

## WEST POND ENTERPRISES, LLC

### STANDARD TERMS & CONDITIONS OF SALE (RESELLERS)

As used herein, “Reseller”, “you” or “your” refers to \_\_\_\_\_, a \_\_\_\_\_ [corporation, limited liability company] with an address for purposes hereof at \_\_\_\_\_, as the issuer of the purchase order for the goods, services or work (referred to as the “Products”) referenced on those certain Quotes from West Pond Enterprises, LLC, a Massachusetts limited liability company (“West Pond”). All sales by West Pond to Reseller are expressly subject to these standard terms and conditions of sale (the “Terms & Conditions”).

#### 1. PRODUCTS, DELIVERY, NON-EXCLUSIVE APPOINTMENT & TERRITORY.

1.1 **Products.** This Agreement governs the purchase, resale and use of those certain products, services or work (the “Products”) provided by West Pond as referenced on the Quote to which these Standard Terms and Conditions of Sale are appended and hereby incorporated into and made a part thereof and for which, West Pond in its sole discretion accepts an order(s) from Reseller.

1.2 **Shipment; Delivery; Title and Risk of Loss.** Unless otherwise specified by West Pond, all prices are FOB West Pond’s facility. All delivery dates are approximate. West Pond is not responsible for damages resulting from any delay. Regardless of the manner of shipment, delivery occurs and title and risk of loss or damage pass to Reseller, upon placement of the Products with the shipment carrier at West Pond’s facility. Unless otherwise stated, West Pond may exercise its judgment in choosing the carrier and means of delivery. No deferment of shipment at Reseller’s request beyond the respective dates indicated will be made except on terms that will indemnify, defend and hold West Pond harmless against all loss and additional expense. Reseller shall be responsible for any additional shipping charges incurred by West Pond due to Reseller’s acts or omissions.

1.3 **Appointment.** Subject to the terms and conditions of this Agreement, West Pond hereby appoints Reseller as a non-exclusive Reseller of the Products for resale to and use by its direct customers and those who install or use the Products (collectively “Users”).

1.4 **Non-Exclusive.** Each party acknowledges and agrees that this appointment from West Pond is non-exclusive, and West Pond may appoint other Resellers and may use its own sales personnel to market, promote and sell the Products and nothing contained herein shall prohibit or otherwise restrict West Pond from soliciting or doing business with Users or marketing, promoting, or referring leads to third parties engaged in a business similar to or competitive with Reseller. Furthermore, West Pond may, at any time and in its sole discretion, refuse to approve the resale of the Products to any User for any reason or no reason without liability or payment obligation of any kind.

#### 2. TERM, TERMINATION, AND SURVIVAL.

2.1 The term of the Agreement is indefinite until terminated. Either party may terminate this Agreement for convenience for any reason or no reason and with no termination liability or cost upon thirty (30) calendar days written notice to the other.

2.2 Any termination of this Agreement shall not relieve either party from any obligations hereunder due and owing prior to termination of this Agreement. Upon any termination or expiration of this Agreement: (i) all rights and licenses of Reseller to sell additional Products shall terminate; (ii) Reseller shall return, destroy or purge from all media in Reseller's possession or under its control, all of West Pond's Confidential Information and certify the above in writing; and (iii) provided that Reseller complies with this Agreement in all respects (including the requirement to timely make payments due West Pond hereunder), this Agreement shall continue in effect solely with respect to Reseller orders existing at the time of termination solely for purposes of Reseller's then current order.

2.3 The parties specifically acknowledge and agree that without any West Pond liability or obligation of West Pond to pay Reseller any amount: (i) West Pond or its third party contractors will have the right to exclusively contract, invoice and collect payments from the Users for any orders placed after termination; and (ii) in cases where Reseller fails to make payments required under the Agreement, Reseller agrees to pay or assign any and all future amounts due Reseller from Users with respect to the Products to West Pond or its designee and West Pond may directly invoice and collect from all Users for amounts otherwise owed Reseller for the Products.

