



## REFERRAL AGENT AGREEMENT

This sets forth the Agreement made as of this \_\_\_\_ day of \_\_\_\_\_, 2006, by and between ASCIO Wireless LLC. ("ASCIO Wireless"), a Massachusetts company with offices at 153 Washington Street, Walpole, MA 02032 and \_\_\_\_\_ ("Referral Agent"), a \_\_\_\_\_ with offices at \_\_\_\_\_. Social Sec. or tax identification number of \_\_\_\_\_.

**1. Appointment and Acceptance.** Subject to the terms and conditions of this Agreement, ASCIO Wireless authorizes Referral Agent to serve as a non-exclusive independent contractor to refer to ASCIO Wireless potential customers for ASCIO Wireless's various telecommunications products and services utilizing the Sales Referral Form attached as Schedule A in the territory identified in the attached Schedule B (the "Territory"). Referral Agent accepts such appointment and represents to ASCIO Wireless that it has all licenses, consents, approvals, authorizations, qualifications, and/or registrations necessary to lawfully procure customers for ASCIO Wireless in the Territory pursuant to the terms of this Agreement, and that it is not prohibited in any way from entering into or performing this Agreement by any other agreement, commitment, law, or regulation. Referral Agent agrees to use its best efforts to refer potential customers to ASCIO Wireless, and expressly acknowledges that it is granted no right, privilege, or authority to offer for sale any of ASCIO Wireless's products or services outside of the Territory.

**2. Term and Termination.**

(a) This Agreement shall commence on the date set forth at the beginning and shall continue in full force and effect until terminated (i) by either party on thirty (30) days prior written notice to the other or (ii) as provided below.

(b) If either party breaches any provision of this Agreement, the other party may give written notice of such breach. If the breach is not cured within ten (10) days of receipt of the notice, the non-breaching party may immediately terminate this Agreement without liability for such termination.

(c) ASCIO Wireless shall have the right to terminate this Agreement immediately upon written notice to Referral Agent in the event of (i) any misrepresentation made by Referral Agent to any customer or prospective customer relating to ASCIO Wireless's products or services; (ii) any fraudulent activity on the part of Referral Agent; or (iii) any violation of Section 5 of this Agreement by Referral Agent.

(d) Upon any termination of this Agreement, Referral Agent shall immediately return to ASCIO Wireless the originals and all copies of any information, documents, and other materials provided to it by ASCIO Wireless.

**3. Submission and Acceptance of Referrals.**

All referrals from Referral Agent to ASCIO Wireless must be submitted to ASCIO Wireless via a properly completed Sales Referral Form (see Schedule A) in order to be eligible for commissions under this Agreement. All referrals submitted and any orders related thereto shall be subject to the written acceptance of ASCIO Wireless in its sole discretion before any orders shall become final and binding. Referral Agent shall have no signatory authority to bind ASCIO Wireless to any agreement, and ASCIO Wireless reserves the right to reject any referral submitted by Referral Agent. Referral Agent shall advise all customers and prospective customers of the restrictions described in this paragraph. All services shall be provided by ASCIO Wireless solely pursuant to written agreements prepared and supplied by ASCIO Wireless and executed by the customer and ASCIO Wireless. All billing shall be rendered directly to the customer by ASCIO Wireless.

**4. Pricing/Terms of Service.**

The prices and terms and conditions of sale of ASCIO Wireless's products and services shall be set by ASCIO Wireless. ASCIO Wireless expressly reserves the right to change the prices, terms, and conditions of sale, and/or to expand, reduce, or modify the products and services it offers, at any time without prior notice to Referral Agent. Referral Agent agrees that it shall not impose any direct or indirect charge on customers relating to ASCIO Wireless's products and services without ASCIO Wireless's prior written consent. Referral Agent further agrees that it will make no warranties or representations about ASCIO Wireless's products and services other than those specifically authorized by ASCIO Wireless.

