

# Brainstorm Internet, Inc. Partner Contract Terms and Conditions

## STATEMENT OF UNDERSTANDING

1. Brainstorm Internet is a service provider of communication services, internet services and hardware products (collectively known as the "Services and Products").
2. Brainstorm Internet sells its Services and Products through independent agents/businesses such as The Partner.
3. Brainstorm Internet desires to expand its base of customers for the Services and Products. Brainstorm Internet shall provide certain support and resources for The Partner as described in this agreement.
4. The Partner desires to market the Services in accordance with the terms and conditions set forth in this agreement.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties agree as follows:

1. **Definitions:** As used in this Agreement, the following terms shall have the meanings set forth below:
  - a. **Commission:** means the commission that Brainstorm Internet pays The Partner pursuant to paragraph 9 and Exhibit 1.
  - b. **Base Commission:** The commission rate, usually described as a percentage of the "Net Revenue" or "Monthly Recurring Revenue" for the specific Service or Services purchased by the Customer at the time the Service or Services are installed and billed.
  - c. **Net Revenue or Monthly Recurring Revenue:** The Commissionable Revenue for services purchased and paid by Customer. Net Revenue is not equal to the actual billable or invoice amount charged to the Customer for the Service or Services purchased.
  - e. **Customer:** means a purchaser of Services who becomes a Brainstorm Internet customer as a result of The Partner activities taken in accordance with the terms of this Agreement. Limitations on Customers available for solicitation are contained in Paragraph 10.
  - f. **Grant of Agency:** Brainstorm Internet hereby grants to the Agent non-exclusive right to market the Services on behalf of Brainstorm Internet pursuant to the terms and conditions in this Agreement. Agent is allowed to set up dealers, resellers, distributors and master distributors/resellers under this agreement. The Partner is an independent contractor as further described in this Agreement.
3. **Term:** This agreement shall be effective as of the date signed by an authorized Officer of Brainstorm Internet and shall continue for an initial term of one (1) year. This agreement shall automatically renew for successive one (1) year terms unless either party provides notice at least thirty (30) days prior to the expiration of the term. Termination may also occur as described in this Agreement.
4. **Territory:**

**Schedule of Brainstorm Internet services available for sale by The Partner:** The services that The Partner is authorized to market and offer for sale to customers are described in Schedule A. The Partner recognizes that the list of available Services varies from state to state and will change from time to time during the term hereof. Agent shall at all times be responsible for verifying with Brainstorm Internet the availability, pricing and all essential terms and conditions of the Services in all territories before offering such Services for sale.

5. **Duties of Agent:** Agent shall use his/her best efforts to market the Services. "Best Efforts" will, at minimum, constitute the following:
  - a. **Identifying "Qualified Customers":** conducting an active search to identify customers appropriate for the Services available from Brainstorm Internet;
  - b. **Education:** educating those qualifying customers as to the benefits and advantages of using Services through Brainstorm Internet;
  - c. **Introduction to Brainstorm Internet sales staff:** introducing Brainstorm Internet sales staff to Qualified customers;
  - d. **Securing Orders:** obtaining commitments and orders for Services according to the guidelines and systems established by Brainstorm Internet for approval by Brainstorm Internet;
  - e. **Communications with Brainstorm Internet:** The Partner will communicate to Brainstorm Internet any material customer information, including complaints, concerns or questions relative to the Services.
  - f. **Training/Certification:** Brainstorm Internet will provide training monthly and/or require training and certification for The Partner staff. The Partner will, at its own expense, attend such courses within a reasonable time. Requirement of such training and certification shall be at the sole discretion of Brainstorm Internet and Company.
  - g. **Miscellaneous:** obtaining signed Letters of Agency or Authorization from the customer when required by law or Company and other documentation from customers as may be necessary to transfer ownership of accounts.
  - h. **Representations and Warranties by The Partner:** The Partner shall not make any representations or warranties related to Services except those set forth in the most recent materials published and supplied by Brainstorm Internet from time to time or as expressly permitted by Brainstorm Internet.
6. **Quotations:** The Partner shall deliver quotations for Services to prospective customers as prepared, issued and approved by Brainstorm Internet. Any and all negotiations with customers relating to price, terms and/or conditions of sale shall be conducted solely by Brainstorm Internet or with the express prior approval as to the terms that The Partner shall negotiate with Customer.
7. **Orders:** Subagent shall obtain the required signature(s) of the customer on all required Brainstorm Internet approved forms and documents. All service agreements and service orders require the written counter-signature of an authorized representative of Brainstorm Internet, and are subject to approval by Company. Brainstorm Internet reserves the right, in its sole discretion to cancel or reject any service agreement or service order for any reason at any time.
8. **Compensation to The Partner:** During the term of this Agreement and provided that The Partner is not in default of any obligations under this Agreement, The Partner shall receive a portion of the Monthly Recurring Revenue on VOIP products and a 1 time Non-reoccurring commissions fee for bandwidth products actually received by Brainstorm Internet for the Services provided to the Customer. The Commission payable to The Partner is described in Exhibit 1 attached to this agreement. The requirements to maintain the designated Brainstorm Internet Business Status with Brainstorm Internet

