

# SETECS Mobile Technologies, Inc.

## Representation Agreement

This Agreement ("Agreement") is made and entered into as of \_\_\_\_\_, (the "Effective Date") by and between **SETECS Mobile Technologies**, a Maryland corporation doing business as "SETECS Mobile" ("SMT"), with offices at 5801 Nicholson Lane, Suite # 1233, North Bethesda, MD 20852 and \_\_\_\_\_, an individual or company, having a principal place of business at \_\_\_\_\_ (the "Representative"), hereinafter referred to together as the "Parties".

### 1. Responsibilities of the Representative

1.1 The Representative shall provide business development, marketing, technical support and sales promotion services in support of SMT's SAFE™ system software in the "Territory" as defined in Attachment A, to include:

- Analysis and assessment of market conditions relative to the competitive positioning of the SMT's SAFE™ system software products, including identification and analysis of potential competitor organizations and products, market opportunities, and threats.
- Development and execution of marketing and sales strategies for the SAFE™ system software products.
- Establishment and development of business relationships with potential customers, Potential SMT's partners, and collaborating organizations.
- Promotion of the SMT's SAFE™ system software products, including advertising, conduct of media and awareness campaigns, trade show and conference attendance, and other networking activities.
- Sales support, including active demonstration of the SAFE™ system software products, follow-up to customer meetings and demonstrations, preparation and submission of sales estimates/quotes, and assistance with after-sales support.
- Technical advice to partners for the installation, activation, deployment, operation, customization and extension of the SAFE™ system.

### 2. Compensation to the Representative

2.1 The compensation to be paid to the Representative pursuant to this Agreement shall be **ten percent** of the sales revenue of the SAFE™ system software products in the Territory. The compensation shall be in consideration for all activities/services rendered by the Representative and shall be the sole compensation due to the Representative under this Agreement.

### 3. Exclusivity of the Appointment

3.1 This Agreement is **not exclusive** to the Parties with respect to the Territory and the SETECS® SAFE™ system software products and services. This means that SETECS® may grant to others in the Territory the right to sell, license, or market its SAFE™ system software products and services during the period of this Agreement. Similarly, Representative may provide business development, marketing or sales promotion services in the Territory in support of any other vendor or maker of similar software products and services during the period of the Agreement.

## 4. Term

**4.1** This Agreement shall commence on the *Effective Date* set forth above and shall continue for an initial term of one (1) year. Thereafter, this Agreement shall automatically renew for one-year periods unless SMT or the Representative provides notice of non-renewal at least 60 (sixty) days prior to the renewal date.

**4.2** Either party may terminate this Agreement: (a) without cause by providing not less than 90 (ninety) days' prior written notice; (b) upon not less than 30 (thirty) days' prior written notice in the event of a material breach of this Agreement; or if (c) a receiver is appointed for the other party or its property; (d) the other party makes, or attempts to make, an assignment for the benefit of its creditors; (e) any proceedings are commenced by or for the other party under any bankruptcy, insolvency, or debtor's relief law; (f) the other party liquidates or dissolves or attempts to liquidate or dissolve.

**4.3** The expiration or termination of this Agreement, for whatever reason, will not discharge or relieve either party from any obligation which accrued prior to such expiration or termination, will not relieve any party that has breached this Agreement from liability for damages resulting from such breach, and will not destroy or diminish the binding force and effect of any of the provisions of this Agreement that expressly, or by reasonable implication, come into or continue effect on or after expiration or termination hereof.

**4.4** Upon the termination of this Agreement for any or for no reason, neither party will be liable to the other because of such termination for damages on account of the loss of prospective profits, good will, or on account of expenditures, leases or commitments in connection with the business of SMT or of the Representative, or for any other reason whatsoever flowing from such expiration or termination.

**4.5** The following obligations will survive termination of this Agreement for any reason, if not agreed differently in writing between the parties:

- a) Obligations relating to nonuse and nondisclosure of Confidential Information in accordance with Article 6 of this Agreement;
- b) Provisions entitled Rights to Deliverables and Intellectual Property, Independent Representative, and Insurance and Indemnification;
- c) Obligations to make payments of amounts that are due prior to termination;

## 5. Rights to Intellectual Property.

**5.1** SAFE™ system is trademark of SMT. "SETECS Mobile Technologies" is also a brand-name that belongs exclusively to SMT, representing mobile and security technologies, products, infrastructure components, protocols, and secure transactions. All documentation related to the above products and SMT mobile software products distributed by SMT is owned by SMT. All source code, design solutions, procedures, protocols, database schemas, and security token profiles are owned by SMT and represent SMT's exclusive intellectual property.

**5.2** SMT retains all ownership rights to all applicable copyrights, trade secrets trademarks, service marks, trade names and other intellectual property rights in the SAFE™ system and other SMT's mobile software products. Representative shall not (i) copy, modify or reproduce any software product or accompanying documentation in any way without explicit written permission by SMT, (ii) reverse engineer, disassemble, or decompile products, (iii) remove, obscure or alter the SMT's proprietary notices, any accompanying End-User License Agreement or other documentation for SMT's software products, (iv) incorporate any software product into any other software or hardware product, or (v) private label any SMT's software product or any portion thereof or include any other party's marks or legends on any software product or any portion thereof. Any documentation accompanying a software product shall also be deemed part of the software product and delivered to each end-user as a complete product.

## **6. Confidentiality and Nondisclosure**

**6.1** The Representative agrees to treat any SMT materials furnished to the Representative under this Agreement, as well as any Work Product developed by the Representative under this Agreement, as confidential information, both during and after the term of this Agreement, in accordance of the associated Non-Disclosure Agreement, which is incorporated into this Agreement by reference. The Representative may also be furnished with other information of a confidential nature that belongs to SMT or to a SMT client. Such information may include financial reports, product plans or information, customer information, marketing plans, and the like. For convenience, such nonpublic information will be referred to as "Confidential Information."