**5. Customers.**

All customers accepted by ASCIO Wireless under this Agreement shall be and shall remain customers of ASCIO Wireless and not of Referral Agent. Referral Agent shall not terminate, attempt to terminate, or otherwise interfere in any way with ASCIO Wireless's relationship with any such customer without the prior written consent of ASCIO Wireless. If Referral Agent violates this prohibition during the term of this Agreement, ASCIO Wireless may terminate this Agreement pursuant to Section 2(c) above. If Referral Agent violates this prohibition after this Agreement has been terminated; any obligation of ASCIO Wireless to pay residual commissions to Referral Agent shall immediately and irrevocably terminate.

**6. Commissions.**

(a) Referral Agent shall be paid a flat five percent (5%) commission on the terms and conditions set forth below within thirty (30) days following the month in which customers procured hereunder are invoiced by ASCIO Wireless. Commission payments shall be based on "Net Billed Revenue" (as defined below) and may be accrued until such time as the total payment exceeds \$100.00.

(b) Except in cases where this Agreement is terminated by ASCIO Wireless in accordance with Section 2(b) or 2(c), Referral Agent shall be entitled to receive commissions for products and services provided by ASCIO Wireless to customers procured hereunder for as long as such customers remain customers of ASCIO Wireless. In the event of termination pursuant to Section 2(b) or 2(c), ASCIO Wireless shall cease to pay commissions to Referral Agent as of the date of termination.

(c) Referral Agent's commissions shall initially be based on ASCIO Wireless revenue for customer usage for the applicable month, net of customer deductions, credits, applicable taxes or surcharges, other governmental assessments, and any one-time or recurring fees ("Net Billed Revenue"). A commission report will be provided to Referral Agent with each commission payment and will (i) reflect those customers procured by Referral Agent for ASCIO Wireless during the term of this Agreement and (ii) reflect ASCIO Wireless revenue for such customer usage for the applicable month.

(d) Referral Agent shall not be entitled to commissions on customer invoices which remain unpaid for greater than ninety (90) days from the date of the invoice. Accordingly, ASCIO Wireless shall have the right to deduct or offset from Referral Agent's commission payments on an ongoing basis, and to retain such deductions or offsets for ASCIO Wireless's own account, any commission payments previously made to Referral Agent relating to invoices which are not paid by the customer within this stated ninety (90) day period.

(e) The commission percentage set forth in subparagraph (a) above is valid only on standard ASCIO Wireless products and services. Commissions on non-standard products and services will be determined on a case-by-case basis.

(f) The commission percentage set forth in subparagraph (a) above is subject to change at ASCIO Wireless's discretion. Any changes shall not retroactively affect any obligation incurred prior to the date of such change. ASCIO Wireless shall notify Referral Agent at least ninety (90) days prior to any such change.

**7. Withholding.** Referral Agent shall provide ASCIO Wireless with a completed IRS form W-9 indicative of Referral Agent's tax status. Failure to do so will require ASCIO Wireless to withhold twenty percent (20%) of all commissions exceeding \$600.00 in any calendar year.

**8. Independent Contractors.** The relationship created by this Agreement shall be that of independent contractor and not of employer and employee or partners. As independent contractors, the parties shall not have, or hold themselves out as having, the power or authority to bind or create liability for the other by their intentional or negligent acts. Referral Agent shall be solely responsible for and shall pay all its expenses incurred in connection with the performance of its duties under this Agreement and shall not be entitled to receive any fringe benefits or other benefits of any kind provided by ASCIO Wireless to its employees. Referral Agent shall be solely responsible for the payment of all taxes (including estimated taxes) payable with respect to commissions earned by it pursuant to this Agreement.

**9. Employment of Additional Personnel.** Referral Agent may hire salesmen or sub-agents to assist Referral Agent in its performance of this Agreement. All such personnel shall be employees of Referral Agent, and their compensation, payroll taxes, withholding, and direction and control shall be the sole responsibility of Referral Agent. In the capacity as employer, Referral Agent shall act individually and not as Agent for ASCIO Wireless.