are also contained in Exhibit 1. With respect to Services sold by The Partner that are not covered on Exhibit 1 the following shall apply.

- e. **Non-standard Services:** Commissions for non-standard Services or for standard Services sold at non-standard or published prices will be determined by Brainstorm Internet on a case-by-case basis and will be confirmed in writing and made a part of this agreement when signed by both The Partner and Brainstorm Internet.
- f. **Services for Carriers other than Brainstorm Internet:** In the event that Customer requires or Brainstorm Internet does not have the specific service(s) required by Customer, or Brainstorm Internet can not provide the Service(s) in the Customers location, Brainstorm Internet may, provide pricing from an alternative carrier. Commissions on such activities will be agreed to on an individual case basis and the Compensation to The Partner shall be confirmed separately in writing.
- g. **Compensation upon termination of this agreement:** The Partner shall receive compensation only for Services sold by The Partner prior to the expiration or termination of this Agreement. Compensation shall be paid for the period of 90 days, provided that the customer remains in good standing and is not in default of any payment or other provisions of such service agreement. In the event Customer does not pay that Brainstorm Internet for any reason, no commission will be due to The Partner or Agent.
- h. **Month to Month:** Month-to-month sales that result in commissions of less than \$50 per month will be accrued until commissions earned exceed \$50.
- i. **Third Parties:** Brainstorm Internet shall have no obligation to make any payment to The Partner or any other party in connection with the sale of Services by a third person other than The Partner
- j. **Prior Brainstorm Internet Customers:** No payments will be made for orders obtained by The Partner from Brainstorm Internet customers who have terminated its relationship with Brainstorm Internet within ninety (90) days of submission by Agent of a customer order, even if Brainstorm Internet accepts the order.

**9. Calculation of Monthly Recurring or Net Revenue:** Commissionable Revenue will be based on Monthly Recurring Charges for voice services, line or "seat" charges, and any overage charges for voice services. Brainstorm Internet will make best efforts to verify and pay commissions due The Partner upon last day of month following the calendar month of receipt of payment from Customer. Brainstorm Internet is only liable to The Partner for Commissions on sums actually paid by the Customer and received by Brainstorm Internet. During any period of suspension or termination by of any Service(s) to any customer, commission payments to The Partner for such Service(s) shall be suspended or terminated.

**10. Change of compensation:** Brainstorm Internet reserves the right to revise any compensation or commission schedules for any or all Services at any time during the term hereof by giving thirty (30) days advance written notice to The Partner. Commission revisions will apply only to Agreements with customers signed after the effective date of such revisions and shall be effective for payments due The Partner after 30 days notice.

- 11. Restricted Accounts:** Agent acknowledges that certain customers, prospects or accounts ("Restricted Accounts") will be solicited only in accordance with the following:
- a. Prior written approval for any state, county, municipality, city or governmental body.
  - b. No Solicitation for accounts designated as non credit worthy by Brainstorm Internet.
  - c. No solicitation shall occur of existing Brainstorm Internet customers and Prospects as set forth in Schedule identified by this paragraph and as will be updated from time to

time.

