

# HYBRID SOLUTIONS MARKET CLOUD LTD AFFILIATE AGREEMENT

This **PARTNERSHIP AGREEMENT** (“the Agreement”) is made on **REGISTRATION DATE** (“the Effective Date”) between **Hybrid Solutions Market Cloud LTD**, a Certified Application Service Provider (ASP) and authorized distributor for Hybrid Solutions for VertexFX Trader (the “Supplier”), and ....., a reseller having her principal place of business at as per the registration form (“the Partner”). In consideration of the mutual promises, covenants and representations contained herein, Supplier and Partner (“the Parties”) agree as follows:

## 1. APPOINTMENT

1.1 **Appointment.** Subject to the terms and conditions set forth in this Agreement, Supplier appoints Partner as non-exclusive reseller of Supplier’s products described in Exhibit A (“the Products”) in the geographical territory described in Exhibit B (“the Territory”). Supplier hereby authorizes Partner to purchase Products directly from Supplier for resale to end-customers and value-added resellers located within the Territory. Partner accepts such appointment. Partner will not, directly or indirectly, without Supplier’s written authority, engage in any sales and marketing activities involving the Products outside the Territory. Supplier reserves the right to market and sell its products (including "the Products") in the Territory directly to any entity, including, but not limited to, other Original Equipment Suppliers (“OEMs”) and accounts of a strategic nature. This Agreement will be valid when signed by authorized representatives of both Parties and when Partner takes delivery of the Initial Order described in Exhibit C within thirty (30) days from the Effective Date.

1.2 **Relationship of the Parties.** Supplier and Partner are independent contractors and nothing in this Agreement will constitute the Parties as partners, representatives, agents, employer and employee, or otherwise as participants in a joint undertaking. Partner will not represent itself as Supplier’s agent or in any way that may result in confusion as to the Parties being separate and distinct entities. Neither party will have any authority to enter into any form of binding commitment on behalf of the other party. Partner will be solely responsible any financial obligations and any acts of its employees or agents arising out of, or in connection with, Partner’s business.

## 2. OBLIGATIONS OF SUPPLIER

2.1 **Marketing Support.** Supplier will, at its own expense, (i) provide Partner a reasonable quantity of product specification sheets, price lists and other promotional materials, and assist Partner in creating other aids aimed at generating interest in the Products; (ii) assist Partner in training its personnel in a reasonable manner and (iii) direct relevant sales leads originating from inquiries, trade events, the Internet and other sources to Partner.

## 3. OBLIGATIONS OF PARTNER

3.1 **Product Promotion.** In consideration of the rights granted herein, Partner will, at its own expense, (i) use its best efforts to actively promote and solicit orders for Supplier’s Products within the Territory; (ii) provide and maintain an adequate sales and marketing within the Territory, staffed by experienced and trained personnel; (iii) include the Products in any catalogs that it publishes or may publish; (iv) cooperate with and assist Supplier in promotional and merchandising

campaigns; (v) Partner shall provide monthly sales and market report to Supplier within the first seven day of a calendar month, including call reports, customer inquiries and complaints, customer identities, sales volume, demand forecasts, information regarding any negotiation or order concerning Supplier and other factors relating to the actual and potential market for the Products in the Territory; (vi) Partner shall use its best efforts to promote vigorously and aggressively the sales of the Products in the Territory, including advertising and participation in trade shows. All promotional and advertising materials involved the Products supplied by Supplier must be approved in writing by Supplier prior to its use.

3.2 **General Conduct.** Partner agrees (i) at all times, to conduct business in a manner that reflects favorably on the good name, goodwill and reputation of Supplier, (ii) to avoid deception, misleading or unethical practices that are or may be detrimental to Supplier, including, but not limited to, the disparagement of Supplier or its Products; (iii) not to publish, employ or cooperate in the publication of misleading or deceptive advertising material; (iv) to make no representations, warranties or guarantees to customers or to the trade, with respect to the specifications, features or capabilities of the Products, that are inconsistent with the literature distributed by Supplier.

