

## **Representative Agreement**

This Representative Agreement ("Agreement") is made by and between you, an existing Buyer with a signed Credit Application with the Distributor (herein defined as "Representative") and **Westcon Group European Operations Ltd**, an English Company, having an office at Chandlers House, Wilkinson Road, Cirencester, Glos. GL7 1YT ("Distributor").

This Agreement shall be deemed effective as at the date of electronic or written acceptance ("Effective Date").

The Distributor and Representative hereby agree as follows:

### **1. Credit Application**

- 1.1 The Representative has agreed and duly signed the Distributor's credit application form ("Credit Application").
- 1.2 The parties agree that the terms of the Credit Application apply to this Agreement as if they were fully set out in this Agreement.
- 1.3 Terms Capitalized and not otherwise defined have the meaning given to it in the Credit Application.

### **2. Definitions**

- 2.1 '**Collected Revenue**' has the meaning given to it in the Schedule.
- 2.2 '**Guide**' means any rules or requirements set out by the Distributor with respect to the Services.
- 2.3 '**Vendor**' has the meaning given to it in the Schedule.

### **3. Services**

- 3.1 Subject to the terms and conditions of this Agreement, Distributor appoints Representative as a non-exclusive representative to promote the sale of and solicit orders for the Vendor cloud products and services made commercially available to Representative, and as permitted, by Distributor ("Services") in the Territory as described in a Schedule. Further Schedules may be agreed through the addition of further Service Schedules depending on the Services that the Distributor requests the Representative to promote.
- 3.2 Distributor reserves the right to modify or add to or delete any of the Services as may be required from time to time upon prior written notice to Representative. Distributor will provide notice to Representative of such modifications, additions or deletions. Distributor may change tariffs or the published terms of service relating to the Services at its sole discretion upon prior notice to Representative.
- 3.3 Representative's appointment to promote and solicit the Services contingent upon Representative's compliance with the terms of this Agreement, including the terms of the applicable Guide(s) and the Westcon Code of Conduct. Distributor may add to or modify any Guide by on a non-discriminatory basis, and such additional or modified rights and obligations shall come into effect following thirty (30) days' notice of such changes. If Representative objects to any terms and conditions in the Guide, or associated content, Representative's sole remedy shall be to resign from the applicable Schedule and terminate this Agreement.
- 3.4 Distributor shall provide Representative with digital copies of a Vendor product literature reasonably to meet Representative's responsibilities under this Agreement, as reasonable determined by Distributor. Representative shall not develop or use any other product literature other than that provided by Distributor without the written consent of Distributor.

4. **Payment and Commission**

- 4.1 During the Term, Representative shall receive a commission, as described in a Schedule on "Collected Revenue" for new accounts referred to Distributor, excluding existing Distributor account conversions ("Commissions"). The Distributor shall periodically provide a commission payment document to the Representative with the total amount due to the Representative. Payment will be made to the Representative 30 days following the issuance of a commission payment document
- 4.2 Distributor and or Vendor (as the case may be) shall have the sole right to accept or reject all orders, to set prices of the Services, the terms and conditions governing use of the Service or other adjustments and to discontinue offering or selling any Service upon thirty (30) days' notice to Representative, without liability to Representative. Distributor will provide details on the order process to Representative.
- 4.3 Unless a valid certificate of exemption, acceptable to the appropriate taxing or governmental authority is provided by the Representative to the Distributor, the Representative shall be responsible for payment of all applicable, sales, use, consumption, VAT, GST, withholding taxes and other taxes (other than Distributor's franchise taxes, taxes based upon Distributor's net income) arising from the payment of any fees hereunder.

