

## PREFERRED ASSOCIATE TERMS OF AGREEMENT

WHEREAS, GKG.NET, INC. a Texas corporation (“GKG”), having its principal place of business at 302 North Bryan Street, Bryan, Texas and Preferred Associate (“P.A.”) desire to enter into an agreement with regards to certain services, projects and leads.

NOW, THEREFORE, in consideration of the covenants, conditions and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, GKG and P.A. contract and agree as follows:

### Services, Projects and Leads

The P.A. will receive a package deal for a leased server or hosting and a reseller account with GKG. In return, GKG will showcase the P.A.'s logo and brief company description in a strategic location on the GKG website where it will be viewed by the existing and potential clients of GKG. GKG will keep track of any Leads that come through the website and send copies of the Leads to the P.A. The P.A. will be responsible for notifying GKG of any GKG client or Lead that comes to the P.A. for services, if the client found them via the GKG website, via a GKG referral, or via another P.A. who is working on a GKG Lead or project.

GKG will provide a page for the P.A. with a description of services and a form to be filled out by the potential customer to request more information. The potential customer will be redirected to a thank-you page containing the P.A.'s link(s) to their website. In return, P.A. will provide GKG a finder's fee (referral bonus) based on the following scenarios:

- 3 Different Type of Leads to be generated from GKG to P.A.:

#### \* Un-referred Leads:

Prospects who contact our P.A.'s for services because they found them on the GKG website.

**REFERRAL FEE** = 5% of the total sales amount – (the total sales amount shall include any payments or other consideration received whether in cash, trade or any other form, excluding taxes)

#### \* Referred Leads:

Prospects who contact GKG and are directed to contact a P.A. for services recommended by GKG.

**REFERRAL FEE** = 7% of the total sales amount as defined above

#### \* GKG EXISTING Client Lead:

In the case of a GKG EXISTING client that intends to hire GKG for website development, flash animation, or any other service, GKG will handle the entire sales process (from presentation to billing) and may decide to outsource a portion or all of the project to a P.A. A detailed proposal will be requested of the P.A. for specific services and deliverables. If GKG wins the project based on the costs proposed by the P.A., the P.A. will be contracted to provide those services for

the GKG client. GKG, will pay the agreed to fee to the P.A. based on the agreed to terms outlined in the final proposal presented by the P.A.'s and accepted by GKG. GKG reserves the right to have different components of any given project developed by several different companies as needed based on GKG's judgment of what is best for the customer (i.e. a special flash presentation could be designed by one company while a database driven application is designed by another company and /or GKG itself). GKG further reserves the right to reject the bid or any part of the bid submitted by P.A. The Client will at all times remain a GKG client.

### **Non-Disclosure, Non-Solicitation, and Non-Compete Agreement**

For a period of 2 years after the last project was presented to P.A., or two years after the P.A. designation has ended, whichever is longer, P.A. covenants and agrees not to contact or offer associated services to any client that GKG presents to the P.A., to not solicit or divert any business or patronage from GKG to a competitor or rival of GKG, and to not directly or indirectly induce or attempt to influence any employee, contractor or goods or service provider of GKG to terminate his, her or its employment by or with GKG. P.A. acknowledges that the foregoing restrictions are reasonably necessary for the protection of GKG and its right to protect its Confidential Information, other trade secrets and its unique business activities. P.A. acknowledges that the restriction will result in no hardship to P.A., as P.A. is capable of earning a living and practicing its trade notwithstanding such restriction.

P.A. further agrees and acknowledges that any violation of the provisions of the above paragraph would cause immediate and irreparable injury to GKG and the remedy at law for any violation or threatened violation thereof would be inadequate. Accordingly, P.A. agrees that in addition to, and without limiting any other right or remedy GKG may have, GKG shall be entitled to temporary and permanent injunctive or other equitable relief without the necessity of proving actual damages or the posting of a bond.

