

SaaS Sales Agreement between COMPANY and RESELLER

Contract Details

1. Parties

Name

COMPANY ("COMPANY")

Address 3F Shiodome Building, 1-2-20 Kaigan, Minato-ku,, Tokyo, Tokyo-To,
105-0022, Japan 〒105-0022 東京都港区海岸1-2-20 汐留ビルディング 3F

Yellow Submarine Ltd company number 11410194..

RESELLER

Address

Company details

2. Term

12 months

3. Services

The Services to be provided by Reseller under this Agreement are outlined in Schedule 1.

4. Fees

COMPANY will pay Reseller the Fees as calculated in accordance with Schedule 2.

5. Commencement Date

By signing this agreement the parties agree to be bound by the attached terms and conditions:

Signed for and on behalf of COMPANY by its duly authorised representative:

Date of signing

.....
Signature of authorised representative

.....
Name (print)

.....
Title

Signed for and on behalf of Reseller by its duly authorised representative:

Date of signing:

.....
Signature of authorized representative

.....
Name (print)

Title:

Terms and conditions

1. GENERAL

1.1 This Agreement sets out the terms and conditions on which Reseller will provide the Services to COMPANY.

1.2 The appointment of Reseller as a service provider under this Agreement is non-exclusive. It does not restrict COMPANY's right to contract with other persons for the performance of services similar to the Services, or to perform any services itself.

2. Supply of services

2.1 In providing the Services Reseller must use its best endeavours to arrange Software Clients to enter into Software Contracts with RESELLER in order to maximize COMPANY's European based Software related revenue.

2.2 Reseller must supply the Services:

- (a) exercising all due care, skill and judgment;
- (b) in accordance with COMPANY's standards, operating principles, policies and procedures as notified to Reseller from time to time; and
- (c) in accordance with all reasonable directions of COMPANY.

2.3 At all times during the term of this agreement, Reseller:

- (a) must hold all authorizations, permits and licences required under any law to perform the Services;
- (b) must act in a manner which is not likely to harm COMPANY, or the reputation of COMPANY;
- (c) must comply with the requirements of all laws of any kind applying to the performance of the Services;
- (d) if required under law, must disclose to all Software Clients that it will receive a fee for any Software that the Software Client purchases;

(e) must not represent that it is COMPANY's agent;

3. COMPANY obligations

3.1 COMPANY will use its reasonable endeavours to:

(a) develop and maintain the SaaS software product; and

(b) provide the assistance and access to Reseller outlined in Schedule 1 of this Agreement.

3.2 Reseller will manage approval and signing of Software Contracts, and facilitate the invoicing and payments received from Software Clients.

4. SaaS sales process and obligations

4.1 Reseller acknowledges and agrees that the Services must be provided as follows:

(a) Reseller must develop, implement and update a SaaS sales strategy which focuses on Approved SaaS Products and includes a comprehensive list of target clients (Marketing and Sales Plan).

(b) Reseller and COMPANY will regularly review the Marketing and Sales Plan, and Reseller must follow COMPANY's directions regarding the Marketing and Sales Plan.

(c) Reseller agrees that it must provide the Services in accordance with the Marketing and Sales Plan.

(d) For the avoidance of doubt Reseller must not execute Software Contracts on behalf of COMPANY without COMPANY's express written consent.

4.2 COMPANY may in its sole discretion reject certain Software provided by Reseller.

4.3 Subject to compliance with COMPANY's requirements and this Agreement, COMPANY will execute or approve the execution of SaaS Contracts with Software Clients for the sale of Software agreements which run up 60 days beyond the expiration of the Term of this Agreement. For the avoidance of any doubt, Reseller will receive the Fees for such Software.

5. INFORMATION AND RECORDS

5.1 COMPANY may require Reseller to provide it with information concerning any aspect of the Services which COMPANY may require. Reseller must provide the information within 5 business days of receiving a request to do so.