**6.2** The Representative will not duplicate any Confidential Information provided hereunder unless such duplication is necessary to implement this Agreement. The Representative agrees that, during the term of this Agreement and for a period of two years after termination, it will not disclose or distribute any Confidential Information to any third party, except as specifically authorized by SMT in writing, and that it will not use any Confidential Information for any purpose other than the implementation of this Agreement. The Representative further agrees that all materials provided to the Representative by SMT or SMT's client or produced by the Representative hereunder, and all copies thereof, shall be delivered to SMT (or its client, if applicable) upon expiration or termination of this Agreement or of the pertinent Statement of Work.

**6.3** Confidential Information shall not include information which (a) is or becomes publicly available through no act or omission of the Representative; (b) was in the Representative's lawful possession prior to the disclosure and had not been obtained either directly or indirectly from SMT or its client; (c) is lawfully disclosed to the Representative by a third party without restriction on disclosure; (d) is furnished by SMT or its client to a third party without restrictions on disclosure; or (e) is independently developed by the Representative.

## **7. Independent Contractor**

**7.1** The relationship of Representative to SMT is that of an *independent contractor* and nothing in this Agreement is intended to, or should be construed to, create a partnership, joint venture or employment relationship. Representative is authorized to represent SMT strictly in the capacity of performing the business development, marketing, and sales support services described in this Agreement. However, nothing in this Agreement shall be construed as authorizing Representative to make any contractual commitments of any kind on behalf of SMT without the express written consent of SMT. All proposals, sales estimates or price quotations must be approved by SMT in writing prior to submission by Representative to customers.

**7.2** The Parties agree that the Representative is not an employee of SMT and, as a consequence, SMT is neither liable nor responsible for paying the Representative's staff, or for withholding or deducting any income taxes, social security, medical, dental, workers compensation, and disability insurance coverage, pension or retirement plan, or the like. The Representative specifically agrees to pay any taxes (if any) lawfully due in connection with the compensation received under this Agreement. The Representative will direct the means, manner, and method by which the services required are performed, subject to SMT's approval. The Representative will be responsible for furnishing equipment, supplies, and materials used to perform all services under this Agreement.

## **8. Insurance and Indemnification**

**8.1** The Representative is responsible for maintaining insurance to protect itself from the following: (a) claims and/or workers compensation or state disability acts; (b) claims for damages because of bodily injury, sickness, or death of any of its employees or any other person which arise out of any negligent act or omission of the Representative, its employees or agents, if any; and (c) claims for damages because of injury to or destruction of tangible property, including loss of use resulting thereof, which arise from any negligent act or omission of the Representative, its employees or agents, if any.

**8.2** The Representative will indemnify SMT and hold it harmless against any losses, damages, or expenses, including court SMT's and reasonable attorney's fees, resulting from any claim or action by a third party against SMT complaining that (a) the services performed by the Representative result in patent or copyright infringement or violation of a trade secret right enforceable in Europe, Asia, the U.S. or Canada; (b) the Representative's negligent act or willful misconduct has resulted in bodily injury, disease or death, or injury or destruction to property; or (c) failure of Representative to pay withholding taxes, social security, and the like, as required by law.

## **9. General**

**9.1** *Limited Warranty.* The Representative warrants that the services to be performed will be of professional quality and will conform to generally accepted industry standards and practices for similar services. Representative makes no other warranty of any kind regarding the services to be provided under this Agreement.

**9.2** *Governing Law; Forum.* This Agreement is governed in all respects by the laws of the United States of America and the State of Virginia as such laws are applied to agreements entered into and to be performed entirely within Virginia between Virginia residents.

**9.3** *Attorneys' Fees.* If any proceeding or lawsuit is brought by the Representative, his suppliers, or SMT in connection with this Agreement, the prevailing party in such proceeding shall be entitled to receive its costs, expert witness fees, and reasonable attorneys fees, including costs and fees on appeal.

**9.4** *Notices.* All notices or reports permitted or required under this Agreement shall be in writing and shall be by personal delivery, telegram, telex, facsimile transmission, by certified or registered mail, or by commercial express courier service, and deemed given upon personal delivery, five (5) days after deposit in the mail, or upon acknowledgment of receipt of electronic transmission. Notices shall be sent to the addresses set forth at the top of this Agreement or such other address as either party may specify in writing. Notices shall be sent to the person identified below.

**9.5** *Severability.* If any provision of this Agreement is unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or court decisions.

**9.6** *Waiver.* The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

**9.7** *Force Majeure.* Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, material shortages, or any other cause beyond the reasonable control of such party.

**9.8** *Assignment.* Neither party may assign, voluntarily, by operation of law or otherwise, any rights or delegate any duties under this Agreement without the other party's prior written consent, except in the case of a merger, acquisition or sale of all or substantially all of the assets of the party, subject to the new entity expressly assuming obligations of the assigning party. Any attempt to do so without that consent will be void. This Agreement will bind and inure to the benefit of the parties and their respective successors and permitted assigns.

**9.9** *Entire Agreement.* This Agreement completely and exclusively states the Agreement of the parties regarding its subject matter. It supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. This Agreement shall not be modified except by a

subsequently dated written amendment signed on behalf of Representative and SMT by their duly authorized representatives, and any provision on a purchase order purporting to supplement or vary the provision hereof shall be void.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last written below.

**SETECS Mobile Technologies, Inc.**

**Representative**

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

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

Name: Sead Muftic

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

Title: Chairman/CEO

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

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

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

## **Appendix A: Territory**

The Territory is defined as the country of \_\_\_\_\_