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**STREAMGUYS, Inc.**

**Authorized Streaming Agent Agreement**

**Please complete and fax back entire agreement to us at 1-707-516-0009**

**Streaming Agent Referral Agreement**

This Streaming Agent Referral Agreement ("**Agreement**") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, by and between StreamGuys, Inc. ("**StreamGuys**"), having its headquarters at Arcata, CA 95521, and \_\_\_\_\_, a \_\_\_\_\_ corporation ("**Streaming Agent**") having its principal place of business at \_\_\_\_\_.

WHEREAS, StreamGuys is engaged in the business of providing Internet-related services (as more particularly defined below, the "**StreamGuys Services**"); and

WHEREAS, Streaming Agent desires to become a sales representative for StreamGuys pursuant to StreamGuys Streaming Agent Referral Program, and StreamGuys wishes to engage Streaming Agent to solicit sales of the StreamGuys Services.

NOW, THEREFORE, in consideration of the foregoing, the mutual agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, StreamGuys and Streaming Agent agree as follows:

**1. Appointment as Authorized Streaming Agent.**

Subject to the terms and conditions of this Agreement, StreamGuys appoints Streaming Agent as non-exclusive sales representative of StreamGuys worldwide for purposes of soliciting sales of StreamGuys Internet-related services as more particularly described at StreamGuys web site at <http://www.streamguys.com> (collectively, the "StreamGuys Services") to customers for the benefit of StreamGuys. In order for the foregoing appointment to be effective, Streaming Agent must (i) evidence its acceptance of the terms and conditions of this Agreement by executing this Agreement and returning it to StreamGuys as provided herein, (ii) **BE ABLE TO RECEIVE A UNITED STATES BUSINESS CHECK AS REQUIRED UNDER SECTION 9 BELOW**. The parties hereto acknowledge that this is not an exclusive area or franchise agreement.

**2. Duties of StreamGuys.**

During the term of this Agreement, StreamGuys shall: (a) provide the StreamGuys Services to customers originated by Streaming Agent in accordance with this Agreement who continue to meet StreamGuys conditions for the StreamGuys

Services as deemed satisfactory by the sole discretion of StreamGuys, including, without limitation, maintaining current payment status on account and use of computer hardware and software that StreamGuys is reasonably able to support.

### **3. Duties of Streaming Agent.**

Streaming Agent represents and warrants that it is familiar with the Internet and the StreamGuys Services and that it is presently qualified to promote the sale and provide sales support of such StreamGuys Services. Streaming Agent represents that the execution and implementation of this Agreement is not in breach nor in violation of any terms or conditions of any other contract, agreement or arrangement to which it is a party, including, but not limited, to any agreement regarding exclusivity or non-competition. Streaming Agent further represents that it has full legal capacity, power and authority to enter into this Agreement and that if Streaming Agent is an individual; Streaming Agent is at least eighteen (18) years old. Streaming Agent also represents that neither it nor any of the customers it solicits are located in a country subject to United States embargoes or listed on the United States Treasury Department's list of specially designated nationals or listed on the United States Commerce Department's denied persons list or entities list.

In addition, Streaming Agent agrees to comply with the following provisions throughout the term of this Agreement:

- (a) Not to knowingly solicit customers who do not have the hardware or software specified by StreamGuys from time to time;
- (b) to follow customer order placement procedures for the signing up of new customer accounts as set out by StreamGuys, as the same may be amended from time to time. In general, Streaming Agent's customers and potential customers can order services via StreamGuys web site or by contacting Streaming Agent's dedicated StreamGuys account executive;
- (c) to use reasonable and lawful sales and marketing efforts to promote the sales of StreamGuys Services;
- (d) where appropriate and mutually agreed upon, to provide post-sales support at a level reasonably necessary to permit customers to activate and operate the StreamGuys Services;
- (e) not to engage in any activity harmful to StreamGuys goodwill or that would reflect unfavorably on StreamGuys business, brand names or trade or service marks, including unfair trade practices, publication of any false or misleading or deceptive advertising or the commission of any fraud or misrepresentation;
- (f) comply, at all times, with all applicable federal, state and local laws, rules, regulations and court orders; and
- (g) not to induce or actively attempt to influence any person to terminate, delay, or reduce in size or scope any contractual or business relationship with StreamGuys.