**10. Confidentiality.** Referral Agent shall keep confidential all information disclosed by ASCIO Wireless to Referral Agent for purposes of this Agreement. All such information shall remain the sole and exclusive property of ASCIO Wireless, and it may not be directly or indirectly disseminated to any third party without the prior written consent of ASCIO Wireless.

**11. Intellectual Property/Approval of Advertising.** Referral Agent agrees that ASCIO Wireless is the exclusive owner of all trademarks and tradenames relating to the products and services provided by ASCIO Wireless. Referral Agent may use such trademarks and tradenames only for the purpose of advertising and promoting ASCIO Wireless's products and services, and Referral Agent shall acquire no proprietary or other rights with respect to such tradenames, trademarks or other intellectual property of ASCIO Wireless. All advertising by Referral Agent regarding ASCIO Wireless's products and services is subject to ASCIO Wireless's prior written approval.

**12. Indemnification and Limitation of Liability.**

(a) Each party shall indemnify, defend, and hold harmless the other from and against any and all claims, losses, damages, costs, and expenses (including reasonable attorney's fees) arising out of or alleged to have been caused by their respective negligent, willful, or unauthorized acts, omissions, or misrepresentations.

(b) In no event shall either party be liable to the other or to any customer procured by Referral Agent for any indirect, special, incidental, or consequential damages for any reason whatsoever, nor shall ASCIO Wireless be liable for damages in excess of those which could be awarded to a customer of ASCIO Wireless under ASCIO Wireless's tariffs.

(c) ASCIO Wireless's entire liability for any failure of its products or services shall be limited to that set forth in its tariffs as filed from time to time with the appropriate state or federal regulatory agency.

**13. Non-Solicitation.**

(a) Referral Agent agrees that, for a period of time equal to the greater of (i) as long as Referral Agent is entitled to receive commissions pursuant to this Agreement or (ii) eighteen (18) months following any termination of this Agreement, Referral Agent shall not and Referral Agent shall cause its employees and sub-agents not to solicit in competition with ASCIO Wireless any person, business or other entity which is a ASCIO Wireless customer or which has been a customer of ASCIO Wireless during the one year period immediately preceding termination of this Agreement or induce or attempt to persuade any ASCIO Wireless employee to terminate his or her employment relationship to enter into other employment.

(b) Except as expressly permitted by this Agreement, Referral Agent shall not, during the term of this Agreement or at any time following termination of this Agreement, make use of any list of ASCIO Wireless customers or otherwise divulge any trade secrets or other confidential information of ASCIO Wireless.

(c) The following provision shall apply to the interpretation and enforcement of subparagraphs (a) and (b) above: (i) since other remedies cannot fully compensate ASCIO Wireless for a violation, ASCIO Wireless shall be entitled, in addition to any other remedies or relief available to it, to injunctive relief to prevent a violation or halt a continuing violation of the covenants set forth in subparagraphs (a) and (b) above; (ii) if, in any action before a court or agency empowered to enforce this Agreement, any covenant is found to be unenforceable, such covenant shall be deemed modified to the extent necessary to make it enforceable; and (iii) if ASCIO Wireless must commence litigation to enforce its rights under this Section 13, it may also recover its reasonable attorney's fees from Referral Agent in connection with the litigation.

(d) In the event of a violation by Referral Agent of any of the prohibitions set forth in subparagraphs (a) and (b) above, ASCIO Wireless may immediately and irrevocably terminate the payment of any and all commissions that may be payable to Referral Agent hereunder, regardless of whether ASCIO Wireless seeks or obtains injunctive relief pursuant to subparagraph 13(c).

**14. Insurance.**

Throughout the term of this Agreement, Agent shall maintain the following minimum amounts of insurance with an insurance carrier having an A.M. Best rating of "A" or better;

(a) Workers' compensation, with employer's liability of \$500,000 per accident, \$500,000 per employee, and \$500,000 aggregate, with a waiver of subrogation in favor of ASCIO Wireless;

(b) Commercial general liability with \$1,000,000 per occurrence, and \$1,000,000 general aggregate with ASCIO Wireless named as an additional insured; and

(c) Automobile liability for all owned, hired, and non-owned automobiles with \$1,000,000 combined single limit with ASCIO Wireless named as an additional insured.