5.2 Reseller must keep full records and documentation in relation to the Services in hardcopy or accessible electronic form during the term of this agreement. On request by COMPANY, Reseller must make all documents and records relating to the Services available to COMPANY for inspection.

5.3 COMPANY must keep full records and documentation of SaaS sales agreements and must make all documents and records relating to the Services available to COMPANY for inspection.

5.4 COMPANY will make best efforts measure and record all Reseller's influenced new European based SaaS customers through reasonable means, including but not limited to marketing automation tracking, email, CRM, and website visitor activity.

6. Payment AND Tax

6.1 Reseller will pay COMPANY the Fees in accordance with the Schedule 2.

6.2 Reseller will not be entitled to receive any reimbursement from COMPANY for any expenses incurred by Reseller in supplying the Services. However, COMPANY may pre-approve certain specific expenses for reimbursement, such as travel and conference attendance costs.

6.3 Reseller will provide COMPANY with a report each month outlining all Fees payable to COMPANY for the preceding month. Reseller will pay COMPANY the Fees as set out in Schedule 2.

6.4 COMPANY and Reseller are each responsible for complying with the tax laws that apply to them in connection with this Agreement. COMPANY may deduct from the Fees withholding taxes or other amounts if required by law. The Fees include all Taxes unless stated otherwise in Schedule 2.

7. Intellectual property

7.1 COMPANY is a sublicensee of the IP (Patent and Source Code) owned by Yellow Submarine Ltd. There is no license of the IP to anyone. COMPANY owns all the IP.

7.2 COMPANY owns the contact data relating to any Software Clients.

7.3 Reseller must not infringe the Intellectual Property Rights of COMPANY or a third party in connection with providing the Services. Reseller continually indemnifies COMPANY against any Loss that COMPANY incurs or suffers, as a direct or indirect result of a breach of the intellectual property rights of COMPANY or a third party in connection with providing the Services.

8. Confidentiality

8.1 Where a party (the Receiving Party) receives Confidential Information from another party (the Disclosing Party) under this Agreement, the Receiving Party must:

- (a) keep the Confidential Information confidential;
- (b) not use, disclose or reproduce the Confidential Information for any purpose other than the purposes directly related to this Agreement;
- (c) not, without the Disclosing Party's written consent, disclose Confidential Information to any person other than its Personnel who need the information for the purposes of this Agreement; and
- (d) establish and maintain effective security measures to safeguard the Confidential Information from unauthorized access, use, copying or disclosure.

8.2 The Receiving Party must ensure that its Personnel comply with the Receiving Party's obligations of confidence as if personally bound by such obligations.

9. WARRANTIES

9.1 Reseller warrants that:

- (a) it has full corporate power to enter into and give effect to this Agreement and to complete the transactions contemplated by this Agreement;
- (b) at the date of this agreement, the execution, delivery and performance of this Agreement by it does not contravene any contractual, legal or other obligations that apply to it;
- (c) it holds all licences, permits, consents and authorizations required under any law in relation to the provision of the Services and will continue to do so at all times during the term of this Agreement; and

(d) any goods, equipment or materials provided by or used by it in connection with the Services will be of acceptable quality and fit for the purposes described in the Agreement or otherwise known to it by COMPANY.

10. Liability and insurance

10.1 Each party (the Indemnifying Party) indemnifies the other party (the Indemnified Party) from any Loss suffered by the Indemnified Party arising from:

- (a) any breach of this Agreement by the Indemnifying Party or its Personnel;
- (b) any negligent or wrongful acts or intentional misconduct of the Indemnifying Party or its Personnel; and
- (c) personal injury, death or loss of or damage to real or personal property caused by the Indemnifying Party or its Personnel.

10.2 Reseller must maintain at a minimum general liability insurance of £1 million to cover Reseller's obligations and liabilities under this Agreement.

10.3 Reseller must provide COMPANY with evidence of all insurance maintained by Reseller relevant to this Agreement upon request.

10.4 Except as set out in clause 10.1, neither party shall be liable for special, indirect, or incidental or consequential damages arising from this Agreement, whether it is foreseeable, known or otherwise.

