



## **VALUE ADDED RESELLER AGREEMENT**

This AGREEMENT is made as of this \_\_\_\_\_ day of \_\_\_\_\_ 2016, by and between \_\_\_\_\_, a Value Added Reseller ("VAR") and Consolidated Delivery Group, Inc., a corporation ("CDG", "CDGcommerce").

WHEREAS, CDG is engaged in the business of marketing electronic transaction processing and Internet business services, and WHEREAS, CDG wishes to contract with VAR to generate merchant referrals for its services, and WHEREAS VAR wishes to provide CDG with merchant referrals.

NOW THEREFORE, in consideration of the mutual promises contained herein, IT IS AGREED as follows:

1. ENGAGEMENT AND OBLIGATIONS OF VAR. VAR agrees to solicit merchant referrals from its existing and future account base, to subscribe to the services provided by CDG upon the terms and conditions set forth herein.

1.1 Except as otherwise provided herein or in the written policies and procedures of CDG, VAR may refer any eligible merchant, which does not have an existing contract for Internet business services with CDG and is an existing customer of VAR. VAR agrees that once a merchant has been identified as having an existing contract with CDG, all solicitation efforts to obtain a referral shall immediately be discontinued.

1.2 In soliciting merchant referrals, VAR shall use only materials supplied by or approved by CDG, including but not limited to business cards, letterhead and promotional, advertising or recruiting materials, and shall offer only terms and conditions authorized by CDG. All procedures and marketing activities used to solicit merchant referrals shall be approved by an

authorized representative of CDG. Such acceptance shall be presumed unless VAR is notified in writing of such non-acceptance within ten (10) days after receipt by CDG of the proposed materials.

1.3 VAR shall not employ any subcontractors for the performance of services hereunder without the express written authorization of CDG, except that such subcontracting services may be provided by VAR.

1.4 VAR agrees to comply with all policies and procedures of CDG relating to the solicitation of merchant referrals.

1.5 VAR agrees that all proposed merchant referrals are subject to acceptance and approval by CDG and the financial institution(s) or merchant bank(s) ("Bank(s)") and that no merchant contract submitted as a result of a referral shall be final and binding unless accepted by CDG and Bank(s). Such acceptance shall be presumed unless VAR is notified of such non-acceptance within twenty (20) days of the receipt of the completed Merchant Application.

1.6 VAR agrees to indemnify and hold harmless CDG, its officers, directors, employees, successors and assigns from any and all liabilities, including but not limited to, claims, demands, actions, suits, costs, damages, settlements, fees, including attorneys fees, and obligations of any kind, type and description whatsoever, brought or imposed upon CDG, its officers, directors, employees, successors or assigns, jointly or severally relating to or arising out of any fraud, misrepresentation or wrongdoing by VAR in connection with the performance of this Agreement.

1.7 CDG agrees to indemnify and hold harmless VAR, its officers, directors, employees, successors and assigns from any and all liabilities, including but not limited to, claims, demands, actions, suits, costs, damages, settlements, fees, including attorneys fees, and obligations of any kind, type and description whatsoever, brought or imposed upon VAR, its officers, directors, employees, successors or assigns, jointly or severally relating to or arising out of any fraud,

misrepresentation or wrongdoing by CDG in connection with the performance of this Agreement.

1.8 VAR shall not submit to CDG any merchant referral that contains any information known by VAR to be false or misleading, or for a merchant referral known by VAR to be ineligible for such contract under the written policies and procedures of CDG.

2. CONFIDENTIALITY. VAR agrees that it or any of its employees or affiliates, will not voluntarily divulge or disclose and will hold in confidence any and all proprietary information with respect to CDG's business, including but not limited to reports, merchant lists, operating procedures, compensation reports or schedules, pricing models, product information, price lists, rate structure, software design, training and sales support materials of which VAR acquires knowledge during the term of this Agreement, whether in written or oral form (the "Information"). Without CDG's prior written consent, VAR agrees not to use the Information for any purpose other than the performance of the services to be performed under this Agreement. The foregoing restrictions with respect to the Information shall not apply to any Information that (a) is now or hereafter becomes generally available to the public other than as a result of a disclosure, directly or indirectly, in violation of the terms hereof, (b) was available to VAR on a non-confidential basis prior to its disclosure, (c) becomes available to VAR on a non-confidential basis from a source other than CDG, which source was not itself bound by a confidentiality agreement or a legal duty to maintain confidentiality, or (d) is disclosed pursuant to any legal requirement or in connection with any legal process. The provisions of this paragraph shall survive the termination of this Agreement.