### **4. General Terms and Conditions of Sales.**

Streaming Agent agrees to sell StreamGuys Services on the terms or conditions set forth in this Agreement (including any and all exhibits attached hereto, as the same may be amended from time to time) and as specified by StreamGuys. All Customer orders are subject to acceptance by StreamGuys, either in writing or by actual provision of the StreamGuys Services. StreamGuys retains the absolute right to reject any order that does not comply with StreamGuys ordering procedures or its terms and conditions for StreamGuys Services. StreamGuys also retains the absolute right to terminate any account that does not meet or continue to meet StreamGuys terms and conditions for StreamGuys Services. No order rejection or termination of Services will subject StreamGuys to any claim for reimbursement, commission, fee or other remuneration for the benefit of Streaming Agent or its customers or potential customers.

### **5. Marketing to StreamGuys Customers.**

Streaming Agent shall not knowingly market the StreamGuys Services to a current customer of StreamGuys. In the event that Streaming Agent solicits a current customer of StreamGuys to buy StreamGuys Services, StreamGuys shall have no obligation under this Agreement to pay a commission to Streaming Agent for such customer.

### **6. Exclusive Streaming and On-Demand Media Content Delivery By Reseller.**

- (a) Streaming Agent acknowledges that StreamGuys shall be the exclusive seller of streaming media services through Streaming Agent's site. These services shall include such products as video podcasting, audio podcasting, live and on demand video and audio files, cell phone streaming media files, and subscription streaming applications.
- (b) Streaming Agent agrees that Streaming Agent will not, directly or indirectly, allow any other person or entity to sell streaming media or on demand delivery of content on Streaming Agent's site or link their site to the Streaming Agent's site in connection with the sale of streaming media services. If our site is used, or copy or other written

material, directly or indirectly, by any person or entity to sell streaming media services, this Agreement states we shall be the sole streaming media service provider.

## **7. Intellectual Property; Sales and Marketing Materials.**

- (c) Streaming Agent acknowledges that StreamGuys owns all right, title and interest in and to certain intellectual property of StreamGuys, including without limitation all StreamGuys trademarks (including, without limitation, the trademark "StreamGuys") trade names, service marks, trade dress or other designation, copyrights, trade secrets, patents, advertising material and all goodwill, if any, in each case, whether presently existing or later developed by either StreamGuys or its affiliates, (collectively "**StreamGuys Intellectual Property**"). Nothing herein shall give Streaming Agent any right, title or interest in any StreamGuys Intellectual Property, or except as provided below, any right to use any StreamGuys Intellectual Property in any way, including without limitation in any advertising, publicity or marketing materials. Streaming Agent covenants not to prejudice or impair the interest of StreamGuys in the StreamGuys Intellectual Property. At no time shall Streaming Agent challenge or assist others to challenge any of the StreamGuys Intellectual Property or the registration thereof or attempt to register any trademark, trade name or any other mark confusingly similar to any of the StreamGuys Intellectual Property.
- (b) If approved in advance and in writing by StreamGuys by an authorized StreamGuys representative, Streaming Agent may use advertising or marketing materials prepared by StreamGuys for the sole purpose of Streaming Agent carrying out its obligations under this Agreement. Streaming Agent may use such advertising materials only upon the terms and conditions stated by StreamGuys from time to time; provided, however, that Streaming Agent may not modify or amend any such advertising materials, which it is authorized to use without the prior written consent of StreamGuys.
- (c) Notwithstanding the foregoing, if Streaming Agent desires to produce its own printed sales and marketing materials referring to the StreamGuys Services and rates, using certain of the StreamGuys Intellectual Property or otherwise suggest a relationship between Streaming Agent and StreamGuys ("**Streaming Agent Produced Materials**"), Streaming Agent shall submit the Streaming Agent Produced Materials to and obtain advance written approval from an authorized representative of StreamGuys prior to printing and the dissemination of any such Streaming Agent Produced Materials to any third party. StreamGuys shall have sole discretion to approve or disapprove of all Streaming Agent Produced Materials and has the right to require Streaming Agent to enter into a trademark license as a condition to granting any approval. As soon as practicable following expiration or termination of this Agreement, all Streaming Agent Produced Materials in Streaming Agent's possession or in the possession of its employees, agents or subcontractors, together with all similar situated advertising and marketing materials of the type referred to in clause (b) above, shall be delivered to StreamGuys.