### 3. **PRICING, PAYMENTS, TAXES, FEES & SURCHARGES.**

3.1 **Pricing & Payments.** West Pond will charge Reseller for Products as set forth in the Quote. Reseller will make payment for Products according to the schedule set forth in the Quote or Product order acceptance by West Pond; provided that any amount due in any month must be received by West Pond prior to the end of the following month. Unpaid amounts will be subject to a monthly late fee of 1.5% of the outstanding balance or the maximum legally allowable interest rate, whichever is lower. Reseller must notify West Pond of any disputed charges within thirty (30) days from the payment due date, otherwise Reseller hereby agrees to such charges and West Pond will not be subject to making adjustments. Reseller agrees that West Pond may apply any amount owed by Reseller or any of Reseller's Affiliates to West Pond or any of its Affiliates to offset any amount owed by West Pond or its Affiliates to Reseller or any of Reseller's Affiliates.

3.2 **User Pricing & Payments.** Subject to the terms of this Agreement, and solely with respect to its Users, Reseller shall be solely and exclusively responsible for all contracting, price setting, charging, invoicing and collecting.

3.3 **Taxes, Withholding.** Reseller shall be solely responsible for any applicable VAT, sales, use or any other taxes (collectively "Taxes") payable under, or arising out of, or in connection with, this Agreement and will not withhold any Taxes from payment to West Pond. Any prices provided by West Pond are exclusive of Taxes.

3.4 **Unpaid Charges.** In the event charges due are not paid in full, for any reason, within thirty (30) days from the due date, West Pond shall have the right to suspend all or any portion of the Products until such time as all undisputed charges and applicable late fees have been paid. Following such payment, West Pond may reinstate Products to Reseller only upon satisfactory assurance of Reseller's ability to pay for Products, which may include modified payment terms.

3.5 **Price Changes.** Pricing is subject to change upon notice by West Pond to Reseller. Any changes made to such pricing shall not retroactively affect any obligation incurred hereunder prior to the effective date of such change. The price modifications shall take effect after notice unless Reseller provides written notice to West Pond that Reseller does not accept the proposed modifications to pricing, in which case the parties shall negotiate in good faith regarding the proposed changes. If the parties are unable to agree on the changes, then West Pond may terminate this Agreement immediately without further obligation or liability. Notwithstanding the foregoing, West Pond reserves the right to add additional charges for any new or additional Products provided to Reseller by West Pond at any time.

#### 4. **RESELLER'S OBLIGATIONS.**

4.1 **Product Promotion.** Reseller agrees to use its best efforts to promote, offer and sell the Products Reseller, at its own expense, agrees to: (i) maintain a webpage on the Reseller's website with links back to West Pond's website (www.westpond.com), (ii) promote the Products through the Reseller's website, newsletter and other forms of market awareness, and (iii) develop, evolve and implement marketing strategies that promote the Products.

4.2 **Order Process and Acceptance; Inspection.** Reseller agrees to utilize West Pond's standard order process as amended by West Pond from time to time and to provide all User information required by such process. West Pond may send email confirmation(s) for order acceptance. Reseller may not cancel or amend an order once it has been received by West Pond without West Pond's written consent.

Reseller shall promptly inspect all Products upon receipt. No claims for shortages will be allowed unless reported to West Pond within ten (10) days of delivery. No other claims by Reseller against West Pond will be allowed unless asserted in writing within thirty (30) days after delivery. Reseller shall notify West Pond of any alleged breach of warranty within thirty (30) days after the date the defect is or should have been discovered by Reseller or the User. Any claim or action against West Pond based upon breach of contract or any other theory, including tort, negligence, or otherwise must be commenced within twelve (12) months from the date of the alleged breach or other alleged event, without regard to the date of discovery.

4.3 **Customer Non-solicit.** Reseller, its subsidiaries, Affiliates, and agents agree that during the term of this Agreement and for one year thereafter, it shall not, directly or indirectly, refer, solicit, sell to or encourage or cause any current client of West Pond or its Resellers or agents to stop, alter or reduce its use of the Products or any products similar thereto which are directly or indirectly supplied by West Pond.