- 12. Non-Interference:** During the period of this Agreement and for Three (3) years after its termination, Agent agrees not to interfere with, or solicit business for any Brainstorm Internet competitor from, any Brainstorm Internet customer, whether or not referred by Agent to Brainstorm Internet hereunder. Nothing herein, however, shall prevent Agent from soliciting any Brainstorm Internet customer who has terminated, or is about to terminate, his/her relationship with Brainstorm Internet as a result of dissatisfaction with Brainstorm Internet's Service and has expressed said dissatisfaction in writing to Brainstorm Internet.
- 13. Independent Contractor.** It is expressly acknowledged and agreed that The Partner is an independent contractor, and not an employee, of Brainstorm Internet. Nothing in this Agreement is intended or shall be construed to create an employer/employee relationship between the parties (nor between Brainstorm Internet and any employee, agent, , The Partner or affiliate of The Partner), nor to constitute the parties one another's s or joint ventures. The specific means, manner and methods by which The Partner accomplishes the furnishing of the sales and marketing activities described in this agreement are in The Partner discretion and will not be prescribed or determined by Brainstorm Internet. Except where Brainstorm Internet determines that The Partner physical presence at Brainstorm Internet facilities and/or interaction with specific Brainstorm Internet personnel is necessary to the provision of the services, the locations at which and hours during which The Partner renders its services are in The Partner discretion and will not be prescribed or determined by Brainstorm Internet. Neither The Partner nor any of The Partner personnel will be eligible to participate in any group insurance or other fringe benefit plans available to Brainstorm Internet employees. Brainstorm Internet will not withhold from any consideration payable to The Partner under this Agreement any amounts for income taxes, unemployment insurance, social security taxes, workers' compensation taxes or insurance, or any other customary employee payroll withholdings. All payments of such taxes and other amounts as may be required by law will be the sole responsibility of The Partner, and The Partner will indemnify and defend Brainstorm Internet against any claims for payment thereof. The Partner represents and warrants that The Partner tax identification number which appears at the end of this Agreement is true and correct, and understands that Brainstorm Internet will report to the United States Internal Revenue Service all consideration paid to The Partner, as may be required by law. Agent shall have no authority to make any commitments or sign any contracts on behalf of Brainstorm Internet. Upon expiration of the Agreement for any reason, Brainstorm Internet shall have no further liability to Agent except with respect to commissions due and payable to Agent as provided in this Agreement.
- 14. Insurance.** The Partner will obtain and maintain throughout the term of this Agreement insurance coverage(s) appropriate to similarly situated reasonably prudent Independent Contractors including workers compensation and travel related insurance coverage as required by the laws of the state(s) in which The Partner conducts business in accordance with this agreement.
- 15. Confidentiality:** The terms and conditions of this Agreement and information and materials provided by Brainstorm Internet pursuant to this Agreement, including but not limited to, customer lists, price sheets, price quotes, information regarding various carriers facilities, information relating to customers or prospective customers of Brainstorm Internet, marketing and business plans and projections, are disclosed in confidence, solely by use for The Partner to carry out the terms and conditions of this Agreement. The Partner shall keep such information secret and confidential and shall not release or disclose it to any other party during the term of this Agreement or after its termination.
- 16. Limitation of Liability:** Brainstorm Internet shall not be liable to Agent in any way for any losses, including but not limited to, loss of commissions and loss of business due to mistakes, omissions, interruptions, delays, errors, defects or disruptions otherwise occurring in the

course of furnishing the Services.

**17. Indemnification:** The Partner shall indemnify Brainstorm Internet against, and hold Brainstorm Internet harmless from all liabilities, claims, demands, costs, and judgments (including reasonable attorneys' fees) and causes of action arising out of or in connection with this Agreement caused by the failure of The Partner to abide by the terms and conditions of this Agreement or by the negligence or willful misconduct of The Partner or of The Partner employees, agents or invitees.

**18. Termination:** This agreement may, at the option of Brainstorm Internet be terminated upon the occurrence of one or more of the following events:  
Material breach by The Partner of any of the terms conditions or covenants herein.

- A. Filing by The Partner of a petition for protection under any bankruptcy statute, or any assignment by either party for the benefit of its creditors, or appointment of a receiver or trustee in bankruptcy for either party.
- B. Upon the occurrence of one or more Events of Default, the non-defaulting party shall give the defaulting party written notice specifying such default. If the defaulting party fails to cure the default within five (5) days after its receipt of such notice, the non-defaulting party may terminate this Agreement immediately and without further notice.
- C. Upon termination of this Agreement all rights of the Agent shall cease, except as otherwise specifically set forth herein, but such termination shall not prejudice any obligation or claim which Brainstorm Internet or Agent may have against each other. Upon termination, the Agent shall immediately discontinue the use, if any, of all trade secrets, trademarks or other materials owned by Brainstorm Internet and used by Agent regarding the sales of Service, remove all signs in offices and outlets used by Agent, and promptly return to Brainstorm Internet (i) all property or materials provided to Agent by Brainstorm Internet; (ii) all lists and other writings containing information of existing customers, or prospective customers, the identities of which were supplied by Agent to Brainstorm Internet, and all files and information on each existing and/or prospective customer; and (iii) all copies of the foregoing. Upon termination, Brainstorm Internet shall retain all information concerning customers on its network at the time of termination.