3.3 **Quota.** Partner must achieve quota described in Exhibit D for this agreement to remain valid

3.4 **Warranty Support.** In consideration of the rights granted herein, Supplier will provide the required fixes, patches, upgrades and other required files for the Partner as long as the service fees are paid on time.

#### **4. TERMS AND CONDITIONS OF SALE**

4.1 **Forecasts and Orders.** Partner agrees to provide Supplier with a six-month rolling forecast of its anticipated demand for the Products on or before the first day of each calendar month. All orders must be accompanied by written Purchase Orders specifying the quantity of products ordered, shipping destination, shipping date and preferred shipping carrier, if any. All Purchase Orders must be transmitted by email to Supplier's designated email address. Partner agrees to observe Supplier's lead-time, which Supplier will advise from time to time, when placing any orders for the Products. This Agreement will control the terms and conditions for the sale of Products and will hereupon replace and supersede any pre-printed terms and conditions appearing on Partner's Purchase Orders or any other forms.

4.1.1 **Minimum Orders.** Partner agrees to purchases per Partner price at that time.

4.2 **Acceptance of Orders.** All Purchase Orders are subject to confirmation and acceptance by Supplier. Supplier reserves the right to refuse any order with or without any cause or reason.

4.3 **N/A**

4.4 **Payment Terms and Credit.** Payment terms will be proportionally paid according to the signed agreement with the client by Wire Transfer ("T/T in advance") to Supplier's designated bank account.

4.5 **Cancellation and Rescheduling.** Orders are non-cancelable unless coordinated together to be cancelled literally.

4.6 **Price Adjustments and Price Protection.** Supplier reserves the right to make any adjustments to the prices of the Products. Supplier will give Partner at least Sixty Five (65) days advance notice of such price changes. If the price is increased, all accepted Purchase Orders with shipment dates that fall within Sixty Five (65) days of the proposed effective date of the new price will be fulfilled at the former price. All remaining orders will assume the new price. If the price is reduced, Supplier will invoice any accepted Purchase Orders then awaiting fulfillment at the new price and in addition will issue to Partner a Credit Note in the amount equal to the difference between the former price and the new price, multiplied by the number of units of Products for which Partner was invoiced in the immediately preceding Sixty Five (65) days.

4.7 **Late Payment.** Service is subjected to be suspended if required payments are not made within (1) week.

4.8 **Customer Protection.** Supplier will give customer protection for accounts reported in the monthly sales and marketing report to Partner for THREE months including the reporting month. If Partner cannot close the account within that period and do not give sufficient reason as determined by Supplier, the account will be open for other Partners and Distributors. If the Supplier at its sole discretion determines that the Partner has given good reasons for not closing the account, the protection will be extended for another month and so on for up to SIX months.

4.9 **Divided Accounts.** In the event that two or more authorized Partners of Supplier, for any reason whatsoever, claim an account, Supplier reserves that right to award the account among the Partners in such proportions as Supplier shall determine to be equitable, and its decision to do so and the manner in which it does so shall be final and binding on all parties involved..

4.10 **Customer Follow-up.** Partner is committed to serve his customers and respond/deliver their requested services within (5) working days. In the event of the lack of serving his customers within that time frame, Supplier has the right to serve the client directly according to his price list. There will be a reserved 10% commission paid back to Partner from any setup fees for any product/service excluding the Monthly service as no commission on monthly services is paid for Partner upon direct delivery by Supplier.

## 5. LIMITATION OF LIABILITY

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING LOSS OF PROFITS, LOSS OF USE AND LOSS OF DATA, ARISING UNDER THIS AGREEMENT OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL SUPPLIER'S CUMULATIVE LIABILITY TO PARTNER, FOR ALL CAUSES OF ACTION, EXCEED THE PAYMENTS ACTUALLY MADE TO SUPPLIER BY PARTNER UNDER THIS AGREEMENT.