### **GKG Confidential Information:**

GKG may at its discretion provide P.A. with certain confidential or proprietary information relating to GKG's products or services. Confidential or proprietary information means and includes, but is not limited to, clients, customers, customer lists, customer accounts, plans, know-how, calculations, concepts, design sheets, design data, system design, computer programs, algorithms, software, firmware, hardware, manuals, processes, instructions, training, information, research, analyses, procedures, results, equipment, identity and description of computerized records, collection knowhow and strategies, marketing and sales plans, financial information, costs, pricing information and all other conceptions or ideas involving or reasonably related to the business or prospective business of GKG and any other personal, business, financial, or personnel information. Such information, together with any other information of, or pertaining to, GKG provided or learned by P.A. is provided and received in confidence and P.A. covenants and agrees at all times to preserve and protect its confidentiality. P.A. agrees to take all necessary steps to ensure that such information shall not be disclosed to, or used by or for the benefit of, any person except P.A.'s own employees or agents having a need to know. GKG makes no warranty with respect to the accuracy or completeness of such information and is providing it on an "As-Is" basis.

**Additional Responsibilities:**

P.A. represents and warrants that in performing under this Agreement it shall:

- (1) comply with the terms and conditions of this Agreement and use its best efforts, consistent with commercially reasonable standards and the terms of this Agreement, in performing hereunder;
- (2) conduct itself in an honest, professional and ethical manner and comply with all applicable international, national, federal, state and local laws, rules, regulations and ordinances (collectively, "Laws") and conduct its business in a manner that reflects favorably on GKG and GKG's services;
- (3) deal directly and only with designated personnel of GKG with regard to all matters arising hereunder;
- (4) maintain documents and records supporting its services provided to all GKG referred customers in a commercially reasonable manner and in compliance with applicable Laws.
- (5) recommend GKG and not make any disparaging or unflattering remarks about GKG and its services.

**Limitation on Scope of Authority and Relationship Created:**

GKG and P.A. agree and acknowledge that they are independent contractors and nothing contained in this Agreement shall place GKG and P.A. in the relationship of principal and agent, joint venturer, partners, affiliates or any similar relationship. P.A. shall not, either expressly or by implication, represent itself as having any authority to make contracts or enter into any agreements on behalf of or in the name of GKG, or to bind or obligate GKG in any way whatsoever.

**Indemnification:**

Each Party shall indemnify, defend and hold harmless the other Party and its officers, directors, employees, representatives and affiliates from any and all claims, liabilities, damages, fines, assessments, penalties, and expenses (including reasonable attorneys' fees and expenses) arising from or relating to: (a) the indemnifying Party's breach or alleged breach of its confidentiality obligations under the GKG Confidential Information Section of this Agreement; (b) the damage, loss or destruction of any real or tangible personal property for which the indemnifying Party is legally liable or responsible; (c) any claim of infringement made against the indemnified Party or its representatives of any copyright, trademark, service mark, trade name or other proprietary rights arising from or relating to any materials or information provided by the indemnifying Party or its representatives to the other Party under this Agreement; (d) any breach of any representation, warranty or covenant made by the indemnifying Party under this Agreement; or (e) any claim arising out of or based upon the indemnifying Party's failure to comply with all

applicable Laws, including any breach of Laws made by the indemnified Party on account of its reliance on indemnifying Party's representations or information.

**Limitation of Liability:**

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING LOSS OF PROFITS OR REVENUES, LOSS OF CUSTOMERS, OR LOSS OF GOODWILL INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LIABILITY FOR DAMAGES HEREUNDER SHALL IN NO EVENT EXCEED FIVE THOUSAND U.S. DOLLARS (\$5,000.00). EACH PARTY ACKNOWLEDGES AND AGREES THAT SUCH LIMITATIONS ARE FAIR AND REASONABLE.

**Termination of Agreement:**

Notwithstanding any provision in this Agreement to the contrary, GKG may terminate this Agreement immediately, without affording P.A. an opportunity to cure if P.A. is, or GKG reasonably believes P.A. is, in breach of this Agreement including without limitation its breach under the Additional Responsibilities Section of the Agreement. Termination of the P.A. designation does not relieve either party of their obligations with reference to existing projects and any Leads or clients generated from the GKG site that have been directed to the former P.A.

P.A. has the right to terminate at anytime with the caveat that all current uncompleted business is completed and any Leads generated from visitors to the GKG site will be handled as per the terms and conditions of this Agreement.