## **8. Pricing.**

Apart from rights expressly given under this Section 7, Streaming Agent shall not have the right to quote or price StreamGuys Services at its discretion. Streaming Agent must utilize the standard approved price list, terms and conditions of StreamGuys in offering StreamGuys Services, described in the StreamGuys web site at: [www.streamguys.com](http://www.streamguys.com) StreamGuys reserves the right to amend its offering of StreamGuys Services and to add, delete, suspend or modify the terms and conditions of the StreamGuys Services, at any time and from time to time, and to determine whether and when any such changes apply to both existing or future customers.

## **9. Order Placement.**

For each potential customer, Streaming Agent shall direct potential customers to fill out the StreamGuys order form. In general, Streaming Agent's customers and potential customers can order services via StreamGuys web site or by contacting StreamGuys. Streaming Agent shall be responsible for any customer fraud losses incurred by StreamGuys in the event that Streaming Agent fails to adhere to StreamGuys policies and procedures for order placement or any other breach of this Agreement.

## **10. Commission.**

- (a) StreamGuys agrees to pay to Streaming Agent a commission on Qualified Cash Received (as defined on the Commission Schedule) at the applicable percentage and time intervals set forth in the commission schedule by

StreamGuys located in (the "**Commission Schedule**"). StreamGuys will not be obligated to pay Commissions to Streaming Agent if Streaming Agent fails to abide by the provisions of Sections 3(b), 4, 5, and 8 of this Agreement. Commissions to Streaming Agent's that are companies (as opposed to individuals) will be paid in the name of the Company set forth on the signature page hereto and not to an individual. Commissions will be paid only in currency of the United States. **STREAMING AGENT MUST BE ABLE TO RECEIVE A UNITED STATES BUSINESS CHECK IN ORDER TO RECEIVE PAYMENT. STREAMGUYS IS NOT REQUIRED TO MAKE PAYMENT BY ANY OTHER MEANS AND IF STREAMING AGENT CANNOT CASH A UNITED STATES BUSINESS CHECK, STREAMGUYS SHALL HAVE NO RESPONSIBILITY WITH RESPECT TO ANY LOSS OF FUNDS BY STREAMING AGENT.**

- (d) StreamGuys shall pay Streaming Agent commissions on cash received during the term of this Agreement from Streaming Agent's customers with respect to initial, upgrade and renewal order(s) for StreamGuys Services by Streaming Agent's customers. Streaming Agent may not at any time provide any billing arrangement or payment on behalf of any of its customer and StreamGuys shall have no obligation to pay any commission with respect to any cash received in breach of this restriction.
- (e) The remuneration structure referenced in this Section 9 is agreed to be the sole compensation and remuneration to Streaming Agent for the performance of its services under this Agreement.

#### **11. Expenses.**

All expenses incurred by Streaming Agent in connection with its activities hereunder shall be for Streaming Agent's account. Streaming Agent shall not be entitled to reimbursement from StreamGuys for any such expenses and Streaming Agent shall hold StreamGuys harmless there from.

#### **12. Relationship Between the Parties; Scope of Authority; Indemnification.**

- (a) Streaming Agent shall perform all services hereunder as an independent contractor, and agrees not to hold itself out as an agent of StreamGuys with authority apart from authority expressly granted under the terms of this Agreement with respect to and in connection with the sale of StreamGuys Services. Streaming Agent shall have no expressed or implied authority to assume or create any obligation on behalf of StreamGuys. Furthermore, it is agreed that neither party is a fiduciary or quasi-fiduciary of the other. Accordingly, it is agreed that nothing in this Agreement shall be (i) construed as constituting Streaming Agent as other than a limited agent of StreamGuys for any purpose whatsoever or (ii) deemed to create an employer-employee, partnership, franchise or joint venture relationship between StreamGuys and Streaming Agent. Streaming Agent hereby waives the benefit of any state or federal laws or regulations dealing with the establishment and regulation of franchises.
- (b) THROUGHOUT THE TERM OF THIS AGREEMENT AND AFTER THIS AGREEMENT IS TERMINATED OR EXPIRES, STREAMGUYS SHALL RETAIN FULL AND EXCLUSIVE OWNERSHIP OF ALL CUSTOMERS ORIGINATED BY STREAMING AGENT RELATIVE TO THE STREAMGUYS SERVICES, ALL INFORMATION RELATING TO SUCH CUSTOMERS AND ALL OF STREAMGUYS'S OTHER PROPERTY AND ASSETS IN THE TERRITORY. StreamGuys shall maintain its absolute and unrestricted right to manage its business, to sign all documents on its behalf, to decide on its behalf, and to carry on its business separately and solely according to its full power and discretion. Streaming Agent shall have no powers to enter into any agreements for or on behalf of StreamGuys.
- (c) Streaming Agent agrees to indemnify, defend, save and hold StreamGuys and its affiliates and employees harmless from and against all liabilities, damages, judgments, claims, costs and expenses (including, but not limited to, reasonable attorneys' fees), as a result of or arising out of any breach of any obligation, warranty or representation in this Agreement by Streaming Agent.

