

StormSource Software, Inc.
Online Software Systems
Commissioned Affiliate Agreement

These Terms and Conditions explain the contractual Agreement (the "Agreement") between _____, the Affiliate Applicant (hereinafter referred to as "Affiliate"), and StormSource Software, Inc. ("StormSource"). This Agreement is effective as of the date you first submit the online Affiliate application to act as a marketing affiliate for STORMSOURCE online software systems ("STORMSOURCE SOFTWARE SYSTEMS") and such Affiliate application is accepted by STORMSOURCE. Affiliates are notified of acceptance by email, and login and use of the system by Affiliate shall also signify effectiveness. StormSource Software Systems currently include Appointment-Plus, MessageRover, Virtual Assistant Manager and/or Zipline Software. In consideration of the mutual covenants made herein, the sufficiency of which is hereby acknowledged, the parties agree to the terms set forth below.

1. Affiliate Functions

- 1.1. Affiliate will function as a COMMISSIONED AFFILIATE of one or more of the online StormSource Software Systems. Affiliate and clients obtained by Affiliate will place orders for such system directly with StormSource. StormSource will invoice clients directly for system use. **Although clients obtained by Affiliate may be referred to herein as "Affiliate's clients", such reference is for commission identification purposes only and all such clients shall be clients of StormSource.**
- 1.2. StormSource will support Affiliate clients by providing the client-selected support level - basic e-mail support (ticket system), extended phone support or premium phone support - all in accordance with the standard support policies of StormSource for STORMSOURCE SOFTWARE SYSTEMS. In addition, setup assistance and setup coaching will be provided in accordance with the standard setup assistance policies of StormSource.
- 1.3. Affiliate's referral/commission rights within a specific territory or to specific customers or clients shall NOT be exclusive.
- 1.4. Affiliate may use StormSource and STORMSOURCE SOFTWARE SYSTEMS logos, trademarks, service marks, and copyrighted materials in consideration of fulfilling the Agreement only when approved by StormSource in writing and in advance of each use. This includes but is not limited to representations Affiliate may make in responding to bids and custom proposals, as well as developing marketing communications materials to represent the Appointment-Plus services, or customizing materials provided in print, electronically, or by any other means. All marketing materials created by StormSource and provided to Affiliates directly or through the STORMSOURCE SOFTWARE SYSTEMS "Affiliates Resources" site shall be available to Affiliate for use without restriction or prior approval.

2. Prices

- 2.1. All prices for systems provided by StormSource and commissions related thereto are in US dollars.
- 2.2. StormSource has the right to revise its prices to Affiliate clients with thirty (30) days' written notice to clients according to the prevailing rate schedule charged for STORMSOURCE SOFTWARE SYSTEMS direct clients.
- 2.3. Pricing for STORMSOURCE SOFTWARE SYSTEMS services to be billed to Affiliate's Clients shall be the charges published on the STORMSOURCE SOFTWARE SYSTEMS product websites. In the event that specialized pricing for STORMSOURCE SOFTWARE SYSTEMS services is requested by Affiliate or Affiliate's clients (i.e. unlimited company-wide pricing), Affiliate and StormSource agree to explore such customized pricing options. No such customized pricing shall be applicable unless agreed to by client and StormSource in writing.

3. Sign Up & Commission Payments

- 3.1. All client accounts are subject to acceptance by StormSource. StormSource will only host scheduling content that is legal in the US. We reserve the right to deny service to any client, including sites engaging in email spamming, bulk emailing, flaming, illegal pornography, and other illegal enterprises. Affiliate agrees to same.
- 3.2. Subject to the provisions hereof, Affiliate client accounts may be opened upon receipt of this Affiliate Agreement. Affiliate client accounts may continue to be opened, at the then applicable prevailing rates and charges as long as this agreement is in effect.
- 3.3. Client accounts to be credited to Affiliate for the purposes of commissions under this agreement are the accounts described in **Schedule 1**. All clients are subject to the STORMSOURCE SOFTWARE SYSTEMS Standard Terms and Conditions AND Content Policy applicable to each software product and posted online.
- 3.4. Affiliate's clients will be invoiced directly by StormSource for all STORMSOURCE SOFTWARE SYSTEMS services requested. Monthly/annual payments for STORMSOURCE SOFTWARE SYSTEMS services will be made directly to StormSource by the STORMSOURCE SOFTWARE SYSTEMS clients of Affiliate according to the charges set forth in Schedule 1 as amended from

