

# REBRANDING AGREEMENT

This Rebranding Agreement (the "Agreement") is made between

You, hereinafter referred to as the "Rebranding Partner" or "Licensee", together with any company or other business entity you are representing

Location:

Represented by

and

First International Shareware Holdings (Hereafter referred to as "Licensor", "Xilisoft", "we", "us", "our")

Location:

Represented by

Subject to the terms and conditions of this Agreement the parties agree as follows:

## 1. TERM SHEET

General Terms	
Effective Date:	
Period:	24 (twenty-four) months
Notice:	60 days notice
Custom Branded Software List:	

## 2. RECITALS

The Licensor is in the business of developing and offering the software and the software update/upgrade. Rebranding Partner is in the business of offering hosting services on the World Wide Web portion of Internet and wishes to provide the software for its customers under its own brand (the "Custom Brand").

The parties therefore agree that Licensor grants the non-exclusive, non-transferable and limited license (the "License") to the Rebranding Partner to substitute the Licensor's brand in Licensor's software products with its own Custom Brand (Rebranding Partner). Rebranding Partner therefore shall become an independent distributor of Licensor on its Web Server under its own name and the Licensor's software shall be used as Custom Branded software.

The parties agree to become bound by the terms and conditions of this Agreement. The Rebranding Partner also agrees to ensure that anyone who uses the Custom Branded software on their computer also abides the Agreement.

### **3. DEFINITIONS**

Under this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

“Software” means the software the Licensor provides.

“Custom Brand” means a name, trademark, corporate identity, logo and marketing concept of the Rebranding Partner.

“Custom Branded Software” means the Software which incorporates the Licensor’s technology with both Licensor’s brand and Custom Brand.

“End User” means each customer, using or otherwise accessing the interface of Software or Custom Branded Software.

“License Key” means a series of letters and digits that help to authorize the Rebranding Partner or the End User.

“Order” means an order placed by the Rebranding Partner with Licensor for the provision of the Custom Branded Software.

### **4. CUSTOM BRANDED SOFTWARE**

The setup of the Custom Branded Software requires Rebranding Partner to supply their Custom Brand, Custom Buy Links, Custom Product Name, and any other materials for the Custom Branded Software. No other alterations would be made to the Custom Branded Software by the Licensor, including but not limited to removing/adding any feature modules and changing layout/color, otherwise the Licensor reserves the right to change the setup fee to make the Custom Branded Software. The Custom Brand is designed by Rebranding Partner, or can be designed for Rebranding Partner by Licensor’s design team for a fee. Rebranding Partner will receive Custom Branded software, which the Licensor will customize based on the Rebranding Partner’s Custom Brand and within the Licensor’s technology requirements.

The Licensor is under no obligation to provide any other service that is not set out in the Agreement.

The Licensor reserves the right to alter, improve or otherwise modify the software without notice or liability from Rebranding Partner for such modifications. In the event of any planned changes requiring the Rebranding Partner to make any changes on their part, the Rebranding Partner will be notified by email via the email address that the Licensor has on record, in advance of such planned changes.

The Licensor may take any action necessary to address any problems with the Custom Branded Software without any prior notice to Rebranding Partner. If such faults or remedial action results in an interruption to the provision of the Rebranding Partner, the Licensor will use its best and reasonable endeavors to inform Rebranding Partner by email, via the email address that the Licensor has on record.

- 1) The Licensor warrants that he owns the sole copyright of his work and that no part of the work or documentation including texts, pictures, images, videos and sound sequences as well as software used such as compilers, tools, codec, etc. infringes or violates upon any right of another person or entity, including, but not limited to, copyright of his work or part(s) of his work he is obliged to state this fact in written form to Rebranding Partner.
- 2) All copyright for material used for the work including texts, pictures, images, video and sound sequences must be made available to Rebranding Partner upon request at any time. In case of usage of third part material Rebranding Partner is entitled to request the release certificates of these third parties.

## 5. TERMS OF USE

Rebranding Partner undertakes not to sell, rent, lease, translate, adapt, vary, modify, decompile, disassemble, reverse engineer, create derivative works of, modify, sub-license, or loan the Custom Branded Software other than as expressly authorized by this Agreement. Rebranding Partner further undertakes not to reproduce or distribute License Keys by **third parties** (including but not limited to downloading sites, online shops, and any other affiliates/resellers/distributors) except under the express and written permission of the Licensor. The Parties also agree the Rebranding Partner has no Bundle/Bundling or OEM rights under this Agreement.

Rebranding Partner further undertakes to distribute the software application updates from its online stores, forums and other sites subordinated to the Rebranding Partner.

