

# CIRCUIT ID<sup>TM</sup>

## **Partner Agreement**

*Legal Partner Agreement*

**Last updated on:** August 2015

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CAREFULLY READ THESE TERMS AND CONDITIONS, AS THEY FORM A LEGAL BINDING AGREEMENT BETWEEN PARTNER AND CIRCUIT ID™. ONLY AN AUTHORIZED REPRESENTATIVE OF PARTNER MAY EXECUTE THIS AGREEMENT. IF PARTNER DOES NOT ACCEPT THESE TERMS AND CONDITIONS, CLOSE THE BROWSER AND DO NOT PROCEED WITH MARKETING THE CIRCUIT ID™ PRODUCTS.

By accepting this Agreement between Partner (defined below) and Circuit ID™, a California Corporation – by clicking “Finish” – Partner agrees to be bound by all of the terms and conditions of (i) this Partner Agreement with Circuit ID™ and (ii) Circuit ID™’s Privacy Policy (collectively, this “Agreement”).

The Privacy Policy is expressly incorporated herein by reference and a current copy is located at <https://www.circuitid.com/legal.html>.

If Partner does not agree to the terms in this Agreement, then (i) Partner must close browser, (ii) Partner must cease use of any Circuit ID™ services including online management portal, (iii) Partner does not have Circuit ID™’s permission to market any of the Circuit ID™ Products.

If you are an individual entering into this Agreement on behalf of Partner, you represent and warrant that you have the authority to bind Partner to this Agreement. If you do not have such authority, neither you nor Partner may accept this Agreement or market or use the Services.

Definitions. For the purposes of this Partner Agreement, the following definitions apply:

“Access Information” means information that alone or together with other information, can provide access to any portion of Partner’s Account, if Circuit ID™ has enabled an interface to such Account, including but not limited to Partner’s Account number, login names, passwords, credit card or other financial information, security questions and their respective answers, and any other similar information. For the avoidance of doubt, Partner’s Access Information will include any such information for each of its Users.

“Account” means any account for Partner created with Circuit ID™ in connection with this Agreement that relates to the marketing of Circuit ID™ Products by Partner and its Users.

“Partner” means the individual or Entity on whose behalf this Agreement is accepted.

“Partner Commission” means the amount calculated in accordance with Exhibit A hereto.

“Partner ID” means the unique ID provided by Circuit ID™ to Partner, or as otherwise specified by Circuit ID™ from time to time, that Partner may provide to a prospective End User. The Partner ID may be in the form of a code, an encrypted link or another form determined by Circuit ID™.

“Data” means all data submitted by Users to Circuit ID™ in connection with this Agreement, including all Access Information, content, material, IP and similar addresses, Account information and Account-related settings.

“End User” means a purchaser or subscriber of Circuit ID™ Products.

“Entity” means a company, corporation, partnership, association, trust, unincorporated organization, government or political subdivision or any other legal entity. “Circuit ID™” means Circuit ID™.

“Circuit ID™ Products” means the Circuit ID™ products and services identified on Exhibit A attached hereto and incorporated herein by reference.

“Triggering Contract” means the agreement between Circuit ID™ and an End User under which Circuit ID™ agrees to provide the End User with Circuit ID™ Products, and which is accompanied by a valid Partner ID during the agreement execution process.

“User” means any of Partner’s employees, representatives, consultants or independent contractors to whom Partner authorizes to assist it in carrying out its duties under this Agreement.

1. GRANT OF RIGHTS; ACCOUNT INFORMATION.

1.1 Grant of Rights. Circuit ID™ hereby grants to Partner, subject to the terms and conditions of this Agreement, a nonexclusive, revocable, personal, non-transferable and non-assignable right to market the then currently marketed version(s) of the Circuit ID™ Products to prospective End Users. A breach of this Agreement by any User will be deemed to be a breach by Partner.

1.2 Account Information and Ownership. Partner will maintain accurate Account information by providing updates to Circuit ID™ promptly, but no later than three (3) business days, when any Account information requires change, including any relevant account contact information. Failure by Partner, for any reason, to respond within three (3) business days to any inquiries made by Circuit ID™ to determine the validity of information provided by Partner will constitute a material breach of this Agreement. Partner acknowledges and agrees, and expressly consents, that in the event of any dispute regarding access to or legal ownership of any Circuit ID™ account, including Partner's Account or an End User account, Circuit ID™ will resolve such dispute in its sole discretion. In addition, in the event of such a dispute, Circuit ID™ may immediately suspend, alter or terminate any relevant account, including Partner's Account or an End User account, or any portion thereof. Partner will reimburse Circuit ID™ for any legal and other fees incurred with respect to any dispute regarding control or ownership of Partner's Account or Data. Partner acknowledges and agrees that (i) the legal owner of all Data on Partner's Account is Partner, the counterparty to this Agreement, and not any individual User, including any Account contact registered with Circuit ID™, regardless of any administrative designation (e.g., "Administrator," "Billing Contact," "Owner," etc.); and (ii) Circuit ID™ may request any documentation it requires to establish ownership and rights to Partner's Account and any related Data. Partner will designate an individual within its respective organization to serve as the primary contact with the other party for all matters under this Agreement. Partner may change such designee by providing notice of such change to Circuit ID™.