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- time to time in accordance with Section 2.2 hereof. Except for initial payment, STORMSOURCE SOFTWARE SYSTEMS monthly clients are billed on the first day of each month.
- 3.5. Commission payments to Affiliate for Affiliate services hereunder shall be made to Affiliate monthly and will be sent out on the 15th of each month for the preceding calendar month. All such Affiliate payments shall be made to Affiliate in accordance with the terms set forth in **Schedule 2** attached hereto. Concurrent with delivery of the monthly payment referenced herein, StormSource shall deliver to Affiliate a report showing the revenues for Affiliate's clients generated for each applicable payment period (i.e. calendar month).
 - 3.6. STORMSOURCE **reserves the right to withhold any and all commission payments unless and until Affiliate submits in writing a valid W-9 form to STORMSOURCE.** Any payments so withheld for a period of 180 days after due to Affiliate shall be waived and no claim thereafter shall be made against STORMSOURCE related to such payment amounts withheld. **STORMSOURCE recommends that Affiliate immediately submit a W-9.**
 - 3.7. Since STORMSOURCE SOFTWARE SYSTEMS clients are given the first 15 days at no charge (trial period), Affiliate's first commission payment for a new client will occur after their second month of service. Affiliate will not be paid for any clients, accounts or schedules for which payment is not received by Affiliate's clients or customers.
 - 3.8. Custom system modifications and system work requests requested by Affiliate clients and accepted by StormSource, if any, may be billed at the current StormSource consulting hourly rate. The customer will be billed directly by StormSource. Any client payments related thereto shall not be subject to payment to Affiliate. Due to the proprietary nature of STORMSOURCE SOFTWARE SYSTEMS, Affiliates or third party developers are not permitted to make modifications to the software. Any modifications to STORMSOURCE SOFTWARE SYSTEMS must be done by employees of StormSource.
 - 3.9. In the event that any amount remains unpaid by Affiliate clients forty-five (45) days after presentation of invoice, StormSource may discontinue, withhold, or suspend services to Affiliate clients to whom such unpaid amounts relate.

4. Duties of Affiliate

Affiliate shall use its discretion in efforts to solicit orders from all potential clients. **Affiliate shall at all times comply with this Agreement and its marketing efforts shall not violate any applicable laws, including SPAM rules and regulations.** Affiliate shall be under no obligation to sell or market exclusively the services of STORMSOURCE SOFTWARE SYSTEMS.

5. Limitation of StormSource's Obligation & Liability

- 5.1. *StormSource will utilize reasonable efforts to maintain acceptable performance of contracted for services, but StormSource makes absolutely no warranties whatsoever, express or implied, including warranty of merchantability or fitness for a particular purpose. StormSource cannot guarantee continuous service, service at any particular time, or integrity of data stored or transmitted via its system or via the Internet. StormSource will not be liable to any party for the inadvertent disclosure of, or corruption or erasure of, data transmitted or received or stored on its system. StormSource shall not be liable to Affiliate, any of its clients, or any end users, including, but not limited to, losses or damages of any and every nature, resulting from the loss of data, inability to access Internet, or inability to transmit or receive information, caused by, or resulting from, delays, non-deliveries, or service interruptions whether or not caused by the fault or negligence of StormSource.*
- 5.2. Services provided by StormSource to Affiliate and Affiliate clients shall be deemed accepted for all purposes thirty days after presentation of invoice for such services, if no written claim or objection regarding such services has been received by StormSource within the 30-day period. No claim related to such accepted services shall be raised.
- 5.3. StormSource's liability to Affiliate, any Affiliate client, and/or end users for StormSource services is limited to the amount paid to and received by StormSource for the account services. In no event shall StormSource be liable to Affiliate, Affiliate client, any end user or any other entity for any special, consequential (including business interruption), or other damages, however caused, whether for breach of contract, negligence or otherwise, even if StormSource has been advised of the possibility of such damage.
- 5.4. Affiliate will take all necessary measures to preclude StormSource from being made a party to any lawsuit or claim regarding StormSource services provided to any Affiliate client and/or end user. Affiliate hereby agrees to indemnify, defend and hold harmless StormSource from any and all claims of whatever nature brought by any of Affiliate's clients or end users against StormSource in excess of the remedies set forth in Section 5 above. Furthermore, Affiliate