11. TERM and termination

11.1 This Agreement commences on the Commencement Date and continues for the Term, unless terminated earlier by either side by giving 1 months notice in writing, in accordance with this Agreement.

11.2 COMPANY may, prior to the end of the Term, terminate this Agreement immediately by written notice if:

- (a) Reseller commits a breach of this Agreement which cannot be rectified;
- (b) Reseller fails to rectify a breach of this Agreement which can be rectified for 7 days after receiving written notice to do so;

(c) Reseller commits multiple or recurring breaches of this Agreement, whether or not remedied; or

(d) Reseller is subject to an Insolvency Event.

11.3 When this Agreement ends, whether by expiration of the Term or on earlier termination, Reseller must immediately return all of COMPANY's equipment, information, documents, records and other property used by it in the provision of the Services or otherwise in Reseller's possession or control.

11.4 Following termination of this Agreement COMPANY's entitlement to Fees for Services provided whilst this Agreement was on foot will continue.

11.5 Any clause of this Agreement that makes provision for continued operation or is intended to survive expiry or termination of this Agreement will survive the expiry or termination of this Agreement.

11.6 COMPANY agrees to use its name and logotype on Reseller websites for marketing purposes.

12. General

12.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

12.2 The variation or waiver of a provision of this Agreement or a party's consent to a departure from a provision by another party will be ineffective unless in writing executed by the parties.

12.3 Each party will from time to time do all things (including executing all documents) necessary or desirable to give full effect to this Agreement.

12.4 This Agreement may be executed in any number of counterparts each of which will be an original but such counterparts together will constitute one and the same instrument and the date of the Agreement will be the date on which it is executed by the last party.

12.5 In relation to the subject matter of this Agreement it:

(a) is the whole agreement between the parties; and

(b) supersedes all oral and written communications by or on behalf of any of the parties.

12.6 If any part of this Agreement is invalid or unenforceable, this Agreement does not include it. The remainder of this Agreement continues in full force.

12.7 Where this Agreement gives any party a right or power to consent or approve in relation to a matter under this Agreement, that party may withhold any consent or approval or give consent or approval conditionally or unconditionally. The party seeking consent or approval must comply with any conditions the other party imposes on its consent or approval.

12.8 This Agreement does not create a partnership, agency, fiduciary or any other relationship, except the relationship of contracting parties, between the parties. No party is liable for an act or omission of the other party.

12.9 This Agreement is governed by the laws of England & Wales.

12.10 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of England & Wales.

13. INTERPRETATION

13.1 In this Agreement, unless otherwise indicated by the context:

(a) COMPANY's Products means any current or future COMPANY solutions and tools for location analytics which are, or may be, offered in the format of software as a service (SAAS).

(b) Clients means third party clients or potential clients with European headquarters sourced by Reseller who wish to purchase COMPANY's Products.

(c) SaaS Software Contract means contracts for Software entered into with Clients (as approved by COMPANY)

(d) Approved SaaS Products means the approved software products specified in Schedule 3 as updated/varied by COMPANY from time to time by notice in writing to Reseller.

(e) Commencement Date means the date set out in item 5 of the Contract Details;

(f) Confidential Information means any information provided by a Disclosing Party to a Receiving Party, or otherwise obtained by a Receiving Party from a Disclosing Party, whether obtained before or after execution of this Agreement, relating to the business affairs of a party or its customers or suppliers or the Services or this Agreement.

It does not include information which:

(i) is in or becomes part of the public domain, other than through a breach of this Agreement or an obligation of confidence owed to the Disclosing Party; or

(ii) was known to the Receiving Party at the time of disclosure, unless the Receiving Party's knowledge arose through breach of an obligation of confidence; or

(iii) the Receiving Party can prove by contemporaneous written documentation was independently acquired or developed without breaching any of the obligations set out in this Agreement.

(g) Disclosing Party has the meaning set out in clause 8 of this Agreement.