## 6. CONFIDENTIAL INFORMATION AND PROPRIETARY RIGHTS

6.1 **Confidentiality Agreement.** Partner understands that all information including, but not limited to, information relating to Supplier's trade secrets, inventions, techniques, processes, product and technology roadmaps, technology implementation plans, sales and marketing plans, product pricing and discount tables, strategic and customer alliances, financial data and the like, received from Supplier hereunder, other than information intended for public dissemination, are confidential and proprietary to Supplier. Partner agrees to treat all such information as confidential and to take reasonable measures to maintain the confidentiality of such Confidential Information, but not less than the measures it uses for its own most highly valued confidential or proprietary information (which in no event will be less than is standard in the industry) and to make no use or disclosure of such information unless expressly authorized to do so in writing by Supplier. Each perspective use or disclosure of Confidential Information by Partner will require a separate authorization. Partner's obligations hereunder will survive the termination or cancellation of this Agreement for a period of three (3) years. Within thirty (30) days after the expiration or termination of this Agreement, Partner will, as Supplier may direct, destroy all Confidential Information in its possession or return them to Supplier at the address specified by Supplier. Partner will not make or retain any copies of any Confidential Information or item that embodies Confidential Information with which it may have been entrusted.

6.2 **Use of Trademarks.** Supplier hereby grants Partner the right to use its trademarks, logos, service marks and trade names associated with the Products (the "Trademarks") on packaging materials, labels, marketing materials, advertising and other promotional materials for the Products, as they are permitted to be marketed and sold hereunder. Partner expressly agrees that ownership and all rights, title and interest in the Trademarks is and will remain vested solely in Supplier. All use of the Trademarks will inure to the sole benefit of Supplier. Partner will not alter or remove any Trademark applied to the Products, Product labels or Product literature by Supplier. Partner grants Supplier the rights to use its trademarks, logos and trade names in referring to Partner as a reseller of the Products in the Territory and in corporate image advertising pieces, corporate background pieces, press releases and the like.

## 7. TERM AND TERMINATION

7.1 **Validity Initial Term and Renewal.** The initial term of this Agreement will be valid for 12 months from the Effective Date unless earlier terminated in accordance with this Section. Upon expiration of the initial term, this Agreement will automatically renew for successive one-year terms if Partner achieved the quota described in Exhibit D unless either party gives written notice of termination to the other at least thirty (30) days in advance of the expiration date of the initial term or subsequent renewal terms.

7.2 **Termination for Cause.** This Agreement may be terminated for cause, immediately upon issuance of notice thereof by Supplier, upon the occurrence of any of the following events:

- (a) Partner ceases to exist as a business entity, or otherwise terminates its business operations, or terminates or otherwise fails to continue to employ representatives who are critical to the continued success of the Products, and

fails to provide adequate assurance of its ability to fulfill its obligations under this Agreement, as determined by Supplier in its reasonable business judgment;

- (b) Partner becomes insolvent or unable to pay its debts as they mature in the ordinary course of business or makes an assignment for the benefit of its creditors;
- (c) Partner fails to secure or renew any license or permit necessary for the conduct of its business or if any license is revoked or suspended;
- (d) Upon liquidation, dissolution, reorganization, merger, sale of substantially all the assets, or change in management, voting control or corporate form, of Partner.
- (e) Partner breaches any material provision of this Agreement or otherwise acts or fails to act in a manner that may adversely affect the rights or interests of Supplier.

In the event of a termination pursuant to this Section 7.2, the termination date will be the date upon which such notice is given.

7.3 **Termination for Convenience.** Either party may terminate this Agreement for its convenience, with or without cause, upon giving the other party thirty (30) days written notice.

7.4 **Effects of Termination.** Upon termination or expiration of this Agreement, Partner will promptly (i) cease to hold itself as an authorized Partner or reseller of Supplier's Products and remove all identifying signs, literature, logos or other evidence linking Partner to Supplier; (ii) terminate all marketing and promotional activities with regards to such Products and return all promotional literature, sales samples and other aids in its possession to Supplier at the address specified by Supplier within thirty (30) days from the date of termination or expiration. Termination of this Agreement for any reason will not release Partner from its obligations to pay its account with Supplier in full accordance with the provisions hereunder.