1.3 Account Security and Activity. Partner acknowledges and agrees that Partner is solely responsible for (i) maintaining the confidentiality and security of Partner's Access Information, and (ii) all activities that occur in connection with Partner's Account, whether initiated by Partner, by others on Partner's behalf or by any other means. Partner will notify Circuit ID™ immediately of any unauthorized use of Partner's Account, Access Information, Partner ID or any other actual or potential breach of security. Partner acknowledges and agrees that Circuit ID™ will not be liable for any loss that Partner may incur as a result of any party using Partner's Access Information, either with or without Partner's knowledge and/or authorization. Partner further

agrees that Partner may be held liable for losses incurred by Circuit ID™ or another party due to any party using Partner's Access Information. Circuit ID™ strongly recommends that Partner and its Users keep Access Information in a secure location, take precautions to prevent others from accessing it and change it when necessary to maintain its confidentiality and security. Circuit ID™ specifically disclaims all liability for any activity in Partner's Account, whether authorized by Partner or not.

1.4 Circuit ID™ shall own all rights, title and interest (including patent rights, copyrights, trade secret rights, mask work rights, trademark rights, database rights and all other rights of any sort throughout the world) whether or not patentable, works of authorship, mask works, designations, designs, know-how, ideas and information made or conceived or reduced to practice, in whole or in part, by Partner or an End User in connection with the development of Circuit ID™ products and/or services. No monetary payment or any sort of compensation will be provided outside Partner commission as stated in Exhibit A.

1.5 Partner agrees to be fully liable and bound to the Master Services Agreement located at <http://www.circuitid.com/legal.html> for all products and/or services that Partner uses his/her own billing information to purchase products and/or services on an End User's account.

## 2. PARTNER REPRESENTATIONS AND DUTIES.

### 2.1 Obligations. The Partner will:

- a) act in good faith and use its best efforts to promote the Circuit ID™ Products to prospective End Users;
- b) at all times conduct its business in a manner that will reflect favorably on the Circuit ID™ Products and/or Services and on the good name and reputation of Circuit ID™;
- c) not solicit competitor's products and services to existing Circuit ID™ customers;
- d) (i) not send SPAM or unsolicited e-mails and communications (whether personalized or bulk, personal or

commercial) related to this agreement, Circuit ID™ or any Circuit ID™ Product and (ii) comply with all applicable laws;

e) not make any promises or representations or give any warranties or guarantees in respect of the Circuit ID™ Products except as expressly authorized by Circuit ID™ in writing;

f) not have any authority to enter into any agreement with a prospective End User on behalf of Circuit ID™;

g) not enter into any agreement with Circuit ID™ on behalf of any prospective or existing End User, including a Triggering Contract;

h) accept reasonable sales and marketing direction from Circuit ID™ in the marketing of Circuit ID™ Products under this Agreement; and

i) provide Circuit ID™ reasonable access to any and all of Partner's records and documentation regarding the subject matter of this Agreement.

### 3. CIRCUIT ID™ DUTIES.

3.1 Materials. Circuit ID™ may from time to time, at its discretion, provide marketing materials in electronic or other medium to Partner to advertise new Circuit ID™ offerings.

3.2 No Obligation to prospective End Users. Circuit ID™ will not be required to supply any Circuit ID™ Product to any prospective End User or to enter into any Triggering Contract.

### 4. RELATIONSHIP; NO AGENCY.

4.1 Neither party will have any authority, and neither party will represent that it has any authority, to assume or create any obligation, express or implied, on behalf of the other party. Each party is an independent contractor, and this Agreement will not be construed as creating a partnership, joint venture, agency, or employment relationship between the parties or as creating any other form of legal association that would impose liability on one party for the act or failure to act of the other party. Partner is neither a distributor nor an agent of Circuit ID™. The Circuit ID™ Products will be available to an

End User only through separate agreement between Circuit ID™ and the End User. For the avoidance of doubt, Partner acknowledges and agrees that any Triggering Contract will be between Circuit ID™ and the relevant End User, with Circuit ID™ having full contract approval and final pricing control. Partner will not in any way modify or alter the terms of the Triggering Contract directly or indirectly, orally or in writing.

