

fusionZONE Reseller Agreement

This Reseller Agreement is entered as of this ___ day of _____, 200__ ("Effective Date") by and between fusionZONE ("fusionZONE") and _____, having its principal place of business at _____ ("Reseller").

NOW THEREFORE, for good and valuable consideration, the parties hereby agree as follows:

1. GRANT OF RIGHTS

1.1 License. Subject to the terms and conditions of this Agreement, fusionZONE hereby grants to Reseller a non-transferable, non-exclusive license to distribute fusionZONE's proprietary computer programs described on Exhibit A in object code format (the "Software") and any documentation supporting the Software provided from time to time by fusionZONE (the "Documentation") solely to third parties to whom Reseller licenses the Software for internal use and not for resale ("End Users") within the following territory (the "Territory"): _____. Any sublicense by Reseller hereunder shall be a personal use license for use on a single personal computer. Reseller shall have no right to reproduce the Software or Documentation, or any part thereof. All copies of the Software distributed by Reseller shall be distributed pursuant to fusionZONE's current End User License, as amended by fusionZONE from time to time (the "End User License"), a copy of which fusionZONE will provide Reseller. Reseller shall not distribute any Software to any End User unless the End User has accepted the terms of fusionZONE's current End User License under penalty of perjury and in writing or by a customary click-wrap mechanism. The acceptance by the End User shall include the provision required by Sections 2.9 and 2.11.

1.2 Ownership. As between fusionZONE and Reseller, fusionZONE owns and retains all right, title, and interest in and to all Software and Documentation; all trademarks, service marks or trade names associated with the Software or Documentation (the "Trademarks"); all copyrights, patents, trade secret rights, and other intellectual property rights therein (collectively, together with the Software, Documentation, and Trademarks, the "Property"). Except as expressly granted herein, fusionZONE does not grant to Reseller any right or license, either express or implied, in the Software, Documentation or Property. Reseller shall not reverse engineer, disassemble, de-compile, or otherwise attempt to derive source code from the Software.

2. RESELLER'S OBLIGATIONS

2.1 Reseller's Marketing. Reseller shall not make any representations or warranties other than those contained in the Documentation and shall not make any representations or warranties on fusionZONE's behalf.

2.2 Trademarks; Property. During the term of this Agreement, Reseller shall have the right to use and reproduce the Trademarks in connection with Reseller's marketing, advertising, promotion and distribution of the Software. Reseller's use of the Trademarks shall not create any right, title or interest therein. Reseller shall use the Trademarks only in a manner, which complies in all material respects with fusionZONE's reasonable policies in effect from time to time, a copy of which shall be delivered to Reseller, and all such use shall be for fusionZONE's benefit. Reseller shall not remove, obscure or alter fusionZONE's copyright notice or the Trademarks from the Software or Documentation. If Reseller, in the course of distributing the Software, acquires any goodwill or reputation in any of the Trademarks, all such goodwill or reputation shall automatically be transferred to and shall vest in fusionZONE when and as, on an on-going basis, such acquisition of goodwill or reputation occurs, as well as at the expiration or termination of this Agreement, without any separate payment or other consideration of any kind to Reseller, and Reseller agrees to take all such actions necessary to effect such vesting. Reseller shall not contest the validity of any of the Property or fusionZONE's exclusive ownership of them. Reseller shall not adopt, use, or register, whether as a corporate name, trademark, service mark or other indication of origin, any of the Trademarks, or any word or mark confusingly similar to the Trademarks in any jurisdiction.

2.3 Support for Software. fusionZONE shall provide support to the Reseller upon request based upon its then-customary support policies.

2.4 Compliance with Applicable Laws. Reseller shall comply with all laws and regulations applicable to Reseller's marketing and distribution of the Software hereunder. Without limiting the generality of the foregoing, Reseller shall, at its own expense, make, obtain, and maintain in force at all times during the term of this Agreement, all filings, registrations, licenses, permits and authorizations in the Territory required for Reseller to perform its obligations under this Agreement and, if applicable, shall provide fusionZONE with English language translations thereof.