4.4 **No Redistribution.** Unless approved by West Pond in writing, Reseller may not allow other entities to resell or otherwise redistribute the Products and Reseller acknowledges that, in such event, West Pond may, with no liability to Reseller or its Users, contact such Users and offer the sale of the Products from West Pond directly.

4.5 **Reseller Product and Services.** Reseller shall be solely responsible for providing all products and services of Reseller or its suppliers not set forth in this Agreement and Reseller agrees to indemnify, defend and hold West Pond, its Affiliates and their respective officers, directors, managers, members, shareholders and employees harmless from any Losses, as defined herein, which arise out of or result from any such products or services.

4.6 **Exporting and Compliance with Laws.** Reseller shall be exclusively responsible for the procurement and renewing of all export or import licenses required under the United States or foreign law for the export or import of the Products and shall pay all costs and other expenses in connection with such procurement and renewal. Reseller agrees to comply with any applicable export or import laws of the United States or any foreign country with respect to the export of the Products from the United States. Reseller shall be exclusively responsible at its own expense for compliance with all local laws relating to the Products in the countries in which Reseller sells the Products.

4.7 **No Reverse Engineering or Modifications.** Reseller undertakes not to (i) translate, adapt, vary, modify, disassemble, decompile or reverse engineer any of the Products; or (ii) modify, amend, add to or in any way alter any of the Products supplied to it or to Users by it, without West Pond's prior written consent.

4.8 **Additional Covenants.** Reseller undertakes and agrees with West Pond that it covenants to, at all times, observe and perform the following:

- (a) in all correspondence and other dealings relating directly or indirectly to the sale of or other transaction relating to the Products, clearly indicate that it is acting as a reseller and not as manufacturer and/or developer of any of the Products;
- (b) use its best efforts to promote and extend the market for the Products and work diligently to obtain orders from Users for the Products;
- (c) subject to this Agreement, provide advertising, publicity, promotion and marketing for the Products at its own expense;
- (d) handle all sales queries it receives from Users and prospective Users;
- (e) deal with all aspects of User billing and payment;
- (f) deal with and pay, whether on its own account or as agent of West Pond, all applicable taxes in the state and/or country in which Reseller is doing business and/or is established, as applicable; and

(g) comply with all applicable laws, regulations, and industry and professional standards of care, and obtain and maintain all required licenses, permits, certificates and authorizations required in the country or countries in which Reseller may operate, including, without limitation, the U.S. Foreign Corrupt Practices Act (“FCPA”) and the U.S. Anti-Kickback Act (“**Anti-Kickback Act**”), each as currently amended, and agrees to indemnify and hold harmless West Pond and its officers, directors, managers, members, shareholders and employees from the consequences of any violation of such provisions by Reseller, its employees or agents. Reseller represents and agrees that Reseller will not make any payment or give anything of value, directly or indirectly to any governmental official, any foreign political party or official thereof, any candidate for foreign political office, or any commercial entity or person, for the purpose of influencing such person to purchase Products or otherwise benefit West Pond’s or Reseller’s business.

## 5. **INDEPENDENT CONTRACTOR.**

Reseller is an independent contractor, and nothing contained in this Agreement shall be construed to (i) give either party the power to direct and control the day-to-day activities of the other, (ii) constitute the parties as partners, joint venturers, co-owners agents, franchisee or franchisor or otherwise, or (iii) allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever. Reseller is not an employee of West Pond and is not entitled to any employee benefits. All financial and other obligations associated with each party’s business are the sole responsibility of such party. Reseller represents and warrants that it: (a) will not make any representation, warranties, or guarantees on behalf of West Pond, and (b) will not disparage West Pond in any manner or otherwise harm West Pond’s business or reputation.

## 6. **INTELLECTUAL PROPERTY.**

6.1 **License.** Subject to the terms and conditions of this Agreement, West Pond hereby grants Reseller and its authorized Users a license to use the Products; provided that Reseller’s license shall apply only to its internal use and for demonstration of the Product’s to prospective Users and not for any other purpose. Except as specifically set forth herein, West Pond and its suppliers, as applicable, retain all right, title, and interest, including all intellectual property rights, relating to or embodied in the Products, including, without limitation, all technology, software, or systems relating to the Products. Reseller agrees not to reverse engineer, decompile, disassemble, translate, or attempt to learn the source code of any software installed on or related to the Products.