7.5 **Limitation of Liabilities.** In agreeing to the terms of termination contained in this Section 7 and elsewhere in this Agreement, it is with full knowledge of such possibilities and neither party will be liable to the other party, because of such termination, for compensation, reimbursement or damages on account of loss of prospective profits from anticipated sales, expenditures, investments, leases or any other commitments in connection with the business or goodwill of Supplier or Partner. Notwithstanding the foregoing, Supplier's termination of this Agreement will be without prejudice to any other remedies that Supplier may have hereunder or under applicable law. Old customers will be kept under partner's management as is, unless agreed settlement was made.

## **8. GENERAL**

8.1 **Notices.** Any notices required hereunder will be in writing and will be sent to the address of each party first set forth above, or any substitute address of which notice is duly given, and will be deemed given upon receipt, if personally delivered; one (1) business day after transmission, if sent by facsimile transmission or electronic mail (provided receipt of the same is confirmed); and three (3) business days after dispatching, if sent by private courier service or registered mail.

8.2 **Assignment.** Partner may not assign or transfer any of the rights, duties or obligations herein without the prior written consent of Supplier, and any purported attempt to do so will be null and void.

8.3 **Waiver.** No waiver of any provision of this Agreement will be effective unless made in writing. No waiver of any breach of any provision of this contract will constitute a waiver of any subsequent breach of the same or any other provision of this contract. Failure of any party to insist upon strict performance by the other of any provision set forth herein will not be deemed a waiver of such or any other provision of this Agreement.

8.4 **Severability.** In the event that any of the terms or provisions of this Agreement will be held by a court or tribunal of competent jurisdiction to be invalid, illegal or unenforceable, the remaining portions of this Agreement will remain in full force and effect.

8.5 **Force Majeure**. Neither party will be liable to the other for delays or failures in performance resulting from circumstances beyond its reasonable control, including, but not limited to, acts of God, war, riots, communication or utility failures, labor disputes or disturbances, material shortages or rationing, governmental regulations and casualties.

8.6 **Dispute Resolution**. In the event of any dispute under this Agreement, the parties expressly agree to attempt to resolve the dispute between the appropriate officers of each company. If such attempt is unsuccessful, the parties agree to submit the dispute to non-binding mediation. In the event that the dispute is not resolved within thirty (30) days after submission to a mediator, either party may then seek judicial relief.

8.7 **Governing Law**. This Agreement is governed by the laws of the United Kingdom, without reference to its principles of conflicts of laws. Second Party expressly agrees that exclusive jurisdiction and venue for any claim or dispute with the First Party relating in any way to the Second Party's use of the Software resides in the Courts of United Kingdom. Second Party hereby irrevocably consents to the personal and exclusive jurisdiction and venue of these Courts.

8.8 **Attorneys' Fees**. In the event any proceeding or lawsuit is brought by either party in connection with this Agreement, the prevailing party in such proceeding will be entitled to receive its costs, expert witness fees and reasonable attorneys' fees, including costs and fees on appeal.

8.9 **Entire Agreement**. This Agreement, including all Exhibits, represents the entire understanding and agreement of the parties regarding the subject matter hereof, and supersedes all prior agreements between the Parties, whether written or oral. This Agreement will not be amended or altered except by written agreement signed by both parties.

Exhibit A

PRODUCTS

---

"VertexFX Trader" product

Exhibit B

TERRITORY

---

As agreed through email

Exhibit C

INITIAL STOCKING ORDER

---

**Financial fees:**

<b>Plan</b>	<b>VertexFX 10 EE Price USD</b>	
<b>Platform Price (USD)</b>	<b>Partner Percentage</b>	Sales Plans reference: <a href="http://marketcloud.net/plans">http://marketcloud.net/plans</a>
MC plan	As agreed through email	



**Exhibit D**

**ANNUAL QUOTA**

---

	Period	Quantity	Remarks
1	First 6 months	As agreed through email	Any VertexFX trader version