#### **13. StreamGuys Non-Exclusivity.**

StreamGuys reserves the right to market and sell StreamGuys Services through its own employees or other representatives, and to appoint other sales representatives, both within and outside of the geographic areas in which Streaming Agent operates.

#### **14. Confidential Information; Non-solicitation of Customers.**

- (a) All documents and other materials made available to Streaming Agent or its employees by StreamGuys in connection with this Agreement and the StreamGuys Services, including, but not limited to, any and all lists of StreamGuys customers, and any information relating to StreamGuys business, including, but not limited to, sales and marketing materials, maintenance techniques, credit policies, advertising, promotions, marketing techniques and prices, or to StreamGuys customers developed by Streaming Agent during the course of this Agreement (collectively “**StreamGuys Confidential Information**”), shall be deemed to be confidential to StreamGuys and shall remain the exclusive property of StreamGuys during and after the term of this Agreement. Streaming Agent acknowledges and agrees that StreamGuys has developed StreamGuys Confidential Information through substantial expenditures of time, money and effort and constitutes unique and valuable property of StreamGuys. Streaming Agent shall keep in strict secrecy and confidence all StreamGuys Confidential Information and shall not during the term of this Agreement or thereafter use StreamGuys Confidential Information for its own benefit or disclose or permit any of its employees or agents to disclose, through any medium, StreamGuys Confidential Information to any other person.
- (b) Upon termination or expiration of this Agreement or upon request, Streaming Agent shall return all StreamGuys Confidential Information to StreamGuys and certify in writing that it has returned all such information to StreamGuys and has not kept copies thereof in any medium.
- (c) Streaming Agent agrees not to solicit any customers of StreamGuys, whether or not originated by Streaming Agent, for Streaming hosting, e-commerce and other Internet related services for a period of two (2) years after expiration or termination of this Agreement.

#### **15. Warranties; Limitation of Liability.**

- (a) *Disclaimer of Warranties.* StreamGuys disclaims all warranties with regard to the StreamGuys Services rendered under this Agreement, including all implied warranties of merchantability and fitness for a particular purpose. Streaming Agent shall extend no warranties or guarantees without the prior written consent of an authorized representative of StreamGuys
- (b) *Limitation of Liability.* Neither StreamGuys nor any of its affiliates nor its and their respective directors, officers, employees, agents or suppliers shall be liable to Streaming Agent or any third party for special, consequential, incidental, indirect, tort or cover damages, including, without limitation, damages resulting from the use or inability to use any StreamGuys Services, delay of delivery and/or implementation of a StreamGuys Service, or loss of profits, data, business or goodwill, whether or not such party has been advised or is aware of the possibility of such damages. StreamGuys liability for all claims of any kind arising out of or relating to this Agreement during its term shall be limited solely to money damages and shall not exceed the amount of commissions paid to Streaming Agent during the twelve months preceding the event giving rise to the claim or claims.
- (c) *No Liability for Expiration or Lawful Termination.* Except as expressly permitted otherwise in this Agreement, neither party shall have the right to recover damages or to indemnification of any nature, whether by way of lost profits, expenditures for promotion, payment for good will or otherwise made in connection with the business contemplated by this Agreement, solely as a result of the expiration or permitted or lawful termination of this Agreement. EACH PARTY WAIVES AND RELEASES THE OTHER FROM ANY CLAIM TO COMPENSATION OR INDEMNITY SOLEY AS A RESULT OF THE TERMINATION OF THE BUSINESS RELATIONSHIP SET FORTH HEREUNDER, UNLESS SUCH TERMINATION IS IN MATERIAL BREACH OF THIS AGREEMENT.