5. **Relationship and Authority**

- 5.1 The parties agree and understand that Representative is an independent contractor and there is no employer-employee relationship, joint venture or agency created hereby. During the Term, Representative agrees that, for so long as Distributor is paying all Commissions owed to Representative under this Agreement in respect of a specific customer, Representative will not actively solicit that customer to switch to a directly competing provider of services which competes with those provided by Distributor or a Vendor to the customer in question, Distributor agrees not to circumvent Representative by soliciting or otherwise doing business with: (a) any customer or prospective customer who Distributor learned of or who Representative introduced to Distributor pursuant to this Agreement; or (b) any sub-agent of Representative who Distributor learned of or who Representative introduced to Distributor pursuant to this Agreement.
- 5.2 Representative has no authority to act for, or on behalf of, Distributor. Representative is not authorized to incur any obligation on behalf of Distributor or to bind Distributor in any manner whatsoever. Representatives will not make any representations of rate, terms or conditions of the Services that conflict with the applicable tariffs, terms of service for the Services or other information provided by Distributor. Distributor shall incur no obligation to employees, contractors, sub-agents or other parties utilized by Representative in selling Services to customers for Distributor. Such individuals shall at all times remain employees, agents, sub-agents or contractors of Representative. Representative is responsible for all expenses and obligations incurred by it as a result of its efforts to solicit customers for Distributor. Representative shall be responsible for payment of all taxes due as a result of payments made to Representative by Distributor. During the Term, neither party shall contact any person employed by the other party for the purpose of inducing the person to discontinue his or her employment with the other party.

6. **Customer Service and Non-Compete**

- 6.1 Representative shall not provide competing customer service with respect to any Service provided hereunder by Distributor to any customers solicited by Representative, including billing, collections or repair service during the course of the provision of the Service to that customer, provided however, that in no event shall Representative be considered to be in breach of this Agreement by assisting Distributor in any collection matter or in any repair service if such assistance is specifically and reasonably requested by Distributor. Notwithstanding the existence of an agreement between the applicable service provider and the Customer, Customers attracted by Representative are customers of Distributor and any termination of this

Agreement shall not affect such relationship.

- 6.2 Representative agrees that, for so long as Distributor is paying all Commissions owed to Representative under this Agreement, Representative will not contact any customers for which it is receiving a Commission for the purpose of inducing such customer to switch to another provider of services which compete with those offered by Distributor hereunder. Notwithstanding the foregoing, Distributor agrees and acknowledges that after the initial term of service contracted by each customer and any subsequent renewals, Representative may: (a) provide quotes for any service of any provider to any existing or potential customer at any time; (b) respond to any customer request to switch to another service provider; (c) solicit any existing customer to switch their services as of the end of the customer's then current contract with Distributor; (d) respond to any inquiries or requests for proposals sent by a customer inviting Representative and/or other agencies or service providers to submit proposals for services similar to the Services being provided by Distributor to the customer; and (e) in its ongoing capacity as a consultant working for its customers, solicit bids from providers other than Distributor for the purpose of adding to and/or supplementing the Services provided to the customer by Distributor.

7. **Trademarks**

- 7.1 Representative shall sell the Services under the trademarks and trade names only as approved in writing in advance by Distributor. All goodwill associated with the authorized use of the Distributor marks and trade names by Representative shall inure to the sole benefit of Distributor. Representative agrees to comply with any standards for usage of such trademarks and trade names issued or to be issued by Distributor from time to time. Representative shall not use in its business, trade, corporate, or domain name the name "Distributor" or any part, colorful imitation or similarity thereof, or any name of a service provided Distributor, nor shall it use any trademark, service mark, or imitation of Distributor or symbol related to Distributor without the prior, express written consent of Distributor.

8. **Data Protection**

- 8.1 During the Term of this Agreement in connection with any processing of personal data which it receives under this Agreement, each party shall comply with all applicable laws, rules, regulations, regulatory requirements and codes of practice including, but not limited to: (i) the General Data Protection Regulation ((EU) 2016/679) ("GDPR"), the Data Protection Act 2018 in the UK ("DPA") and then any secondary and/or successor legislation to the GDPR and/or DPA; or (ii) data protection laws applicable in the state, country or countries where personal data is collected or held or otherwise processed under this Agreement (collectively, the "Data Protection Laws").
- 8.2 Each Party shall implement commercially reasonable technical and organizational security procedures and measures to preserve the security and confidentiality of the personal data received under this Agreement. Neither party shall do any act that puts the other party in breach of its obligations under the Data Protection Laws. Nothing in this Agreement shall be deemed to prevent any party from taking the steps it reasonably deems necessary to comply with the Data Protection Laws, including requiring signature of each Party on additional terms and conditions related to the Data Protection Laws prior to providing any personal information, and neither Party shall take any action which a reasonable person knowledgeable in the Data Protection Laws should know may cause or otherwise result in a violation of the Data Protection Laws.
- 8.3 Each Party agrees to obtain all necessary consents under the Data Protection Laws and will not pass personal data to third parties without prior notification to the data subject, except that the Vendor hereby consents to Distributor using, storing or otherwise processing personal data provided by Vendor for relationship management purposes.