4.2 Circuit ID at its sole discretion may grant Partner use of titles such as "Regional Sales Director." However, such use does not create a partnership, joint venture, agency, or employment relationship between the parties or as creating any other form of legal association that would impose liability on one party for the act or failure to act of the other party as stated here within.

### 5. PAYMENT

5.1 Partner Commission. Circuit ID™ will pay Partner a Partner Commission in accordance with this Agreement, including this Section and Exhibit A, as Circuit ID™ may amend from time to time. The method of payment will be determined by Circuit ID™, at its discretion. However, notwithstanding anything herein to the contrary, Circuit ID™ will have no obligation to make any payment to Partner until and unless Partner provides to Circuit ID™ a fully completed and executed Form W-9 (or substitute form if so required by applicable law).

5.2 Additional Terms. In each instance, taxes imposed in connection with the payment of any Partner Commission will be the responsibility of Partner. Partner Commissions payable hereunder will be made in US Dollars. Partner Commissions are paid monthly and only when Partner's account has reached a minimum Partner Commission due of \$100.00. Accounts with a balance of less than the minimum will not be paid that month. The unpaid balance will roll over to the subsequent month until such account has accrued a minimum of \$100.00 or until Partner contacts Circuit ID™ for payment.

5.3 Exclusions. Partner will not be entitled to receive, and Circuit ID™ is not obligated to pay,

any Partner Commissions in any of the following cases: (i) the relevant End User is an existing or former customer of Circuit ID™; (ii) Circuit ID™ comes into initial contact with the relevant End User through means other than through the execution of a Triggering Contract; (iii) the relevant End User has already been identified by Circuit ID™ in its internal sales and marketing processes as an entity that Circuit ID™ reasonably believes to be a potential candidate for the acquisition of Circuit ID™ Products at any point within the three (3) months prior to the execution of the relevant Triggering Contract; (iv) the relevant Triggering Contract is executed by or for the direct use and benefit of Partner, any of its Partners or, if an individual, for Partner's employer or its Partners; (v) the relevant End User did not provide the Partner ID during the Triggering Contract execution process, or (vi) Partner is contract is terminated for breach of contract.

## 6. CONFIDENTIAL INFORMATION.

6.1 Confidential Information. "Confidential Information" is all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Partner's Confidential Information will include Partner's Data. Circuit ID™'s Confidential Information will include the Circuit ID™ Products (and any portion thereof), the terms and conditions of this Agreement and all related forms and support records (written or electronic), as well as Circuit ID™'s business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by Circuit ID™. Confidential Information will not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

6.2 Protection of Confidential Information. Except as otherwise permitted by this Agreement or in writing by the Disclosing Party, the Receiving Party will use the same degree of care that it uses to

protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement.

6.3 Use and Disclosure by Circuit ID™. Notwithstanding the foregoing, Circuit ID™ may use or disclose Partner's Data (a) as expressly permitted in writing by Partner, (b) as expressly provided in this Agreement, including (i) in accordance with the Privacy Policy (as if such Data were "Information" as defined under the Privacy Policy), and (ii) to access such Data to provide Circuit ID™'s services or prevent or address service or technical problems.

6.4 Authorization of Use and Disclosure. Partner expressly authorizes, acknowledges and agrees that Partner's Data is subject to the Privacy Policy and that Circuit ID™ may act in accordance with the Privacy Policy.

## 7. WARRANTY; DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY.

7.1 Except as expressly stated in this Agreement, Circuit ID™ makes no warranties whatsoever to Partner, express or implied, with regard to the products, services, support or any materials supplied to Partner, including any secure links containing an Partner ID, or any matter relating to this Agreement, and Circuit ID™ specifically disclaims all warranties and conditions of merchantability and fitness for a particular purpose.

7.2 Except for breaches of confidentiality or pursuant to a party's indemnity obligation hereunder (i) neither party's liability in connection with the Circuit ID™ Products, this Agreement, or any other matter relating to this Agreement will exceed the amounts paid and/or payable to Partner under this Agreement, and (ii) in no event will either party be liable to the other party for any special, consequential, or incidental damages, whether based on breach of contract, fundamental breach, tort (including negligence), product liability, or otherwise, and whether or not the other party has been advised of the possibility of such damage.

7.3 The parties have entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties set forth in this Agreement and the same form an essential basis of the bargain between the parties.

