AFFILIATE AGREEMENT

THIS AFFILIATE AGREEMENT (this “**Agreement**”), dated as of [date] (the “**Effective Date**”), is entered into by and between Hammer Technologies USA LLC (“**Company**”), having a place of business at 623 West Lake St, #105 Chicago IL 60661 and between and [name of Affiliate partner] (“**Affiliate Partner**”) with an office at [address]. Company and the Affiliate Partner are sometimes individually referred to as a “**Party**” and collectively, as the “**Parties**.”

WHEREAS,Companyprovides a SaaS-based collaborative performance and productivity software platform that enables operations efficiency, quality, and visibility to project stakeholders. (the “**Company Platform**”).

WHEREAS, Company desires to engage Affiliate Partner to introduce to Company sales leads for customers that might be interested in the Company Platform (“**Customers**”), and Affiliate Partner desires to accept such engagement.

NOW, THEREFORE, in consideration of the premises set forth above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Engagement.
   1. Company hereby engages Affiliate Partner, and Affiliate Partner hereby accepts such engagement, to act as Company’s non-exclusive Affiliate partner with respect to sales Affiliates for the Company Platform to Customers during the Term, solely in accordance with the terms and conditions of this Agreement. Company may in its sole discretion engage any other person or company to provide Affiliates or to license the Company Platform without restriction.

Affiliate Partner shall introduce Company to Customers, and perform such other responsibilities as reasonably directed by Company, including forwarding sales literature and assist in providing demonstrations.

* 1. The prices, terms and conditions under which Company shall offer or license the Company Platform shall be determined by Company in its sole discretion. Company shall have the authority to control all discussions and negotiations regarding any proposed or actual offering or licensing of Company Platform. Nothing in this Agreement shall obligate Company to actually offer or license the Company Platform or consummate any transaction with any Customer.
  2. Affiliate Partner shall defend, indemnify and hold harmless Company, and any of its directors, officers or shareholders, against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorney fees, fees and the costs of enforcing any right to indemnification under this Agreement, incurred by Company, arising out or resulting from any claim of a third party related to (i) a breach by Affiliate Partner of its obligations under this Agreement and (ii) Affiliate Partner’s negligence or willful misconduct.

1. Compensation.

(a) In consideration for the services rendered by Affiliate Partner hereunder, Company shall pay to Affiliate Partner compensation (as modified from time to time, “**Affiliate Partner’s Fee**”) on the licenses granted by Company to each Customer introduced by Affiliate Partner to Company hereunder in accordance with Exhibit A. Company reserves the right to periodically change the commission rate on new Affiliates covered by this Agreement, upon prior written notification thereof to Affiliate Partner. Such new rate shall be applicable to all new Affiliates received thirty (30) days after the date of such notification.

(b) Company shall pay the Affiliate Partner’s Fee no later than thirty (30) days after the end of the quarter in which Company receives actual unconditional payment of the corresponding Purchase Price from Customer.

(c) If in Company’s sole discretion it has to adjust, or refund to any Customer, any fees or other amounts paid to Company by such Customer (the “**Refunded Amount**”), then Company shall have the right to subtract the Refunded Amount from any future payments of the Affiliate Partner’s Fees.

(d) If more than one (1) Affiliate partner or party introduces Company to a Customer, Company shall decide which Affiliate partner is entitled to the related Affiliate Partner’s Fee. Any such decision shall be in Company’s sole discretion and final.

(e) Unless otherwise agreed in writing by Company, Affiliate Partner shall bear any and all costs or expenses incurred by Affiliate Partner to perform its obligation under this Agreement, including, but not limited to, vehicle insurance, travel expenses and telephone expenses.