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hereby agrees to indemnify, defend and hold harmless StormSource from any and all claims of whatever nature brought by any party or governmental entity arising out of Affiliates marketing of STORMSOURCE SOFTWARE SYSTEMS services.

6. Confidentiality

Affiliate acknowledges that by reason of its relationship with StormSource hereunder, it may have access to certain information and materials relating to StormSource 's business, plans, customers, software technology, and marketing strategies that is confidential and of substantial value to StormSource, which value would be impaired if such information were disclosed to third parties. Affiliate agrees that it will not use in any way, for its own account or for the account of any third party, nor disclose to any third party, any such information revealed to it by StormSource. Affiliate further agrees that it will take every reasonable precaution to protect the confidentiality of such information. In the event of termination of this agreement, there shall be no use or disclosure by the Affiliate of any such confidential information in its possession, and all confidential materials shall be returned to StormSource or destroyed. The provisions of this section shall survive the termination of the agreement for any reason. Upon any breach or threatened breach of this section, StormSource shall be entitled to injunctive relief, which relief shall not be contested by Affiliate.

7. Relationship of the Parties

The relationship between StormSource and Affiliate is that of vendor and commissioned Affiliate. They shall not be construed as being partners, joint venturers, franchiser/franchisee, or employer/employee. This agreement is a commercial agreement between businesses, not a consumer agreement. Affiliate has no authority, apparent or otherwise, to contract for or on behalf of StormSource, or in any other way legally bind StormSource in any fashion, nor shall Affiliate be authorized to make any representations about StormSource or its services other than to set forth StormSource's responsibilities as outlined in this agreement.

8. Disputes

The parties shall resolve all disputes arising out of this agreement in a spirit of cooperation without formal proceedings. Any dispute which cannot be so resolved (other than the collection of money due on unpaid invoices), other than the injunctive relief referred to in Section 12, shall be subject to mandatory, non-appealable arbitration upon written demand of either party. Arbitration shall take place in Phoenix, AZ, unless the parties mutually agree otherwise in writing. The arbitration shall follow the guidelines established by the American Arbitration Association.

9. Terms & Termination:

- 9.1. The term of this agreement will begin upon the effective date referenced above and will end when terminated by either party. Either party may terminate this agreement at any time, with or without cause and for any reason, by giving the other party written notice of termination. You are only eligible to earn marketing and advertising fees during the term of this agreement. Upon termination, you must remove all StormSource links and other content provided.
- 9.2. In the event of termination of this agreement, Affiliate shall be entitled only to commissions on its Affiliate client account payments made to StormSource prior to the effective date of the termination. Nothing herein shall be construed as barring StormSource from continuing to service such clients subsequent to termination. Continued service shall be solely at the option of StormSource.

10. Non-assignability

Affiliate's rights and obligations under this agreement may not be transferred or assigned directly or indirectly without the prior written consent of StormSource, which consent shall not be unreasonably refused.

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11. Partial Invalidity

If any provision of this agreement is held to be invalid by a court of competent jurisdiction, then the remaining provisions shall nevertheless remain in full force and effect. StormSource and Affiliate agree to renegotiate in good faith any term held invalid and to be bound by mutually agreed substitute provision.