9. **Representations, Warranties and Covenants**

- 9.1 The Representative represents, warrants and covenants to Distributor that as of the Effective Date and during the Term that it:
- (a) shall not participate in any pyramid or multilevel marketing system in conjunction with any person who has an agreement with Distributor.
  - (b) Shall, (1) appoint a single point of contact for Distributor regarding all matters pertaining to this Agreement, (2) not knowingly commit any act which would reflect unfavorably upon Distributor and (3) not package any other business activity in such a manner as to impact the tariff rates applicable to the Services.

10. **Insurance, Indemnification and Liability**

- 10.1 The Representative hereto agree to indemnify, defend, and hold the Distributor (the Indemnifying Party) harmless from any costs, loss, expenses, damages or liabilities ("Damages") to the extent such arise as a result of third-party claims arising directly as a result of a material breach of this Agreement. The indemnifying party shall pay resulting costs and damages finally awarded or agreed to in a settlement, provided the indemnified party: (i) makes no admission of the alleged claim; (ii) gives the indemnifying party written notice of any action filed or threatened; (iii) gives the indemnifying party sole authority and control of the defense of any action and all related settlement negotiations; and (iv) furnishes all information and assistance necessary for the defense of the action as reasonably requested.
- 10.2 With the exception of Damages arising from), sections 8 (Representations, Warranties and covenants) and section 6 (Trademarks and Tradenames) under this Agreement or (ii) fraud or fraudulent misrepresentations, in no event shall: (a) either party be liable to the other or to any third-party for special, incidental, indirect, punitive, exemplary or consequential damages whether arising in contract, tort (including negligence), breach of statutory duty, or otherwise; and (b) Either Party's liability for Damages exceed the greater of: (i) one year's average Commissions paid to Representative or (ii) Two Million Pounds Sterling (£).

11. **Term and Termination**

- 11.1 The initial term ("Initial Term") of this Agreement shall be three (3) years commencing on the Effective Date, unless earlier terminated in accordance with this Section 11. Thereafter, this Agreement will automatically renew for additional one (1) year terms (each a "Renewal Term"), unless sooner terminated by written notice provided by the terminating party to the non-terminating party not less than thirty (30) days prior to the expiration of the Initial Term or the then-current Renewal Term, as applicable. The Initial Term and any Renewal Terms are referred to collectively as the "Term."
- 11.2 Either party may terminate this Agreement (i) for cause if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice thereof; or (ii) at any time for convenience on ninety (90) days advance notice to the other.

12. **Anti-Bribery and Ethics**

- 12.1 **Anti-Bribery and Corruption.** Both Parties shall maintain internal controls and procedures sufficient to prevent the giving, offering or receiving of bribes, including monitoring of compliance and detection of violations. Each party shall reasonably assist the other Party, upon the other Party's reasonable request and expense, to comply with obligations related to bribery and corruption as required by law. Neither party shall offer nor accept in the performance of this Agreement, any payment, promise to pay, or authorization of the payment of any money, offer, gift, promise to give, or authorization of the giving of anything of value, directly or indirectly to or from any person or entity with the intention of obtaining or retaining business or securing any improper advantage in the Territory. Notwithstanding the foregoing, and without limitation, the parties shall conduct their respective business operations in accordance with the UK Anti-Bribery Act, the US Foreign Corrupt Practices Act and all applicable laws and regulations in the Territory regarding the prevention of bribery and corruption. The Representative shall promptly notify the Distributor of any allegation of fraud, bribery or corrupt practices made against the Vendor in court, arbitration or administrative

proceedings, or if any investigation is commenced in respect of such allegations; at any time during the term of this Agreement, where legally permitted to do so.

- 12.2 Code of Conduct & Applicable Laws.** Representative shall at all times comply with the Westcon's Code of Conduct and all laws applicable to any activity contemplated by this Agreement.

**13. General Terms.**

- 13.1 Audit Rights.** Representative shall keep and maintain true and complete records pertaining to its performance of this Agreement in sufficient detail to permit Distributor to accurately determine whether Representative has fully complied with this Agreement. Representative shall make such records available upon reasonable notice, during regular business hours, for inspection and copying by Distributor and its representatives. Representative shall maintain such records for at least two (2) years after the end of the Agreement.