2.5 Security Issues. Reseller shall take all action necessary to ensure that (a) the Software and Documentation on Reseller's servers or computer systems is appropriately secured so that the Software and Documentation can only be viewed, copied, or utilized by licensed End Users; and (b) that the object code of the Software can only be accessed by employees authorized by fusionZONE and cannot be copied or downloaded by any of Reseller's licensees or by any other third party. In addition, Reseller shall make its offices and equipment available in person, upon reasonable notice, and to the extent feasible, remotely, to fusionZONE to inspect and test Reseller's physical and technical set-up to ensure that Reseller is complying with its obligations under this Section. Reseller agrees to indemnify and hold fusionZONE harmless in accordance with the provisions of Section 4.4 to the extent that Reseller breaches its obligations under this Section 2.5.

2.6 Protection of Proprietary Rights. Reseller shall cooperate without charge (provided that fusionZONE will reimburse out of pocket expenses as agreed in advance in writing), in fusionZONE's efforts to protect fusionZONE's rights in the Property. Reseller shall promptly notify fusionZONE of any infringements of fusionZONE's Property Rights that come to Reseller's attention. fusionZONE shall have the exclusive right to institute infringement or other appropriate legal action against alleged infringers of its Property Rights. fusionZONE shall incur all expenses in connection therewith and shall retain all monetary recoveries received there from.

2.7 No Excess Representations or Warranties. Reseller covenants that it shall not make any representations or warranties with respect to the Software or Documentation in excess of those provided by fusionZONE herein. Reseller agrees to indemnify and hold fusionZONE harmless in accordance with the provisions of Section 4.4 to the extent that Reseller breaches its covenant under this Section 2.7.

2.8 Fulfillment of Reseller's Obligations. Reseller covenants that it will fulfill all of its contractual and legal obligations to its customers. Reseller covenants that it will (a) provide its customers with first quality sales and technical support with respect to any Software sold by Reseller, (b) promptly, courteously and appropriately respond to its customers questions, concerns and complaints, and (c) generally deal with its customers in a professional manner that shall add to the good reputation of Reseller and fusionZONE. To the extent that Reseller fails to fulfill its contractual and legal obligations to its customers, Reseller agrees that fusionZONE may elect to fulfill those obligations, or any portion of them, and Reseller shall reimburse fusionZONE any costs and expenses so incurred by fusionZONE. Reseller agrees to indemnify and hold fusionZONE harmless in accordance with the provisions of Section 4.4 to the extent that it breaches any of its covenants under this Section 2.8.

2.9 Safeguards Against Sales Outside the Territory. Reseller shall use commercially reasonable efforts to ensure that it does not make sales outside the Territory. Without limiting the foregoing, Reseller shall require its end user customers to affirm in writing or over the Internet by click-wrap, under penalty of perjury, that they are residents within the Territory. If, now or in the future, Reseller can through commercially reasonable efforts and at minimal cost determine the location of a prospective customer's computer, then Reseller shall from that time forward utilize such technology and shall not sell the Software to anyone with a location so indicated to be outside the Territory.

2.10 Export Administration. Reseller agrees to comply with all relevant export laws and regulations of the United States ("Export Laws") to assure that neither the Software, if any, nor any direct product thereof, is: (a) exported, directly or indirectly, in violation of Export Laws or (b) is intended to be used for any purposes prohibited by the Export Laws, including without limitation, nuclear, chemical or biological weapons proliferation.

2.11 U.S. Government - Restricted Rights. Reseller covenants to require its customers to accept a click-wrap agreement that, among other things, provides that the Software and accompanying documentation are deemed to be "commercial computer Software" and "commercial computer Software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction release, performance, display or disclosure of the Software and accompanying documentation by the U.S. Government shall be governed solely by the terms of the Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

3. PRICE AND PAYMENT; SHIPMENT AND DELIVERY

3.1 Suggested End User Prices. Reseller is free to determine its own end user prices for the Software. Although fusionZONE may publish suggested end user prices for the Software from time to time, these are suggestions only.

3.2 Per Copy Fees. Resellers must buy the Software at the suggested end user prices first. Subsequently, resellers shall pay to fusionZONE for each unit of the Software distributed hereunder per copy fees (the "Per Copy Fees") equal to eighty percent (80%) of the suggested end user prices for the Software as set forth on Exhibit A hereto as adjusted by fusionZONE from time to time in its sole discretion (the "Suggested Prices"). In the event that fusionZONE changes the Suggested Prices, Per Copy Fees based on such changed Suggested Prices shall apply to any order for the Software received by fusionZONE after the effective date of the increase.