**Excusable Delays:**

Any event, including, but not limited to, acts of God, war, fire, explosion, power failure, inability to obtain suitable labor or materials, or law or regulation restricting performance, that prevents or hinders either Party from performing its obligation hereunder and that is beyond the reasonable control and without fault or negligence of such Party shall constitute an excusable delay. In such event, the performance obligations of the Parties hereunder shall be suspended; provided, however, that the affected Party shall promptly notify the other Party of the nature of such delay.

**Miscellaneous Provisions:**

- a. *Guarantees.* GKG does not guarantee any Leads or projects.
- b. *Hosting.* All clients generated through this association will be hosted with GKG.
- c. *GKG Logo.* P.A. will place GKG's logo on their website in an equivalent position to that in which the P.A. logo is placed on the GKG website.
- d. *Notices.* Any notice required by or permitted under this Agreement must be in writing. Any notice required by this Agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified

mail, return receipt requested, and correctly addressed to the intended recipient, or if sent via email and the receiving email server accepts delivery of the email.

e. *Entire Agreement.* This Agreement, together with its exhibits and referenced documents, if any, constitute the entire agreement of the parties concerning this Agreement. There are no oral representations, warranties, agreements, or promises not incorporated in writing in this Agreement.

f. *Amendment.* This Agreement may be amended by GKG at any time at its sole discretion.

g. *Successors and Assigns – Binding Effect.* This Agreement is binding on the parties hereto and their heirs, legal representatives, executors, successors and assigns and any subsidiary or affiliate thereof, any company operating under an assumed name, and any other business entity, person, agent or representative associated with the parties in any capacity.

**h. *Choice of Law; Venue.* This Agreement will be construed under the laws of the State of Texas. Venue is in Brazos County, Texas.**

I. *Waiver of Default.* It is not a waiver of default if the nondefaulting party fails to declare immediately a default or delays taking any action with respect to the default. Waiver by either party of a breach does not operate as, and will not be construed as, a waiver of any subsequent breach.

j. *Severability.* The provisions of this Agreement are severable such that if a court of competent jurisdiction finds that any provision of this Agreement is unenforceable, the remaining provisions will remain in effect without the unenforceable parts.

k. *Ambiguities Not to Be Construed against Party Who Drafted Agreement.* The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Agreement.

l. *Attorney's Fees.* If any party is required to retain an attorney to enforce this Agreement, the party prevailing in litigation is entitled to recover reasonable attorney's fees and costs of court and all other damages.

m. *Time of Essence.* Time shall be of the essence whenever time limits are imposed herein for the performance of any obligation of the parties hereto or whenever the accrual of rights to any of the parties hereto depend upon the passage of time.

n. *Acceptance.* P.A. acknowledges and agrees that this Agreement shall be deemed executed and effective as of the date the P.A. is placed on the GKG website. Should P.A. already be an existing reseller, partner or have any other affiliation with GKG at the time they are placed on the GKG website, P.A. agrees that any other agreements with relation to services purchased from GKG are not affected by this agreement and will remain in affect regardless of any changes in their status as a P.A. The terms and conditions contained in this Preferred Associate

Agreement (“Agreement”) which apply to the submission and acceptance of a Lead, as defined above herein, apply immediately upon acceptance of a Lead. By accepting a Lead, P.A. accepts and agrees to be bound to the terms and conditions of this Agreement. **IF P.A. DOES NOT WISH TO BE BOUND BY THIS AGREEMENT, THE P.A. YOU MUST NOT ACCEPT A LEAD. Any acceptance of a Lead by P.A. shall be deemed an offer and acceptance of this Agreement in full.**

P.A. ACKNOWLEDGES THAT BY ALLOWING GKG TO PLACE THEIR LOGO ON THE GKG WEBSITE, P.A. HAS READ ALL OF THE PROVISIONS OF THIS AGREEMENT, HAS HAD FULL OPPORTUNITY TO SEEK COUNSEL, UNDERSTANDS IT IN FULL AND HAS RECEIVED A COPY THEREOF. THIS AGREEMENT WILL BE POSTED ON THE GKG WEBSITE.