**19. Force Majeure:** Neither party shall be liable for delays in performing, or failure to perform this Agreement or any obligations hereunder, which are directly attributable to causes beyond the reasonable control of the party so delayed or failing to perform, including but not limited to, acts of God, fires, strikes, war, failure or non-delivery by a common carrier, equipment provider, supplier or acts or intervention of any governmental authority.

**20. Notices:** All notices or other communications permitted or required hereunder shall be in writing and mailed by certified mail, return receipt requested, or sent by receipted overnight courier addressed as follows:

**To Brainstorm Internet:**

640 Main Ave Suite 201, Durango Colorado 81301

**To The Partner:**

Notices shall be deemed given five (5) days after deposit in the US Mail postage prepaid, if sent by certified mail or when received or receipt is refused if sent by receipted overnight courier.

**21. Assignment/Survivability:** Agent may not assign his/her rights or obligations under this Agreement without the prior written consent of Brainstorm Internet. Any such assignment to which Brainstorm Internet consents or any assignment by Brainstorm Internet shall inure to the benefit of and be binding upon the Assignee. Notwithstanding the foregoing, this Agreement and the rights and obligations of the parties hereunder shall survive any change of ownership or control of Brainstorm Internet, whether by statutory merger, consolidation or otherwise.

**22. Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of Colorado.

**23. Headings:** The paragraph headings used in this Agreement are for purposes of convenience-only and shall not be deemed a part of this Agreement for purposes of construction or interpretation.

**24. Severability:** In the event that any term or provision of this Agreement shall be deemed or rendered void or unenforceable, the remainder of this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken.

**25. Waiver:** No failure or delay by any party in exercising any right hereof shall operate as a waiver.

**26. Modifications must be in writing, etc.** This Agreement, including its exhibits and schedules, sets forth the parties' entire agreement and understanding with respect to the subject matter hereof and supersedes any and all prior agreements between the parties. Terms of all schedules and exhibits hereto are a part of this Agreement. Neither party has made any promises, representations, warranties, or other undertakings not stated herein. This Agreement may be amended or modified only by means of a Brainstorm Internet Contract Amendment Form, duly executed by both parties. No such document will be binding on Brainstorm Internet unless signed by Brainstorm Internet authorized executive. Rights and remedies set forth in any provision hereof is, unless otherwise expressly stated, in extension and not in limitation of those set forth in other provisions. Neither party shall under any circumstances be held to have orally or impliedly waived any right or remedy available under this Agreement.

**EXHIBIT ONE**  
**Brainstorm Internet Partner**

**Agent Commissions**

Subject to the terms and provisions of this Agreement, Brainstorm Internet will pay to The Partner or Agent a commission based on a sliding scale (which will be a Percent of the Monthly Recurring Revenue (MRC)) with VOIP related services. Brainstorm Internet will also pay Non-reoccurring Revenue (NRC) for data in form of a one-time payment of the first month service. This is for the duration of The Partner's contact term and as long as the Agent remains active with Brainstorm Internet under the terms of this agreement.

In the event that Brainstorm Internet does not receive payment of Monthly Recurring Revenue for an account that The Partner is an Agent, it shall have no obligation to pay commissions under this Agreement. If at a later time, Commissions are resumed or paid, The Partner shall receive its share of the Commissions. Brainstorm Internet will provide monthly training on new marketing and products we release. By becoming an Agent / Reseller for BSI you have the opportunity to co-brand literature, co-op marketing in our markets and access to all media we have for direct sales. All agents will have access to direct easy ordering process and will receive training on our ordering procedures. It is up to the Agent to keep track of all sales to reconcile to your monthly BSI statement we will provide at the close of business every month. By using our ordering system we will update you on order delivery time and status of the account. We require from all Agents a report every month of the customers that were referred to help us keep track of all sales.

THIS AGREEMENT is effective as of \_\_\_\_\_ 2006 between: \_\_\_\_\_ with its principal place of business at \_\_\_\_\_.

And

**Brainstorm Internet Inc.** (Brainstorm Internet), a Colorado corporation, having its principal place of business at 640 main Ave suite 201, Durango Colorado 81301

IN WITNESS WHEREOF, the parties hereto have set their hands as of the date first written above.

Brainstorm Internet:

The Partner:

By: \_\_\_\_\_  
Name: Zachary T. Rupas

By: \_\_\_\_\_  
Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

TAX ID# \_\_\_\_\_