3.3 Payment. All payments to fusionZONE shall be made at the time of purchase. All payments shall be made in United States Dollars, free of any withholding tax and of any currency control or other restrictions to fusionZONE at the address within the United States indicated by fusionZONE to Reseller. fusionZONE shall have the right, at reasonable times and on reasonable notice, to inspect and audit the books and records of Reseller to verify the accuracy of any statements. In the event that such an inspection discloses any error of any amount, the parties shall by appropriate payment promptly adjust for the error. If Reseller fails to make payments when due, fusionZONE shall be entitled to, in its sole discretion, to take any one or more of the following: (a) place Reseller on credit hold, in which case, fusionZONE may cease to fulfill Reseller's orders to any new End Users; (b) rescind Reseller's right to sell or distribute any additional Software or Documentation hereunder; and (c) to require that Reseller direct all future payments, for licenses sold in the past or in the future, from the End Users directly to fusionZONE or a lock box or an account designated by fusionZONE for such purpose, to be applied by fusionZONE to the payment default (and interest thereon) until such defaults have been satisfied. All amounts received by fusionZONE hereunder shall be nonrefundable except for any payments received or held under fusionZONE's control pursuant to clause "c" of the last sentence after Reseller's payment default has been satisfied.

3.4 Taxes, Tariffs, Fees. fusionZONE's Suggested Prices and Per Copy Fees do not include any national, state or local sales, use, value added or other taxes, customs duties, or similar tariffs and fees which may be required to be paid or collected upon the delivery of the Software or upon collection of the prices for the Software or the Per Copy Fees. Should any tax or levy be made, Reseller agrees to pay such tax or levy and indemnify fusionZONE against any claim for such amount. Reseller represents and warrants to fusionZONE that all Software acquired hereunder is for redistribution in the ordinary course of Reseller's business, and Reseller agrees to provide fusionZONE with appropriate resale certificate numbers and other documentation satisfactory to the applicable taxing authorities to substantiate any claim of exemption from any such taxes or fees.

3.5 Shipment and Delivery. fusionZONE shall electronically deliver software to Reseller. Reseller shall inspect all Software delivered to it, upon receipt and shall, within 10 days of receipt, give written notice to fusionZONE of any claim of damage or missing portions. Should Reseller fail to give such notice, or fail to obtain an extension of such 10-day period from fusionZONE, the packages shall be deemed to be accepted by Reseller. fusionZONE will reasonably accommodate Reseller's request to replace its master copy of software, which becomes corrupted or damaged. Reseller shall contractually require its End Users to report any claim of damage or shortages for Software shipped to them within thirty (30) days of the End Users receipt of such package (or the time required by applicable law, if longer). fusionZONE shall use commercially reasonable efforts to meet delivery dates requested by Reseller, but in no event shall fusionZONE be liable for its failure to meet such

dates. In the event that fusionZONE shall be unable to meet Reseller's requested ship dates, fusionZONE shall advise Reseller of the change in or actual delivery schedule.

3.6 Security Interest. Reseller hereby grants fusionZONE a purchase money security interest in all Software licensed to Reseller, all physical media on which the Software is located, and all rights licensed to Reseller pursuant to this Agreement in the amount of the Total Purchase Price. Reseller also grants fusionZONE a security interest in Reseller's address list of End Users to secure Reseller's payment, indemnification, and other obligations hereunder. To secure its rights hereunder, fusionZONE shall have the right to file one or more UCC financing statements and to make such other filings as fusionZONE shall deem appropriate. Reseller shall cooperate with fusionZONE with respect to all such filings. Upon fusionZONE's demand, Reseller agrees to execute promptly any financing statement, security agreement, chattel mortgage, applications for registration and/or similar documents, and to take any other action deemed necessary for registration or otherwise deemed necessary or desirable by fusionZONE in order to perfect fusionZONE's security interest hereunder. In the event of Reseller's default hereunder, fusionZONE may foreclose its security interests and exercise such other rights as provided under the UCC.

4. WARRANTY AND LIABILITY

4.1 Product Warranty. With respect to Software delivered by fusionZONE to Reseller on CD-Rom, fusionZONE warrants that for a period of thirty (30) days following delivery to Reseller, the media on which the Software is furnished to Reseller will be free from defects in materials and workmanship during normal use. fusionZONE warrants that its Software will substantially conform to the user documentation. EXCEPT AS EXPRESSLY SET FORTH ABOVE, THE SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS". FUSIONZONE HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

4.2 Product Indemnity. fusionZONE will indemnify, defend and hold Reseller and its subsidiaries (each, an "Indemnified Party"), harmless from and against any and all claims, losses, costs, liabilities and expenses (including reasonable attorneys' fees), arising as a result of or in connection with any claim that the Software or Documentation infringes any intellectual property right of a third party provided: (i) the Indemnified Party promptly gives written notice of any claim to fusionZONE; (ii) the Indemnified Party provides any assistance which fusionZONE may reasonably request for the defense of the claim (with reasonable out of pocket expenses paid by fusionZONE); and (iii) fusionZONE has the right to control of the defense or settlement of the claim, provided, however, that the Indemnified Party shall have the right to participate in, but not control, any litigation for which indemnification is sought with counsel of its own choosing, at its own expense. Additionally, if an injunction or order issues restricting the use or distribution of any of the Software or Documentation, or if fusionZONE determines that the Software or Documentation are likely to become the subject of a claim of infringement or violation of any proprietary right of any third party, fusionZONE shall in its discretion and, at its option (a) procure the right to continue using, reproducing, and distributing the Software and Documentation; (b) replace or modify the Software and Documentation so that they become noninfringing, provided such modification or replacement does not materially alter or affect the specifications for or the use or operation of the Software; require return of the Software to fusionZONE and refund any licensing fees relating to the future use of the Software.

4.3 LIMITATION OF LIABILITY. EXCEPT FOR FUSIONZONE'S OBLIGATIONS UNDER SECTION 4.2, IN NO EVENT SHALL FUSIONZONE'S OR ITS LICENSORS' LIABILITY TO RESELLER OR ANY THIRD PARTY ARISING OUT OF THIS AGREEMENT EXCEED THE TOTAL AMOUNT ACTUALLY RECEIVED BY FUSIONZONE HEREUNDER DURING THE PREVIOUS SIX (6) MONTHS. IN NO EVENT SHALL ANY PARTY OR FUSIONZONE'S LICENSORS BE LIABLE TO ANOTHER PARTY OR ANY THIRD PARTY FOR LOSS OF DATA, COSTS OF PROCUREMENTS OF SUBSTITUTE GOODS OR SERVICES OR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES UNDER ANY CAUSE OF ACTION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF AN ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

4.4 Indemnification. Reseller shall indemnify and hold fusionZONE harmless from and against any and all damages, liabilities, costs and expenses (including reasonable attorney's fees) which fusionZONE incurs as a result of any claim based on any breach of any representation or warranty, covenant or agreement by Reseller under this Agreement or any breach of this Agreement by Reseller; provided: (i) that fusionZONE promptly gives written notice of any claim to Reseller; (ii) at Reseller's expense, fusionZONE provides reasonable assistance which Reseller may reasonably request for the defense of the claim; and (iii) Reseller has the right to control the defense or settlement of the claim, provided, however, that fusionZONE shall have the right to participate in, but not control, any litigation for which indemnification is sought with counsel of its own choosing, at its own expense.

5. TERM AND TERMINATION

5.1 Term of Agreement. The term of this Agreement is one (1) year from the Effective Date (the "Initial term"). After the Initial Term has expired, the term shall automatically renew for successive one (1) year terms unless either party gives written notice of termination to the other at least thirty (30) days prior to the expiration of the then current term. Upon termination of this agreement, you will forthwith cease referring to yourself as a fusionZONE Partner.

5.2 Termination of Agreement. fusionZONE may terminate this Agreement for convenience by giving at least thirty (30) days written notice of termination to Reseller. This Agreement may be terminated by either party in the event of a material breach of this Agreement by the other party that is not cured within thirty (30) days of the other party's receipt of written notice of such breach. If a material breach is cured within a thirty (30) day cure period this Agreement shall remain in effect as if no material breach had occurred. This Agreement shall terminate automatically without notice and without further action by the other party in the event that the other party becomes insolvent, which means it becomes unable to pay its debts in the ordinary course of business as they come due, or makes an assignment of this Agreement for the benefit of creditors.

5.3 Effect of Termination. Upon the expiration or termination of this Agreement:

(a) Reseller shall, within thirty (30) days, pay to fusionZONE all amounts due hereunder, return to fusionZONE all products and demonstration copies received from fusionZONE, erase any and all of the foregoing from all computer memories and storage devices within Reseller's possession or control and, if requested, provide fusionZONE with a signed written statement that Reseller has complied with the foregoing obligations. All rights and licenses granted by fusionZONE hereunder shall terminate, provided such termination shall not result in the termination of end user licenses for copies of the Software which already have been purchased by end users in accordance with the provisions of this Agreement.

(b) The following shall survive termination of this Agreement: Section 1.2, the last two sentences of Section 2.2, Sections 2.3 through and including 2.9, Section 3.6, Section 4, this Section 5 and Section 6.

5.4 Limitation of Liability Upon Termination. In the event of termination in accordance with Section 5.1, fusionZONE shall not be liable to Reseller because of such termination for compensation, reimbursement or damages on account of the loss of prospective profits or anticipated sales or on account of expenditures, inventory, investments, leases or commitments in connection with the business or goodwill of Reseller.

6. GENERAL PROVISIONS

6.1 Confidentiality. By virtue of this Agreement, each party may have access to information that is confidential to the other ("Confidential Information"). Confidential Information shall include, but not be limited to, software, documentation, formulas, methods, know how, processes, designs, new products, developmental work, marketing requirements, marketing plans, customer names, prospective customer names, the terms and pricing under the Agreement, and any information clearly identified in writing at the time of disclosure as confidential.

A party's Confidential Information shall not include information that (a) is or becomes a part of the public domain through no act or omission of the other party; or (b) is independently developed by the other party without use of or reference to the first party's Confidential Information. In the event, Confidential Information is required to be disclosed by law or other governmental authority, a party hereunder shall not be prohibited from disclosing such information by this Section provided that the responding party shall first have given prompt notice to the other party hereto and shall have made a reasonable effort to obtain a protective order restricting or limiting the disclosure of the Confidential Information to the extent possible.

6.2 This Agreement Controls; Merger; Amendment; Waiver. This Agreement shall control Reseller's distribution of the Software and Documentation. All different or additional terms or conditions in any Reseller purchase order or similar document shall be null and void. This Agreement, including any Exhibits hereto, constitutes the final, complete, and exclusive agreement between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing signed by both parties. The failure or delay by either party in exercising any right, power or remedy under this Agreement shall not operate as a waiver of any such right, power or remedy.

6.3 Notices. All notices shall be given in writing and shall be considered effective when (a) personally delivered, (b) upon confirmed receipt if sent by electronic mail or facsimile; or (c) two (2) days after posting if sent by overnight registered private carrier (e.g. DHL, Federal Express, etc.).

6.4 Assignment. Reseller may not assign any of its rights or delegate any of its obligations hereunder, whether by operation of law or otherwise, without fusionZONE's prior written consent. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

6.6 Force Majeure. fusionZONE will not incur any liability to Reseller or any other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement (except for payment obligations) to the extent such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control, and without the negligence of, the parties. Such events, occurrences, or causes include, without limitation, acts of God telecommunications outages, Internet outages, power outages, strikes, lockouts, riots, acts of war, floods, earthquakes, fires, and explosions.

6.5 General. If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of this Agreement shall remain in full force and effect. Reseller is an independent contractor, and nothing herein shall be construed to create an employer-employee, partnership, joint venture, or agency relationship between the parties. Reseller shall have no authority, right or power to create any obligation or responsibility on behalf of fusionZONE. This Agreement shall be governed by and construed under the laws of Camden County, Georgia, excluding conflict of laws provisions and excluding the 1980 United Nations Convention on Contracts for the International Sale of Goods. The parties consent to the personal and exclusive jurisdiction of and venue in the state and federal courts of Georgia, U.S.A. for any disputes arising out of this Agreement. This Agreement may be executed simultaneously in two or more counterparts, each one of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the following duly authorized representatives have signed this Agreement on behalf of the entities indicated below, as of the date first above written.

"RESELLER"

By: _____
Title: _____
Date: _____

"FUSIONZONE"
FUSIONZONE

By: _____
Title: _____
Date: _____

EXHIBIT A
(Description of Software)

classifiedZONE
couponZONE
realestateZONE

Classified Ad Management Software
Coupon Management Software
Real Estate Listing Software