay them on demand.
- (c) Charges payable by the Customer become due and will be charged to the credit card account in accordance with Smartware billing cycles. Invoices will be issued to the Customer quarterly.
- (d) If a prepayment or security deposit has been lodged with Smartware by the Customer, it will be held until the termination of the Service to the Customer and all outstanding charges have been paid. The Customer authorizes Smartware to apply any prepayment or security deposit in or towards satisfaction of all outstanding fees and charges on termination of the Service.
- (e) The IR will be under no obligation to pay Smartware any moneys owed to Smartware by a Customer.

4. IR's Commission

- (a) Smartware will pay commission to the IR in accordance with Schedule A.
- (b) Smartware will provide the IR with a transaction record of Paid and Collected charges for Service provided to the Customer by reference to applicable License fees, PIN charges and other commissions for related products purchased by the Customer. The IR is not entitled to receive any further information concerning a Customer's dealings with Smartware without the written permission of the Customer.

5. Confidential Information and Intellectual Property

- (a) "**Confidential Information**" includes:
 - (i) all technical information and specifications relating to any and all aspects of the Service and the business of Smartware beyond that which is posted and available in the Public domain; and
 - (ii) all commercial and marketing information relating to the marketing and sale of the Service, whether now possessed by Smartware or developed or acquired by it after the date of this Agreement.

- (b) **"Intellectual Property"** means any software, software documentation trademark, trade name, logo, style, copyright or patent belonging to Smartware relating to the provision, promotion or sale of the Service.
- (c) The IR will keep confidential all information and disclosures made or made known to it under this Agreement and all other information and technical data disclosed to it by Smartware.
- (d) Notwithstanding the provisions of the above clauses, the IR has the right to disclose Confidential Information and all other information and technical data disclosed to it by Smartware:
 - (i) to the IR's employees where and to the extent that it is necessary for them to know the information for the purposes of this Agreement;
 - (ii) to the IR's customers where and to the extent that the disclosure of information is necessary and incidental to the sale of the Service in accordance with the provisions of this Agreement;
 - (iii) if so required by law; and
 - (iv) which is in the public domain.
- (e) The IR may use the Intellectual Property in connection with the promotion and sale of the Service under this Agreement and for the purposes of this Agreement but for no other purpose.
- (f) The IR will have no right to, or right to use, names or images which are confusingly similar to those employed by Smartware otherwise than in accordance with the above clauses. The IR must not hold itself out as the owner of any of the Intellectual Property or as having any connection with Smartware or the Intellectual Property other than an IR of Smartware under this Agreement.
- (g) The IR will not use any names or images which are confusingly similar or which would impair the value of the names and images employed by Smartware except with the written consent of Smartware and in connection with the promotion and sale of the Service under this Agreement.

6. Service Interruptions

- (a) Smartware will not be liable to the IR or any Customer introduced by the IR for any connection delay or service interruption or failure due to any occurrence beyond the control of Smartware.

7. Limitation of Liability

- (a) The liability of Smartware to the IR for:
 - (i) any breach of this Agreement; or
 - (ii) any breach of a condition or warranty implied by the *Australian Trade Practices Act 1974*; or
 - (iii) any negligence; or
 - (iv) any misrepresentation or misleading and deceptive conduct,whether in the formation, performance or termination of this Agreement with regard to the provision of the Service to Customers introduced by the IR will be

limited, at the option of Smartware, to the supply again of the Service or the payment of the cost of having the Service supplied again.

- (b) All express or implied conditions or warranties relating to any attribute of the Service are excluded from this Agreement to the extent permitted by law.
- (c) Under no circumstances will Smartware be liable to the IR for any indirect, consequential or economic loss or damages including, without limitation, loss of income, profit or business opportunity.

8. Indemnity

- (a) If the IR makes any warranty or representation regarding the Service not required by law which is inconsistent with or in addition to anything contained in any brochures or other material, including online content, published by Smartware, the IR will at its own expense defend and will indemnify and hold Smartware harmless from any claim, liability or cost to the extent that it is based upon or incurred as a result of such inconsistent or additional warranty or representation.

9. Relationship of the Parties

- (a) Nothing in this Agreement will constitute a relationship of employer-employee between the parties or create any partnership or agency. The IR will, for the term of this Agreement, be an independent contractor of Smartware.
- (b) The IR will have no power or authority to enter into any contracts on behalf of Smartware or to pledge the credit of Smartware.
- (c) The IR will have no power to make or purport to make or give any representation or warranty on behalf of Smartware other than as to the quality or attributes of the Service and, in that event, only to the extent of the matters contained in brochures or other material, including online content, published by Smartware.