12. Applicable Law, Jurisdictional Matters

This agreement is to be governed by and construed under the laws of the State of Arizona. The state courts of the State of Arizona shall have exclusive jurisdiction to adjudicate any non-arbitrable dispute arising out of this agreement. Affiliate hereby expressly consents to (1) the jurisdiction of the courts of Arizona and (2) service of process being effective upon it by registered mail sent to the address set forth at the beginning of this document, as may be changed from time to time by written notice actually received by StormSource.

13. Notices

Except with respect to service of process as set forth in paragraph 12, all notices may be sent by email, fax, or express mail to the email address, fax number, or address. If Notice to Affiliate, to the contact information listed on the Affiliates account page listed in the and will be effective upon transmission. Evidence of successful transmission shall be retained.

14. Entire Agreement, Modifications

This agreement sets forth the entire agreement and understanding between the parties and merges all prior discussion between them. StormSource may make changes to this agreement/terms upon thirty (30) days' notice to Affiliate, posted in the Affiliate Terms and Conditions section of Affiliate's Client Tracking access page and/or the Affiliate Terms and Conditions section of the STORMSOURCE SOFTWARE SYSTEMS Affiliate Resources page. Utilization of StormSource products and/or services by Affiliate and/or its clients following the effective date of such change(s) shall constitute acceptance by Affiliate of such change(s).

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Schedule 1 – Affiliate Client Account Definition

A Commissioned Affiliate Client Account is defined as follows:

1. Affiliate will be assigned unique “smart links” for each STORMSOURCE SOFTWARE SYSTEMS product directly connected to Affiliate’s account. Affiliate may utilize the links in any manner consistent with this Agreement. For the purposes of this agreement, smart links may be in the form of drag and drop “widgets”.
2. Any STORMSOURCE SOFTWARE SYSTEMS account created by a client initiated by use of Affiliate’s unique smart links or widgets will be assigned to Affiliate’s account.
3. Affiliate shall received commissions as defined in this Agreement for all clients generated by use of the Affiliate’s unique smart links or widgets.
4. Affiliate will be supplied an “Affiliate Login” to allow Affiliate to log in to the STORMSOURCE SOFTWARE SYSTEMS Affiliate Sales Tracking System at any time. From this system Affiliate can track all assigned accounts and commissions related thereto.

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Schedule 2 – Affiliate Commission Payments

Payments shall be made to Affiliate for all Affiliate client accounts as follows:

1. StormSource shall pay Affiliate **25%** of all STORMSOURCE SOFTWARE SYSTEMS revenues as described in the Agreement generated by Affiliate client accounts and received by StormSource as described in Schedule 2 of this Affiliate Agreement for each applicable month.
2. Commission will only be paid to Affiliate on active accounts in which monthly/annual payment (or agreed upon specialized/custom payment) has been received.
3. The commission percent applies to the monthly/annual fee actually paid by the client.
4. In the event that an Affiliate client is invoiced and pays on a customized/specialized schedule (i.e. annually) and such Affiliate client cancels, refunds, if any, made by StormSource to Affiliate clients for such customized payments shall entitle StormSource to charge Affiliate back for commissions paid related to the refund.
5. Affiliate shall not be entitled to a commission on any Affiliate client accounts existing prior to the effective date of this agreement.
6. Commission checks shall be mailed to Affiliate at the address and to the Contact listed in the online Applicant form. In the event that Affiliate fails to negotiate a payment check from StormSource 180 days after the date of the instrument, such check shall be void. **In addition, subsequent commission payment checks shall be held by StormSource until written request is received from Affiliate. Any commission amounts not requested after one (1) year from the original commission payment date shall be forfeited.**
7. STORMSOURCE **reserves the right to withhold any and all commission payments unless and until Affiliate submits in writing a valid W-9 form to STORMSOURCE.** Any payments so withheld for a period of one (1) year after due to Affiliate shall be waived and no claim thereafter shall be made against STORMSOURCE related to such payment amounts withheld. **STORMSOURCE recommends that Affiliate immediately submit a W-9.**