1. Independent Contractor. Affiliate Partner is an independent contractor of Company, and this Agreement shall not be construed to create any association, partnership, joint venture, employee or agency relationship between Affiliate Partner and Company for any purpose. Affiliate Partner has no authority (and shall not hold itself out as having authority) to bind Company and Affiliate Partner shall not make any agreements or representations on Company’s behalf without Company’s prior written consent. Without limiting the above, Affiliate Partner will not be eligible to participate in any vacation, group medical or life insurance, disability, profit sharing or retirement benefits, or any other fringe benefits or benefit plans offered by Company to its employees, and Company will not be responsible for withholding or paying any income, payroll, Social Security or other federal, state or local taxes, making any insurance contributions, including unemployment or disability, or obtaining worker’s compensation insurance on Affiliate Partner’s behalf. Affiliate Partner shall be responsible for, and shall indemnify Company against, all such taxes or contributions, including penalties and interest. Affiliate Partner shall be fully responsible for any person employed or engaged by Affiliate Partner in connection with the performance of Affiliate Partner’s obligations hereunder and shall indemnify Company against any claims made by or on behalf of any such employees or contractors.
2. Confidentiality. All non-public, confidential, or proprietary information of Company, including, but not limited to, specifications, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Company to Affiliate Partner, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as “confidential,” in connection with this Agreement, as well as the terms and conditions and the existence of this Agreement is confidential, solely for the use in connection with the performance of Affiliate Partner’s obligations under this Agreement and may not be disclosed to any third party or copied unless authorized by Company in writing. Upon termination of this Agreement or Company’s request, Affiliate Partner shall promptly return all documents and other materials received from Company. Company shall be entitled to injunctive relief for any violation of this Section 4. This section shall not apply to information that is: (a) in the public domain; (b) known to the Affiliate Partner at the time of disclosure; or (c) rightfully obtained by the Affiliate Partner on a non-confidential basis from a third party.
3. Publicity and Announcements. Affiliate Partner shall not (orally or in writing) publicly disclose or issue any press or make any other public statement, or otherwise communicate with the media, concerning the existence of this Agreement or the subject matter hereof, without the prior written approval of Company (which shall not be unreasonably withheld or delayed).
4. Term and Termination.
   1. The term of this Agreement commences on the date of this Agreement and continues for a period of twelve (12) months, unless and until earlier terminated as provided under this Agreement (the “**Initial Term**”). Upon expiration of the Initial Term, this Agreement shall renew for additional successive twelve (12) month terms if both Parties agree to renew in writing at least thirty (30) days prior to the end of the then-current term, or unless and until earlier terminated as provided under this Agreement (each a “**Renewal Term**” and together with the Initial Term, the “**Term**”).
   2. Either Party may terminate this Agreement for any reason by providing the other Party with no less than thirty (30) days’ prior written notice.
   3. If the Agreement expires or is terminated for any reason other than a breach by Affiliate Partner, then the Affiliate Partner’s Fees that were earned prior to the effective date of expiration or termination shall continue to be paid in accordance with the terms of this Agreement.
5. Limitation of Liability. EXCEPT FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR A BREACH OF PARAGRAPH 4, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER ENTITY FOR LOST PROFITS, LOST BUSINESS OPPORTUNITIES OR COSTS OF PROCUREMENT OF SUBSTITUTE SERVICES BY ANYONE OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF WARRANTY, BREACH OF CONTRACT, REPUDIATION OF CONTRACT, NEGLIGENCE OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL COMPANY’S TOTAL LIABILITY TO AFFILIATE PARTNER FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE COMPANY PLATFORM (WHETHER IN CONTRACT, TORT INCLUDING NEGLIGENCE, WARRANTY, OR OTHERWISE), EXCEED THE AMOUNT OF AFFILIATE PARTNER’S FEES PAID DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE CLAIM. THE ESSENTIAL PURPOSE OF THIS PROVISION IS TO LIMIT THE POTENTIAL LIABILITY OF THE PARTIES ARISING OUT OF THIS AGREEMENT WHETHER FOR BREACH OF CONTRACT, NEGLIGENCE, OR OTHERWISE. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.
6. Miscellaneous.
   1. All notices, requests, consents, claims, demands, waivers, summons and other legal process, and other similar types of communications hereunder (each, a “**Notice**”) must be in writing and addressed to the relevant Party at the address set forth above (or to such other address that may be designated by the receiving Party from time to time in accordance with this Section 8(a)). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). A Notice is effective only (i) upon receipt by the receiving Party and (ii) if the Party giving the Notice has complied with the requirements of this Section 8(a).
   2. This Agreement and all matters arising out of or relating to this Agreement shall be governed by, and construed in accordance with, the laws of the State of California, without regard to any conflict of law principles. Any legal suit, action or proceeding arising out of or relating to this Agreement must be instituted in the federal or state courts located in Los Angeles County, California. **Each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.** Service of process, summons, notice or other document by certified mail in accordance with Section 8(a) will be effective service of process for any suit, action, or other proceeding brought in any such court. The Party prevailing in any controversy, claim or dispute arising out of or relating to this Agreement shall be entitled, in addition to any other relief that may be granted, to be awarded costs, including its reasonable attorneys’ fees and court costs.
   3. This Agreement, and each of the terms and provisions hereof, may only be amended, modified, waived, or supplemented by an agreement in writing signed by each Party.
   4. Affiliate Partner shall not assign this Agreement or assign, transfer, delegate, or subcontract any of its rights or obligations under this Agreement without the prior written consent of Company. Any purported assignment, transfer, delegation or subcontract in violation of this Section shall be null and void. Company may at any time assign, transfer, or subcontract any or all of its rights or obligations under this Agreement without Affiliate Partner’s prior written consent. This Agreement will inure to the benefit of and be binding upon each of the Parties and each of their respective permitted successors and permitted assigns.
   5. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together constitutes one and the same agreement. Delivery of an executed counterpart of this Agreement electronically shall be effective as delivery of an original executed counterpart of this Agreement.
   6. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
   7. This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.
   8. The Parties do not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns.
   9. Sections 1(c), 4, 6(c), 7 and 8 shall survive the expiration or termination of this Agreement for any reason.

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

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| --- | --- |
|  | **Company**  **Hammer Technologies USA LLC** |
|  | By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:  Title: |
|  | **Affiliate Partner**  **[name of Affiliate partner]** |
|  | By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:  Title: |

**Exhibit A**

**Affiliate Partner’s Fee**

The Affiliate Partner’s Fee equals the commission rate of 20% multiplied by the Subscription Fees for the Company Platform licensed during the first thirty six (36) months after such Customer has become a customer.

For purposes of this Agreement, “Subscription Fees” means the net subscription fees (exclusive of sales tax and after applying any discounts, credits, rebates, adjustments, and shipping, handling, insurance and related transportation costs) for the right to access and use the Company Platform sold by Company to Customer introduced by Affiliate Partner hereunder during the first thirty six (36) months after such Customer has become a customer.