10. Assignment

- (a) The rights and obligations of the IR under this Agreement are personal to the IR and may not be licensed, sub licensed, assigned, transferred or otherwise mortgaged, charged, encumbered or dealt with.

11. Term and Termination

- (a) This Agreement will commence on the date of completion of the Smartware Reseller Application Form by the IR and will run for a period of 12 months. Unless terminated by the IR by written notice given no more than 60 days nor less than 30 days prior to the conclusion of the initial or any subsequent 12 month period, this Agreement will be extended for a further 12 months on the same terms and conditions.
- (b) Either party may terminate this Agreement upon the occurrence of any of the following events:

- (i) if a material breach of this Agreement by a other party continues unremedied for a period of 14 days after the giving of written notice by the non-defaulting party requiring the breach to be remedied; or
 - (ii) if a receiver or a receiver and manager is appointed to the other party or over any of its property or if a liquidator or a provisional liquidator is appointed to the other party or if the other party enters into any arrangement with creditors; or
 - (iii) if the other party becomes bankrupt or enters into any arrangement with creditors or
 - (iv) if the provision of the Service no longer complies with all relevant laws, rules and regulations.
- (c) Smartware may terminate this Agreement on giving 30 days written notice to the IR if, in its opinion, any new law, rule or regulation makes it materially more difficult or expensive for it to provide the Service.

12. Effect of Termination

- (a) In the event of termination by either party:
- (i) the IR will immediately cease to act as the representative of Smartware;
 - (ii) the IR will immediately discontinue use of all Confidential Information and Intellectual Property of Smartware and return to Smartware all materials relating to the Service including technical specifications, product information, advertising, stationery and any other documents (whether in written or computer form) containing or concerning the Confidential Information supplied to it by Smartware and including all Intellectual Property;
 - (iii) Smartware will pay all money then owing to the IR under this Agreement by the due date;
 - (iv) Smartware may continue to provide the Service to the Customers introduced by the IR but will be under no further obligation to pay commission to the IR in accordance with this Agreement or otherwise; and
 - (v) the IR must not interfere with the on-going service or customer relationship between Smartware and any Customer introduced by the IR.

13. Entire Agreement

- (a) These terms and conditions contain the entire Agreement between Smartware and the IR with respect to the subject matter of this Agreement and supersede any and all promises, representations, discussions and agreements made by one party to or with the other concerning the subject matter of this Agreement.

14. Governing Law

- (a) The law of this Agreement will be the law of the state of Queensland, Australia. The parties submit to the non-exclusive jurisdiction of the courts of Queensland, Australia.

SCHEDULE “A”

Commission schedule and payments:

The IR’s commission will be based on the applicable, “paid and collected” total of fees, charges and related revenue generated by the Customer(s) introduced by the IR. The IR’s commission will be the aggregate total calculated by multiplying the appropriate commission percentage rate by the net value of the product/service purchase, excluding taxes.

Where an IR maintains a Service account with Smartware the commission entitlement may be set off firstly against any amount due by the IR on his account and the remaining balance (if any) paid out.

Credits allowed to the IR’s Customers during any one-month will be accounted for and adjusted in the following month.

Commissions are calculated on paid accounts only. Commissions are not payable where Smartware pays a refund during the 30 Satisfaction Guarantee period. Unpaid accounts may be carried forward to the following billing period and the related commission becomes payable only when payment has been received from the Customer.

Unless otherwise agreed, commissions are only payable on Customer accounts directly introduced by the IR. If for example, an IR’s Customer introduces directly to Smartware a new Customer without going through the IR, the IR will not be entitled to a commission on that new Customer account.

Unless the IR is guaranteeing the usage of his clients through a cash deposit, through an irrevocable standby letter of credit or other security, Smartware will not activate any client account until it receives a duly completed License Order Form or Site License Application from that client.

Unless otherwise agreed, no commission is payable until a threshold minimum of AUD\$50 due to the IR has been accrued.

Commissions may be payable within 28 days at the end of the quarterly billing period.

Commissions are calculated in accordance with the following table:

TABLE A –Commission Structure

PRODUCT / SERVICE	% RATE
Software Licenses - Purchases	30.00%
Software Licenses - Subscriptions	30.00%
Internet Access Cards	10.00%
PIN Labels	10.00%

Miscellaneous:

This document (whether contained in the online Smartware Reseller Application Form, duly completed by the applicant) shall constitute an Application for Appointment as an Independent Reseller of Smartware Corporation pursuant to the Terms and Conditions herein set forth.