#### **16. Term; Termination.**

- (a) This Agreement shall commence on the date stated above and shall remain in effect until terminated pursuant clause (b) below.
- (b) Either party may terminate this Agreement at any time without cause upon providing fifteen (15) days' prior written notice to the other party. Moreover, StreamGuys may terminate this Agreement immediately without notice at any time in the event of the occurrence of any of the following:
  - (i) Breach of any covenant, term or condition of this Agreement by Streaming Agent which breach continues unremedied for a period of ten (10) days after notice to Streaming Agent of such breach;
  - (ii) An assignment by Streaming Agent for the benefit of creditors or Streaming Agent becomes bankrupt or insolvent, or takes benefit of, or becomes subject to, any legislation in force relating to bankruptcy or insolvency, it being

understood that the appointment of a receiver or trustee of the property and assets of the Streaming Agent is conclusive evidence of insolvency; or

(iii) StreamGuys is unable to provide the subject StreamGuys Service by reason of any law, rule, regulation, or order of any municipal, state or federal authority.

(c) The provisions of Sections 6, 10, 11, 13, 14, 15© and 16 of this Agreement shall survive any expiration or termination of this Agreement (or any part thereof).

## 17. Miscellaneous.

- (a) *Force Majeure.* StreamGuys shall not be liable for failure or delay in performing its obligations hereunder if such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or other labor disturbance, breakdown or damage to machinery, equipment or software, malfunctioning of software, corruption of data, interruption of or delay in transportation, acts or omissions of the other party, unavailability of or interruption or delay in telecommunications or third party services, failure of third party software or inability to obtain raw materials, equipment, supplies or power used in or needed for provision of the Services.
- (b) *Waiver.* No failure of StreamGuys to pursue any remedy resulting from a breach of this Agreement by Streaming Agent shall be construed as a waiver of that breach neither by StreamGuys, nor as a waiver of any subsequent or other breach unless such waiver is in writing and signed by an authorized representative of StreamGuys.
- (c) *Severability.* In the event any provision of this Agreement shall be invalid, illegal or unenforceable in any respect, such a provision shall be considered separate and severable from the remaining provisions of this Agreement, and the validity, legality or enforceability of any of the remaining provisions of this Agreement shall not be affected or impaired by such provision in any way.
- (d) *Non-Assignment.* Streaming Agent may not assign this Agreement or any rights or obligations of Streaming Agent under this Agreement, in whole or in part, without the express written consent of StreamGuys.
- (e) *Choice of Law.* This Agreement shall be construed in accordance with the laws of the state of Colorado regardless of its choice of laws provision.
- (f) *Notices.* Notices required to be given by one party to another shall be deemed properly given only when reduced to writing and sent to the addresses stated above or provided by either party from time to time by certified mail, return receipt requested, postage prepaid, by courier, by facsimile or email and shall be effective upon delivery. Either party may change the addresses for giving notice from time to time by written instructions to the other party of such change of address. Streaming Agent hereby acknowledges and agrees that StreamGuys may email Streaming Agent from time to time in order to communicate with Streaming Agent regarding the AGENT Program and/or Streaming Agent's performance there under.
- (g) *Entire Agreement.* This Agreement, the Exhibits hereto, if any, and the AGENT Program Guide, each as amended from time to time, constitute the entire understanding between the parties hereto in relation to the subject matter hereof and supersede all prior discussions, agreements and representations, whether oral or written and whether or not executed by StreamGuys or Streaming Agent. Unless otherwise provided in this Agreement with respect to StreamGuys' right to amend or modify the AGENT Program Information from time to time, no modification, amendment or other change may be made to this Agreement or any part thereof unless reduced to writing and executed by authorized officer of both parties. StreamGuys may change any terms of its AGENT Program without prior notice to Streaming Agent; provided, however, that Streaming Agent shall be permitted to terminate this agreement and its participation in the AGENT Program, in its sole discretion, upon implementation of any such change by StreamGuys.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement (i) as of the date first stated above or (ii) if this Agreement is e-signed, as of the date of Streaming Agent's signature.

**StreamGuys, Inc.**

By: \_\_\_\_\_  
(Authorized Signature)

Print: \_\_\_\_\_

Title: \_\_\_\_\_

**Streaming Agent:**

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Federal Tax ID or Social Security Number)

By: \_\_\_\_\_  
(Authorized Signature)

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone: \_\_\_\_\_