**15. Assignment.**

(a) The rights and obligations of ASCIO Wireless under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of ASCIO Wireless.

(b) Referral Agent acknowledges that the services to be rendered by Referral Agent are unique and personal. Accordingly, Referral Agent may not assign any of its rights under this Agreement nor delegate any of its duties or obligations under this Agreement without the prior written consent of ASCIO Wireless.

**16. Notices.** All notices under this Agreement shall be in writing and shall be given by personal delivery, or by registered or certified mail or overnight courier, return receipt requested, to the addresses set forth at the beginning of this Agreement (or another address designated by notice), and shall be deemed given upon receipt.

**17. Modification of Agreement.** This Agreement, including its Schedule(s), may only be amended, modified, or supplemented by a separate written document duly executed by authorized representatives of both parties.

**18. Waiver.** No term or provision of this Agreement shall be waived, and no breach or default excused, unless such waiver or excuse is in writing and signed by the party to which it is attributed. No consent by a party to, or waiver of, a breach or default, by the other, whether expressed or implied, shall constitute a consent to or waiver of any subsequent breach or default.

**19. Partial Invalidity.** If any provision of this Agreement shall be held to be invalid or unenforceable, the validity or enforceability of the remaining provisions shall not in any way be affected or impaired thereby, but rather this Agreement shall be construed as if not containing the invalid or unenforceable provision. However, if such provision is an essential element of this Agreement, the parties shall promptly attempt to negotiate a substitute therefor.

**20. Governing Law/Jurisdiction/Venue.** The laws of the State of Massachusetts shall govern the interpretation, enforcement, and validity of this Agreement. Any action or proceeding involving this Agreement shall be commenced and maintained only in the courts of the State of Massachusetts through arbitration. Venue for any action or proceeding so commenced shall be in Norfolk County. Each party agrees to be subject to the personal jurisdiction of the courts of Massachusetts.

**21. Rules of Construction.** No rule of construction requiring interpretation against the draftsman shall apply in the interpretation of this Agreement.

**22. Survival.** Any obligations of the parties relating to monies owed, as well as any provisions of this Agreement relating to confidentiality, intellectual property, indemnification, limitation of liability, non-solicitation, interference with ASCIO Wireless's relationship with its customers, and commencement of legal proceedings shall survive any termination of this Agreement.

**23. Entire Agreement.** This Agreement, together with the attached Schedule(s), represents the entire agreement of the parties with respect to the subject matter hereof and supersedes all other agreements, written or oral, between the parties with respect to its subject matter.

The assent of the parties to this Agreement as of the date set forth at the beginning is established by the following signatures of their duly authorized representatives.

**Referral Agent**

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ASCIO Wireless LLC**

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Schedule A**

**SALES REFERRAL FORM**

Customer Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Project Type: \_\_\_\_\_

Point to Point: \_\_\_\_\_

Point to Multipoint: \_\_\_\_\_

Wireless LAN: \_\_\_\_\_

Appointment Date and Time: \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Referral Agent**

**ASCIO Wireless, LLC.**

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

## **Schedule B**

### **Territory**

Referral Agent is authorized to refer customers to ASCIO Wireless which Referral Agent has solicited on behalf of ASCIO Wireless anywhere in the United States where ASCIO Wireless is authorized and certified to do business, subject to the following restrictions:

- Section 3 of this Agreement (“Submission and Acceptance of Referrals”) governs all solicitation and procurement of customers by Referral Agent.
- Customers must be located in the contiguous forty-eight (48) states.
- Referral Agent may not solicit any of the following without the prior written consent of ASCIO Wireless:
  - Information Providers
  - Internet Service Providers
  - Licensed Interexchange Carriers
  - Licensed Competitive Local Exchange Carriers
  - Independent Local Exchange Carriers
  - Local Exchange Carriers
  - Colleges and Universities
  - Government Agencies
  - Affinity Groups and Associations
  - Residential Customers

Initials \_\_\_\_\_  
Initials \_\_\_\_\_