8. INDEMNITY. Partner agrees to fully defend, indemnify and hold harmless Circuit ID™ from any claims or damages (including reasonable attorney's fees and costs) made against Circuit ID™, its officers, directors, employees and agents, as a result of negligence, misrepresentation, act or omission on the part of Partner or otherwise resulting from this Agreement.

9. TERM AND TERMINATION.

9.1 This Agreement will continue in full force and effect unless terminated as provided herein.

9.2 Circuit ID™ may terminate this Agreement upon notice to Partner. Partner may terminate this Agreement upon sixty (60) day notice to Circuit ID™.

9.3 Upon the termination of this Agreement, Partner will promptly return to Circuit ID™ or (at such other Circuit ID™'s request) destroy all copies of all materials supplied by Circuit ID™ pursuant to this Agreement, including without limitation all Confidential Information, Circuit ID™ Products, customer lists, lists of sales and marketing personnel, marketing and promotional brochures and sales kits, or certify to Circuit ID™ in writing, over the signature of a duly authorized representative of such party, that it has done so. The preamble, definitions, and Sections 6, 7, 8, 9 and 11 will survive termination of this Agreement for any reason. Termination of this Agreement by either Circuit ID™ or Partner in accordance with the terms of this Agreement will be without prejudice to the terminating party's other rights and remedies under or in connection with this Agreement, both at law and in equity.

10. PROMOTION AND PUBLICITY; USE OF MARKS. Notwithstanding the foregoing or anything herein to the contrary, Circuit ID™ is permitted during the Term of this Agreement to reference Partner on Circuit ID™'s website and in its marketing materials as a partner of Circuit ID™. Except for the foregoing, neither party may issue a news release, public announcement, advertisement or any other form of publicity concerning this Agreement without the express prior written consent of

the other party, in each instance. The marketing materials provided to Partner may only be used solely in connection with Partner's obligations hereunder and may not be used to market any non-Circuit ID™ Product. Further, upon notice from Circuit ID™ at its discretion, Partner must immediately cease and desist using Circuit ID™ materials, brand or trade name or marks. Partner will not bid for or otherwise use (including the use by any third party) any keyword or search term for use in search engines, linking or re-directing that (i) incorporates any trade name or mark, or any variant or misspelling thereof, of Circuit ID™, or (ii) infringes the intellectual property rights of any party. Partner will not use any Circuit ID™ trade name or mark (i) in its domain name or URL, meta tags, hidden text or source code or (ii) in connection with any SPAM or unsolicited emails (whether personalized or bulk, personal or commercial) or any unlawful purpose.

11. MISCELLANEOUS.

11.1 Modification. Circuit ID™ may update, amend, modify or supplement the terms and conditions of this agreement from time to time by giving You notice. Such changes will take effect immediately. Any such modification may be made without the consent of any third party beneficiaries of this Agreement. You can review the most current version of this Agreement at any time at: (<http://www.circuitid.com/legal.html>). **Your continued use of Your Account and/or the Services after Circuit ID™ posts a new version of the Agreement online will be conclusively deemed to be acceptance by You of any such new version.**

11.2 Governing Law; Jurisdiction; Forum; Attorneys' Fees. This Agreement will be governed by and construed in accordance with the laws of the State of California without regard to its conflicts of laws or its principles. Any claim or suit arising out of or relating to this Agreement will be brought in any court of competent jurisdiction located in the County and State of New York. In any action to enforce this Agreement, including, without limitation,

any action by Circuit ID™ for the recovery of fees due hereunder, Partner will pay Circuit ID™ reasonable attorneys' fees and costs in connection with such action if Circuit ID™ prevails in such action. Partner agrees to waive the right to trial by jury with respect to any proceeding related to or arising out of this Agreement.

11.3 Written Communications and Notice. Partner accepts that communication from Circuit ID™ may be electronic. Circuit ID™ may contact Partner by e-mail or provide Partner with information by posting notices on Circuit ID™'s website or to Partner's Account. Partner agrees to this electronic means of communication and Partner acknowledges that all contracts, notices, information and other communications that Circuit ID™ provides to Partner electronically are acceptable and effective as notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder will be in writing and will be deemed to have been given (i) immediately upon personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email or, if from Circuit ID™ to Partner, online posting. Notices to Partner may be addressed by Circuit ID™ to any e-mail address, postal address or facsimile number registered with Circuit ID™, or through means of online posting to Partner's Account (if applicable). Notices to Circuit ID™ that are not expressly authorized by administrative control panel under this Agreement will be mailed to Circuit ID™, 1055 West 7th Street, 33rd Floor, Penthouse, Los Angeles, CA 90017, Attn: Legal Department, or such other address as designated on Circuit ID™'s website from time to time.

11.4 Age and Capacity. Partner represents and warrants that the individual executing this Agreement on Partner's behalf, and any person to whom Partner grants access to its Account, has reached the older of (i) the age of eighteen and (ii) the age of majority in any such individual's jurisdiction, and that Partner is not subject to a limitation on its ability to enter into this Agreement.

11.5 Severability. If any one or more of the provisions contained herein will, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any of the other provisions of this Agreement, and this Agreement will be construed as

if such provision(s) had never been contained herein, provided that such provision(s) will be curtailed, limited, or eliminated only to the extent necessary to remove the invalidity, illegality, or unenforceability.

11.6 Waiver. No waiver by Circuit ID™ of any breach by Partner of any of the provisions of this Agreement will be deemed a waiver of any preceding or succeeding breach of this Agreement. No such waiver will be effective unless it is in writing signed by the parties hereto, and then only to the extent expressly set forth in such writing.

11.7 Assignment. No benefit or duty of Partner under this Agreement will, without the consent of Circuit ID™, be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to do so will be void. Circuit ID™ may assign this Agreement without Partner's consent and without notice.

11.8 Force Majeure. Circuit ID™ will not be in default or liable for any loss or damage resulting from delays in performance or from failure to perform or comply with the terms of the Agreement due to any causes beyond its reasonable control, which causes include but are not limited to Act of God or the public enemy; riots and insurrections; war; terrorism; fire; strikes and other labor difficulties (whether or not the party is in a position to concede to such demands); embargoes; judicial action; lack of or inability to obtain export permits or approvals, necessary labor, materials, energy, components or machinery; acts of civil or military authorities.

11.9 Entire Agreement. This Agreement constitutes the entire understanding of the parties with respect to the subject matter of this Agreement, and supersedes all prior or contemporaneous representations, understandings, proposals, and agreements. Continued performance of the activities contemplated by this Agreement constitutes continued acceptance of this Agreement, including any and all modified terms. These terms will bind and benefit the successors and heirs of the parties.



## EXHIBIT A

### 1. CIRCUIT ID™ PRODUCTS

Only those Circuit ID™ products and services, including, but not limited to, Circuit ID™'s United Communications Solution & Apps, Design & Development, Managed Hosting and Devices, as may be modified by Circuit ID™ from time to time, that Circuit ID™ makes available for online purchases solely to End Users through its public-facing website.

### 2. PARTNER COMMISSIONS

Upon signing up with Circuit ID™, a Partner must choose between receiving One-Time Partner Commissions or Recurring Partner Commissions with respect to Triggering Contracts. This choice is irrevocable and may not be changed. Partner Commission options and requirements are described below.

If Circuit ID™ enters into a Triggering Contract with an End User that provided Partner's ID to Circuit ID™ during Circuit ID™'s Triggering Contract execution process, then Circuit ID™ will pay Partner an Partner Commission agreed upon by both parties of the Aggregate Net Monthly Recurring Fee for each calendar month, including the month in which the Triggering Contract is signed up, where the Triggering Contract remains an active Circuit ID™ account as of the end of the last day of that respective calendar month. The initial Partner Commission will not be considered earned until the Triggering Contract has completed two (2) complete calendar months of the term of the Triggering Contract (the "Initial Period"). "Aggregate Net Monthly Recurring Fee" means the gross fees that Circuit ID™, in accordance with generally accepted accounting principles and regular, established Circuit ID™ practices, recognizes under a Triggering Contract on a recurring monthly basis for Circuit ID™ Products, less Circuit ID™'s costs for services fees, sales tax and gross receipts tax amounts imposed by any competent taxing authority. For the avoidance of doubt, (i) non-recurring fees paid to Circuit ID™ are expressly excluded from this calculation and (ii) Circuit ID™ will not be obligated to pay a Partner Commission with respect to a Triggering Contract that is terminated prior to the end of the respective Initial Period.

Circuit ID™'s obligation to pay the Partner Commissions to Partner under the Recurring Partner Commission option is contingent upon Circuit ID™ receiving the applicable monthly recurring fee from the End User with respect to all months of the Initial Period. Circuit ID™ will pay Partner Commissions that are due within thirty (30) days after the Initial Period, and subsequently within 30 days of the completion of each corresponding month where the fee is actually received by Circuit ID™.

### 3. FEES FOR NON-GENERALLY AVAILABLE PRODUCTS AND SERVICES

For those Circuit ID™ products and services which cannot be licensed directly through Circuit ID™'s website but which require the intercession of a Circuit ID™-sales representative, Circuit ID™ will offer customized pricing and fee arrangements on a case by case basis, at its discretion.