3. OTHER AGREEMENTS. VAR represents to CDG that the referral by VAR of any other VAR or merchant referrals to enter into merchant processing agreements with CDG and the execution of such agreements is not prohibited by or in breach or violation of any agreement to which VAR is a party and is not in breach of any obligation or duty owed to any other person or entity. VAR shall

indemnify and hold harmless CDG, its officers, directors, employees, agents, successors and assigns from any and all liabilities, including but not limited to, claims, demands, actions, suits, costs, damages, settlement, fees, including attorney's fees, and obligations of any kind, type and description whatsoever, brought or imposed upon CDG, its officers, directors, employees, agents, successors and assigns, jointly or severally, relating to or arising out of the solicitation of any merchant referral in breach or violation of any agreement to which VAR is a party.

4. NON-SOLICITATION. In consideration for the compensation provided for herein, without the prior written consent of CDG, VAR shall not directly or indirectly, whether or not for compensation, engage in any business activity (whether as an employee, proprietor, officer, director, agent, trustee, partner or creditor lending money for the purpose of establishing or operating any such business) that (a) induces or attempts to induce, directly or indirectly, any merchant to modify or terminate such merchant's business association with CDG or (b) interferes with, disrupts or attempts to disrupt any present business relationship, contractual or otherwise, between CDG and any merchant, client, supplier, consultant, agent or employee of CDG. The provisions of this paragraph shall survive the termination of this Agreement indefinitely.

5. REMEDIES. The parties acknowledge that any disclosure of the Information or breach of the Non-Solicitation provisions will cause immediate, irreparable and continuing damage to CDG for which there is no adequate remedy at law. Consequently, the parties acknowledge and agree that in the event of any breach or violation or threatened breach or violation of the Confidentiality provisions of paragraph 3 and Non-Solicitation provisions of paragraph 4 of this Agreement, CDG and its successors and assigns shall be entitled to temporary, preliminary and permanent injunctive relief and restraints enjoining and restraining such breach or violation or threatened breach or violation and such other legal and equitable remedies as may be provided by applicable law (without

the necessity of posting any bond or other security), including damages, costs of suit and attorney's fees.

5.1 REMEDIES. The parties acknowledge that any disclosure of the Information or breach of the Non-Solicitation provisions will cause immediate, irreparable and continuing damage to VAR for which there is no adequate remedy at law. Consequently, the parties acknowledge and agree that in the event of any breach or violation or threatened breach or violation of the Confidentiality provisions of paragraph 2.1, VAR and its successors and assigns shall be entitled to temporary, preliminary and permanent injunctive relief and restraints enjoining and restraining such breach or violation or threatened breach or violation and such other legal and equitable remedies as may be provided by applicable law (without the necessity of posting any bond or other security), including damages, costs of suit and attorney's fees.

6. COMPENSATION. CDG agrees to pay to VAR for services performed under this Agreement the following:

6.1. VAR shall receive compensation as specified in SCHEDULE A - AGENT COMPENSATION. Should any month's compensation not equal at least \$25, that month's compensation amount shall accrue and be added to the subsequent month's total commission. Upon at least a \$25 or greater amount of commission being due, the commission shall be paid to VAR by CDG.

6.2 CDG reserves the right in its sole and exclusive discretion to change its fee schedule, equipment prices, commission structures, and processing methods and to terminate merchant contracts pursuant to their terms.

6.3 It is specifically understood and agreed upon that CDG shall reserve the right in its sole and exclusive discretion to discontinue any and all commissions to VAR in the cases of: (a) a VAR soliciting or attempting to switch an existing CDG merchant to a competitor's service, (b) VAR files for bankruptcy or an involuntary petition for bankruptcy is filed against VAR by a third party or (c) VAR conducts business in a manner that is

inimicable to the best interests and/or reputation of CDG.

6.4 It is specifically understood and agreed upon that VAR bears no liability or responsibility with respect to chargebacks incurred by their referred merchants. However, if a merchant rejects or charges back a service fee billing from CDG on which the VAR has been paid a commission, CDG reserves the right to offset the amount of commission against any future commission(s) owed to VAR. If no further commission(s) are owed to VAR, CDG reserves the right to bill/debit VAR for the amount of commission paid on the rejected sale/transaction.

6.5 It is specifically understood and agreed upon that CDG shall provide all compensation to VAR via Direct Deposit to a Bank Account specified by VAR. VAR agrees to fill out and provide CDG with the necessary banking information for such direct deposits.

6.6 It is specifically understood and agreed upon that CDG shall charge an extra surcharge of \$2.00 per month on any customer or VAR direct billing account whose credit card billing is declined, and that CDG shall charge an extra surcharge of \$10.00 per month on any customer or VAR account whose ACH checking account debit is returned or rejected. This amount shall be added to the end customer billing and no commissions shall be issued on these surcharges.

7. TERM AND TERMINATION. The term of this agreement shall be for one (1) year and automatically renew at the one (1) year anniversary of this contract, unless written notice of intent not to renew is given by either party not less than thirty (30) days prior to the end of any term. This Agreement may be terminated by either party with or without cause, by giving thirty (30) days written notice. Should such termination occur both parties agree to mediation, in an attempt to reconcile all differences before final termination shall take affect.