6.2 **Use Of Marketing Materials.** West Pond may make available certain marketing Materials (“**Materials**”) to Reseller for use by Reseller in marketing the Products. Reseller acknowledges and agrees that West Pond owns the copyright in such Materials and reserves all copyright therein. Reseller may modify the marketing Materials to incorporate Reseller’s name and trademark(s); provided, however, that Reseller must obtain West Pond’s written approval prior to the use, distribution or disclosure of any modified Materials. To the extent that these modified Materials constitute a “derivative work” as that term is defined in Title 17 of the United States Code and interpreted by the Federal courts or any similar law, rule or regulation anywhere

in the world, West Pond shall own all right, title, and interest in such modified Materials and all copyright therein; provided, however, that West Pond shall obtain no right, title, or interest in Reseller's name and trademarks as such may be incorporated in the modified Materials. Reseller may use these Materials to market and promote the Products under the terms and conditions of this Agreement, but except as expressly set forth in this Section, these Materials shall not be copied, reproduced, modified, transmitted, displayed, performed, distributed, or otherwise used in whole or in part in any manner without West Pond's prior written consent.

6.3 **Surrender of Materials.** Upon termination of this Agreement and as directed by West Pond, Reseller shall: (1) surrender and deliver to West Pond, at Reseller's expense, all copies of the above Materials provided by West Pond that are in the possession, control, or custody of Reseller at the time of such termination, whether or not such Materials were modified by Reseller as provided in the previous paragraph; or (2) destroy all copies of the above Materials, and certify such destruction in writing to West Pond.

6.4 **Marks.** West Pond grants you a revocable, non-exclusive license to use the Materials and West Pond marks in accordance with this Agreement. Reseller agrees that it will not directly or indirectly: (a) obtain any right, title, or interest in any West Pond mark or any string identifier, whether in the form of a Universal Resource Locator (URL) or in any other form, representing or linking with any network address, such string identifier comprising in whole, comprising in part, or in any way similar to any word portions of any West Pond mark; or (b) employ any word portion of, or any West Pond marks, including, without limitation, using or facilitating use of such word portion in connection with any Internet search engine, any Internet website, or any Internet browser, so as to direct or re-direct communications network traffic. Reseller acknowledges and agree that West Pond is the owner of all right, title and interest in and to the Products, Materials and marks and that other than as set forth in this Agreement and retains all such rights.

6.5 **No Other Rights Granted.** Except as expressly set forth in this Agreement, the parties agree and acknowledge that neither party is granted any license, express or implied, to or under any patent, copyright, trademark, service mark, trade secret or other intellectual property right of the other party.

## **7. INDEMNIFICATION, LIMITED WARRANTY, AND LIMITATION OF LIABILITY.**

7.1 **Indemnity.** Reseller shall indemnify, defend and hold West Pond, its Affiliates and their respective officers, directors, managers, members, shareholders and employees harmless from any and all third party claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including reasonable attorneys' fees ("**Losses**") arising out of, relating to, or resulting from the negligence, breach of this Agreement or violation of applicable law, rule, regulation by Reseller or its Affiliates, or their respective owners, officers, directors, employees or representatives.

7.2 **Limited Warranty.** RESELLER UNDERSTANDS AND AGREES THAT WEST POND WARRANTS ONLY THAT THE PRODUCTS SOLD HEREUNDER SHALL

BE FREE FROM DEFECTS IN MATERIAL OR WORKMANSHIP FOR A PERIOD OF TWELVE (12) MONTHS FROM THE DATE OF DELIVERY. WEST POND DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