(h) Insolvency Event means anything that reasonably indicates that there is a significant risk that a person is or will become unable to pay its debts as and when they fall due.

(i) Intellectual Property Rights means all copyright, patents, patent applications, trade marks (registrable or not), designs, eligible circuit layout rights, trade secrets, know-how, data and all contact data related to the Software Clients and other like rights.

(j) Loss means any loss including any liability, cost, expense (including legal costs on a full indemnity basis), claim, proceeding, action, demand or damage.

(k) Personnel means any agents, officers, employees or contractors of a party to this Agreement.

(l) Receiving Party has the meaning set out in clause 8 of this Agreement.

(m) Taxes means all sales, use, transfer, privilege, excise or other taxes and all duties and government charges, whether international, national, state or local, however designated.

13.2 In this Agreement, unless otherwise indicated by the context:

(a) words importing the singular include the plural and vice versa;

- (b) headings are for convenience only and do not affect interpretation of this Agreement;
- (c) an expression importing a natural person includes a body corporate, partnership, joint venture, association or other legal entity;
- (d) a reference to a party to a document includes that party's legal personal representatives, successors and permitted assigns;

Schedule 1 - Services

Reseller' role and responsibilities:

1. To generate leads and sales for COMPANY Approved SaaS Products to maximize software revenue.
2. To provide sales collateral to potential customers
3. Identify high value verticals and partners whose target customers match the COMPANY target customer profile
4. Develop tailored and generic sales proposals, presentations and reports to management and clients, and sales collateral materials and messaging to the market as needed and requested.
5. Arrange meetings and demo calls with prospects, provide expert knowledge and position COMPANY as a SaaS solution
6. Develop, implement and monitor sales pipeline and report to COMPANY when requested.
7. Utilize COMPANY CMR system to record customer/prospect contact information and interactions
8. Onboarding and customer service of COMPANY SaaS customers
9. Invoicing clients, invoice collection.

10. Provide analytics data for the websites and SaaS products and new Trial Signups influenced by Sales and Marketing efforts

COMPANY's obligations:

1. Maintain and manage the software with an SLA > 90%
2. Provide input into prioritizing target clients.
3. Provide monthly feedback on sales performance.
4. Provide templates and graphics for sales proposals and presentations.

Schedule 2 – Fees

All amounts are in GBP. Unless otherwise stated all calculations are made monthly, for each calendar month.

Revenue is received upon Payment received from vendor.

1. Commission Rate: The Commission percentage rate will be calculated as follows:

Reseller will receive x% commission rate for the first 12 months value of new customers sourced by Reseller. For future repeat business commission rate will for clarity also remain at x% rate.

2. Payment:

- a. The Commission is payable monthly upon payment received from vendor.
- b. COMPANY and Reseller will both use reasonable efforts to ensure that Commission is paid on the basis of current + 15 days (i.e. within 15 days of the end of the month in which the Revenue is received), in the following way. Reseller will provide a report on relevant Commission payable monthly (including a reconciliation against Commission calculated), within 3 business days of the end of the month. COMPANY will issue then an invoice according to this report, which Reseller will pay within 5 business days of receipt. COMPANY and Reseller will work to avoid delays in order to meet the current + 15 days target payment cycle.

Schedule 3 – Approved SaaS Products

Approved SaaS Products:

1. YELLOW SUB AI - Dedicated Private Cloud - Receiving and Sending back JSON response on any location in the world. A list of JSON files is created to by the customer and YELLOW SUB AI to be fired at the dedicated API.
2. YELLOW SUB AI RESTful API. A list of JSON files is created to by the customer and YELLOW SUB AI to be fired at the dedicated API. This will interface to a Google Sheets flat file CSV. Either of these can be used by the Reseller or its end customers, or can have a Google Data Studio or other type of business analytics tool front end to visualise the data.

All pricing and details to be agreed between COMPANY and Reseller based on current market conditions and competitive pricing.

Schedule 4 – Existing COMPANY Customers

Existing COMPANY Customers:

Do not call list to be supplied by COMPANY