In the event of mediation, the party requesting the mediation shall be responsible for all costs associated

with such mediation.

7.1 In addition to any other provisions specified herein, CDG shall have the right to terminate this Agreement for cause in any of the following circumstances: (a) material breach of this Agreement, (b) any act of fraud or dishonesty in connection with the performance of this Agreement, (c) conduct inimical to the best interests of CDG,

(d) Execution of an assignment for the benefit of creditors, (e) filing of any petition under the United States Bankruptcy Code.

7.2 In the event that VAR voluntarily terminates this Agreement at any time, CDG shall pay VAR all Compensation due hereunder to the date written notice of termination is given.

7.3 Upon termination of this Agreement by either party, with or without cause, VAR shall promptly return to CDG all equipment, sales literature and all documents and materials supplied by CDG. CDG shall have no obligation to pay any further referral fees until it has received all such equipment and materials.

8. GOVERNING LAW. The law of the Commonwealth of Virginia shall be applied to this agreement. In any action brought under or concerning this agreement, the prevailing party shall be entitled, in addition to all costs and fees, to reasonable attorney's fees.

9. NOTICES. All payments, notices, requests, demands and other communications required or permitted to be given under this Agreement shall be given in writing by United States mail, postage prepaid to the parties at the address set forth below or to such other place or places as either party hereto shall designate by written notice to the other.

Value Added Reseller: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Consolidated Delivery Group, Inc.

d/b/a CDGcommerce

860 Greenbrier Circle Suite #408

Chesapeake, VA 23320

Such notice shall be effective as of the date of mailing.

10. ENTIRE AGREEMENT. This Agreement, together with any supplements, addenda, amendments, modifications or attachments, comprises the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings. Each party acknowledges that no representations, inducements, promises, warranties or agreements have been made by any party, or anyone acting on behalf of any party, other than those set forth in this Agreement.

11. SEVERABILITY. In the event that any portion of this Agreement is found to be void, illegal or unenforceable, the validity and enforceability of any other portion shall not be affected.

12. AMENDMENTS AND WAIVERS. This Agreement may be modified, amended or supplemented only by a written instrument duly executed by the parties hereto or by notice from CDG that is accepted by default within five (5) business days of its transmission to VAR if VAR does not communicate any objection to it. CDG shall make such notice of any modifications, amendments or supplements to VAR by electronic mail or by facsimile or written document, at its discretion.

No covenant, term or condition, or the breach thereof, shall be deemed waived, unless it is waived in writing and signed by the party against whom the waiver is claimed. The waiver by either party of a breach of any covenant, term or condition shall not operate or be construed to be a waiver of any preceding or subsequent breach thereof.

13. JURISDICTION AND VENUE. Any suit, action or



proceeding arising out of or relating to this Agreement shall be brought only in the Superior Court for Chesapeake, Virginia or the United States District Court for Chesapeake, Virginia and VAR hereby agrees and consents to the personal and exclusive jurisdiction of said courts over it as to all suits, actions and proceedings arising out of or related to this Agreement, and VAR further waives any claim that such suit, action or proceeding is brought in an improper or inconvenient forum and further irrevocably waives the right to object, with respect to such suit, action or proceeding brought in any such court, that such court does not have personal jurisdiction over VAR. For purposes of any such suit, action or proceeding, the parties agree that any process to be served in connection therewith shall be effective, if delivered or mailed by regular mail to the other party at the addresses below, which may be changed from time to time and each party shall notify the other party of any such change.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Value Added Reseller

By: \_\_\_\_\_

\_\_\_\_\_, 2016

Consolidated Delivery Group, Inc.

d/b/a CDGcommerce

By: \_\_\_\_\_

Chris West, CEO \_\_\_\_\_, 2016

## SCHEDULE A

Fees imposed by Visa/MasterCard are subject to change upon written documentation of fee modifications by Visa or MasterCard; otherwise, this Schedule A may be amended in accordance with Section 6.2 All network pricing & expenses from First National Bank of Omaha, TSYS, Paymentech, Vital, MAPP, Global, BuyPass, UBC (collectively referred to as "Networks") and/or any other Networks that CDG may contract with will be priced at tiered rates. CDG reserves the right to pass-through any additional charges the Networks may impose on CDG in conjunction to the Merchant Program and/or this Agreement.

Billing Item	Compensation Structure - 30% Split Above Pass Through
Association Fees (Interchange, Dues & Assessments charged by the Card Associations) plus BIN sponsorship, reporting & maintenance costs incurred by CDGcommerce from its vendors, network providers and sponsor bank(s). The percent amount will also be carried over on all network, communication fees, and all additional fees and expenses associated with each Merchant Account ID (MID).	