For the full length of this agreement Rebranding Partner alone is entitled to the following rights:

- a) Box production , Pre-press runs
- b) Free design and packaging of the work for promotion and selling
- c) Public demonstration of the work

Rebranding Partner shall have the right to distribute the title of Custom Branded Software on or via CD-ROM, DVD-ROM, ESD, and all other media and forms of distribution that exist now or may become available during the term of the Agreement.

The licensor warrants the **LIMITED ESD Distribution Rights** to the Custom Branded Software in the Territory.

***"Limited ESD Distribution Rights"*** means the **NONEXCLUSIVE** right to **Distribute ESD** versions of the **Product Worldwide**.

Licensor will send Rebranding Partner the License Keys, Rebranding Partner will send the purchasers the email with the download link and License Key. If the customer of

Rebranding Partner asks for refund within the 30-days period, Rebranding Partner will give Licensor the License Key to be put on their blacklist.

Licensor agrees to continue to provide activations of the Custom Branded Software, under the same rules of Licensor's activation procedures for Licensor's products, should this agreement ever expire or terminate.

## **6. SUPPORT AND MAINTENANCE**

Rebranding Partner will provide support services to the customers of Custom Branded Software.

The Licensor will communicate a relevant maintenance, technology and other issues related to Custom Branded Software directly to Rebranding Partner, who is responsible to communicate this information to its customers.

Licensor will allow Rebranding Partner to use any and all support text and tools on the Licensor's website to describe and support the Custom Branded Software. Rebranding Partner will replace any references to Xilisoft with its Custom Brand.

## **7. REBRANDING LICENSE FEES**

The Rebranding Partner shall pay all the applicable setup fees for the use of Custom Branded Software. The Licensor reserves the right to charge for a fee if Rebranding Partner requests to make any alterations to the Custom Branded Software (including but not limited to removing or adding any modules, or changing the layout or design of the Custom Branded Software), and also the right to change the price it charges for Licensor's services if Rebranding Partner requests more alternations or services for the Custom Branded Software.

## **8. COMMISSION**

Rebranding Partner shall pay to Licensor 50% of the net revenues for each unit (including but not limited to ESD, bundle, box with CD/DVD, subscription) distributed by Rebranding Partner to its End Users after signed this agreement.

## **9. PAYMENT AND ACCOUNTING**

All royalty and other payments shall be made in U.S. Dollars every month from the day when Rebranding Partner starts to sell the Custom Branded Software.

All taxes and duties that are attributable to the transactions contemplated under this Agreement shall be for the account of and paid by Licensor, except for taxes due upon the income of Rebranding Partner. If Rebranding Partner is required by any governmental authority to deduct or withhold taxes on royalties payable to Licensor, Rebranding

Partner shall have the right to deduct and pay such governmental authority such taxes so withheld. The amount of any withheld tax shall be at the full rate provided by United States tax law unless the Licensor provides a properly executed Form W-8BEN showing its entitlement to a reduction in the withholding rate pursuant to a United States income tax treaty.

#### **10. OVERDUE CHARGES AND ATTORNEYS' FEE**

Any unpaid amounts under this Agreement shall be subject to one-half percent (0.5%) per day overdue charge until paid in full. In the event either party shall be successful in any suit for damages for any breach of this Agreement, including non-payment of amounts due, or to enforce this Agreement, such party shall be entitled to recover its reasonable legal fees and expenses incurred in any such action in addition to any other relief granted.

#### **11. ADVERTISING**

Rebranding Partner will be responsible and liable for an advertising and promotion of their Custom Branded Software. Rebranding Partner agrees to advertise within local regulations. In particular Rebranding Partner agrees to abide to market the Custom Branded Software with clear and non-deceptive methods.

Rebranding Partner represents and warrants that the material used on the Custom Branded Software will not infringe upon, violate the intellectual property rights or moral rights of any person, or are morally objectionable in any form. The Licensor can request copies of a marketing material to confirm the integrity of Rebranding Partner's marketing.

Licensor will allow Rebranding Partner to use any and all text and descriptions on the Licensor's website to market the Custom Branded Software. Rebranding Partner will replace any references to Xilisoft with its Custom Brand.

#### **12. PRICING**

The Parties agrees that the Custom Branded Software have the same unit prices for new customers as the original prices (not discounted prices) on the Licensor's website (See **ANNEX 1**). In any instance, Rebranding Partner will not reduce the unit price for promotion except under the express and written permission of the Licensor. The Licensor has the right to request copies of the order materials from Rebranding Partner to confirm the justifiability of each order of the Custom Branded Software.