7.3 **Limitation of Liability.** EXCEPT FOR THE PARTIES' INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING COST OF COVER, LOST PROFITS, LOST GOODWILL, LOST USE OR PERFORMANCE OF ANY PRODUCTS, SERVICES, OR OTHER PROPERTY, LOSS OR IMPAIRMENT OF DATA OR SOFTWARE, OR OTHERWISE EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, EXCEPT FOR DAMAGES THAT ARE REQUIRED BY LAW TO BE PAID AND CANNOT BE LIMITED BY CONTRACT, YOU AGREE THAT ALL DAMAGES ARE EXCLUDED EXCEPT FOR THE DIRECT DAMAGES SO THAT WEST POND'S MAXIMUM CUMULATIVE LIABILITY AND RESELLER'S EXCLUSIVE REMEDY FOR ANY REASON AND UPON ANY CAUSE OF ACTION OR CLAIM IN CONTRACT, TORT, FOR INDEMNIFICATION OR OTHERWISE, ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY RESELLER TO WEST POND UNDER THIS AGREEMENT DURING THE 2 (TWO) MONTHS PRIOR TO SUCH LIABILITY.

## 8. **MISCELLANEOUS.**

8.1 **Advertising And Publicity.** Except for Materials already made public, neither Party will distribute any news releases, articles, brochures, speeches, or advertisements concerning this Agreement, nor use the other Party's name or trademarks (or any variation thereof), without the other Party's prior written consent.

8.2 **Force Majeure.** Neither Party shall be liable for delays and/or defaults in its performance under this Agreement (other than Reseller's obligation to pay fees) due to causes beyond its reasonable control, including, but without limiting the generality of the foregoing: acts of god or of the public enemy; fire or explosion; flood; actions of the elements; epidemics, telecommunication system failure; war; acts of terrorism; riots; embargoes; quarantine; viruses; strikes; lockouts; disputes with workmen or their labor disturbances; total or partial failure of transportation, delivery facilities, or supplies; acts or requests of any governmental authority; or any other cause beyond its reasonable control, whether or not similar to the foregoing.

8.3 **Verifying Compliance And Reseller Records.** Reseller will keep accurate records in the normal course relating to this Agreement including regarding amounts charged to Users. Reseller will promptly provide true and accurate copies of any such records to West Pond upon request and grants to West Pond and its independent accountants the right to examine Reseller's books, records and accounts during Reseller's normal business hours to verify compliance with the Agreement. In the event such audit discloses non-compliance with the

Agreement, without limiting any other remedy hereunder, Reseller shall promptly pay to West Pond the appropriate fees, plus the reasonable cost of conducting the audit.

8.4 **Waiver**. The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement, the waiver of any term or condition of this Agreement, or the granting of an extension of time for performance, shall not constitute the permanent waiver of any term or condition of this Agreement.

8.5 **Assignment**. Reseller may not assign or transfer any right, obligations or duty, in whole or in part, or any other interest hereunder, without West Pond's prior written consent.

8.6 **Severability**. Should any part, term or provision of this Agreement be declared invalid, void or unenforceable, then such provision shall be construed, as nearly as possible, to reflect the intentions of the parties with all terms and provisions remaining in full force and effect.

8.7 **Notices**. All notices and other communications required or permitted under this Agreement shall be deemed to have been duly given and made if in writing and if served either by personal delivery to the party for whom intended or by being deposited, (a) postage prepaid, certified mail, return receipt requested, in the United States mail, or (b) costs prepaid, with a nationally recognized overnight delivery company for overnight delivery, in either case bearing the addresses as set forth in the Quote, or such other address as may be designated in writing hereafter by, such party.

8.8 **Applicable Law**. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts without regard to its choice of law provisions. The parties consent to the exclusive jurisdiction and venue of the courts sitting in Middlesex County, Massachusetts with respect to any dispute, controversy or claim arising out of or relating to this Agreement. In any action arising out of or relating to this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and other costs in addition to any other relief that may be awarded.

8.11 **Third Party Beneficiary**. Except as specifically set forth herein with respect to West Pond's suppliers, no provision of this Agreement will in any way inure to the benefit of any third person (including the public, at large) so as to constitute any such person a third-party beneficiary of the Agreement or any of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

8.12 **Entire Agreement**. The Agreement constitutes the entire agreement between the Parties with regard to the subject matter herein and no other agreement, promise or practice between the Parties will be binding on the Parties.



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