#### **13. CUSTOMER DATA**

The Licensor and Rebranding Partner will jointly own the Custom Branded Software's customer data, collected by the Licensor through Licensing Script, while both adhering to the

terms of the Privacy Policy. Neither party will sell, rent or trade customer data to any third party unless otherwise agreed to in writing.

#### **14. CONFIDENTIALITY**

Both parties agree to keep confidential and not disclose the terms of this Agreement without prior written consent. The obligations of this section shall not restrict any disclosure by either party pursuant to any applicable law, or by order of any court, government agency and shall not apply to the information that is independently developed by the disclosing party or is publicly known. A public announcements related to this Agreement shall be coordinated by the Licensor and Rebranding Partner.

#### **15. TERM AND TERMINATION**

This agreement is effective for a period of two years from the date of execution, subject to the termination provisions below and to the cancelling and refund provisions of this Agreement.

Either party upon at least 2 months written notice in the form of an email (or letter) may terminate this Agreement.

Rebranding Partner may request the termination of this Agreement by written notice in the form of an email (or letter), 2 months in advance. The following shall apply to such situation:

- If Rebranding Partner wishes to terminate during the course of a first half-year period, the Agreement will end 2 month after Licensor receives the Rebranding Partner's written notice, there is no refund and the Rebranding Partner shall pay all the unpaid portions of the subscription fees for the first 6 month subscription term.

- If Rebranding Partner wishes to terminate during the course of a subsequent half-year period, the Agreement will end 2 months after the Licensor receives Rebranding Partner's written notice and Licensor will refund the prorated amounts paid for the unexpired portion of the subscription term.

The Licensor reserves the right to terminate this Agreement immediately in the following circumstances:

- If Rebranding Partner fails to pay fees due under this Agreement;
- If Rebranding Partner is in breach of this Agreement;
- If each title of Custom Branded Software sells no more than 90 units per quarter by Rebranding Partner, except for the first quarter in the period of the Agreement;
- If Rebranding Partner declares bankruptcy or becomes insolvent;
- If Rebranding Partner is unable to pay its debts; or
- If Rebranding Partner has a receiver, manager, administrator or administrative receiver appointed over all or a substantial part of its undertakings, assets, or income; has passed a resolution for its winding up; or is the subject of a petition presented to a court for its winding up or for an administration order.

If this Agreement is terminated by Licensor for any reason other than the Rebranding Partner's breach of the Agreement, Licensor will refund the prorated amounts paid for the unexpired portion of the subscription term.

On termination Rebranding Partner must immediately stop selling and distributing any copies of Custom Branded Software anywhere in any form, and should return the remaining license keys to the Licensor.

All provisions of this Agreement relating to confidentiality, warranties, software activations, intellectual property rights, limitation and exclusion of liability, indemnification obligations and payment obligations will survive the termination or expiration of the Agreement.

## **16. NON COMPETE**

During the term of this Agreement, Rebranding Partner or its employees will not specifically target any affiliates, resellers or customers hosted on the Licensor Technology. At all times Rebranding Partner will not engage in any activity harmful to the Licensor, any of Licensor's brands, partners, and affiliates or through misleading or deceptive advertising.

As mentioned in item 13 above, Licensor will have access to Custom Branded Software's customer data, collected through Licensing Script. During the term of this Agreement, the Licensor or its employees will not specifically target any Rebranding Partner affiliates, resellers or customers, through emails or any other method of contact to promote the Licensor's products.

## **17. ASSIGNMENT**

Both parties agree not to assign, transfer, or otherwise dispose of this Agreement or any of its rights, benefits, or interests under this Agreement without written consent. No assignment of this Agreement shall operate to discharge the assignor of any duty or obligations hereunder without prior written consent.

**IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.**

**FIRST INTERNATIONAL SHAREWARE  
HOLDINGS LTD.**

By:

Name:

Title:

**REBRANDING PARTNER INC.**

By:

Name:

Title:

## ANNEX 1 – COMPENSATION

### 1. ROYALTY RATE

Licensee shall owe Licensor royalties equal to:

- 50% of Net revenues for ESD sales
- 50% of Net revenues for Box sales
- 50% of Net revenues for Subscription fees
- 50% of Net revenues for others

### 2. SRP





## ANNEX 2 - MATERIALS FOR CUSTOM REBRAND SOFTWARE

1. Custom Branded Software List:
2. Custom Buy Links:
3. Website:
4. Support Page:
5. Support Email Address:
6. Online Help:
7. Others:

