

# AGREEMENT FOR INDEPENDENT SALES REPRESENTATIVE

## THIN AIR TECHNOLOGY, INC.

Revision Date: January 16, 2006

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This Agreement for Independent Sales Representative (the "Agreement") is entered into between THIN AIR TECHNOLOGY, INC., a Delaware corporation ("Thin Air") and \_\_\_\_\_, a \_\_\_\_\_ corporation ("Sales Rep"), and covers all products, installations, upgrades and improvements that may be made by Thin Air during the term of this Agreement.

This agreement shall be held in strict confidence between Thin Air and Sales Rep.

### 1. SERVICES AND TERM

General. During the term of this agreement, Sales Rep shall act as a finder of buyers for the professional services of Thin Air and shall be paid the sales commission for its acts as described in paragraph 5 of this Agreement. The services of Sales Rep shall include the introduction of Thin Air to buyers or the furnishing of sales leads which ultimately result in sales of Thin Air's products or services to a buyer. It is specifically understood and agreed that the dominant purpose of this Agreement is entry by Thin Air into a profitable contract for sale of Thin Air's products or services to a buyer.

This agreement shall have duration of 1 year and shall commence on \_\_\_\_\_, **2006** and shall expire on \_\_\_\_\_, **2007** unless extended in writing and signed by both parties.

### 2. BUYER AGREEMENT

All deliverable items, parts and installation shall be provided under separate agreement between Thin Air and the buyer found by Sales Rep. Sales Rep shall not be a party to the buyer agreement, and Sales Rep is not required to take part in negotiations with the buyer.

### 3. BEST EFFORTS

Sales Rep shall use its best efforts to promote Thin Air's products and services in the market areas defined by Thin Air. Thin Air will furnish brochures, technical

support and other marketing materials at its own discretion to support Sales Rep's marketing efforts.

#### 4. CONDITIONS OF PAYMENT

Thin Air shall be under no obligation to pay any fee or other monies whatsoever to Sales Rep until 30 days after any sale or contract contemplated by this Agreement has closed with any buyer of Thin Air's products or services, resulting from either the introduction by Sales Rep to the buyer or the furnishing of a sales lead that results in a sale to the buyer and Thin Air received a cash payment from the related sales transaction.

#### 5. FEES

A fee of 2 % of the gross sale shall be paid to the Sales Rep for the provision of a contact or referral that results in a direct sale of goods or professional services from Thin Air from that contact or referral.

OR

A fee of 8 % of the gross sale shall be paid to the Independent Sales Rep for handling the process of the sale, including customer interface, assistance with communication or relationship, and/or installation.

The gross sale will be the total price of all Thin Air supplied products and services as paid by the end user. Installation by third party vendors included as part of the sale will no be included as part of the gross sale.

It is understood and agreed that some opportunities provided by Sales Rep to Thin Air may have to compete against other bidders for a prospective client's business. In these competitive bid situations, the above fees may be reduced by mutual consent of Sales Rep and Thin Air. These reduced fees should be agreed to prior to the submission of a price by Thin Air.

#### 6. CONFIDENTIALITY

Sales Rep recognizes and acknowledges that the Thin Air possesses certain confidential information that constitutes a valuable, special, and unique asset. As used herein, the term "confidential information" includes all information and materials belonging to, used by, or in the possession of Thin Air relating to its products, processes, services, technology, inventions, patents, ideas, contracts, financial information, developments, business strategies, pricing, current and prospective customers, marketing plans, and trade secrets of every kind and character, but shall not include (a) information that was already within the public domain at the time the information is acquired by Sales Rep, or (b) information that subsequently becomes

public through no act or omission of the Thin Air or Sales Rep. Sales Rep agrees that all of the confidential information is and shall continue to be the exclusive property of Thin Air, whether or not prepared in whole or in part by Sales Rep and whether or not disclosed to or entrusted to Sales Rep's custody. Sales Rep agrees that Sales Rep shall not, at any time following the execution of this Agreement, use or disclose in any manner any confidential information of Thin Air.

## 7. OWNERSHIP

Full and exclusive rights and ownership in Thin Air's products, processes, services, technology, inventions, patents, ideas, contracts, financial information, developments, business strategies, pricing, current and prospective customers, marketing plans, and trade secrets of every kind and character shall remain in the sole possession of Thin Air despite any degree of possession and manipulation of such property by Sales Rep.

## 8. RETURN OF MATERIALS

Sales Rep agrees that upon termination of this Agreement, Sales Rep will return to Thin Air all drawings, blueprints, notes, memoranda, specifications, designs, writings, software, devices, documents and any other material containing or disclosing any confidential or proprietary information of Thin Air. Sales Rep will not retain any such materials.

## 9. WARRANTIES

Sales Rep warrants that:

- (a) Sales Rep's performance under this Agreement does not violate any agreement or obligation between Sales Rep and a third party; and
- (b) Sales Rep's performance under this Agreement will not infringe any copyright, patent, trade secret, or other proprietary right held by any third party; and
- (c) The services provided by Sales Rep shall be performed in a professional manner, and shall be of a high grade, nature, and quality. The services shall be performed in a timely manner and shall meet deadlines agreed between Sales Rep and Thin Air.

## 10. INDEMNITY

Sales Rep agrees to indemnify, defend, and hold Thin Air and its successors, officers, directors, agents and employees harmless from any and all actions, causes of action, claims, demands, cost, liabilities, expenses and damages (including attorneys' fees) arising out of, or in connection with any breach of this Agreement by Sales Rep. Furthermore, Sales Rep will hold Thin Air free and harmless from any and all claims, liabilities, commissions, fees or expenses in connection with the transaction from any party who alleges a relationship with or through Sales Rep and the buyer.

## 11. RELATIONSHIP OF PARTIES

Sales Rep shall be considered an independent contractor of Thin Air. Nothing in this Agreement shall be construed as creating an employer-employee relationship, as a guarantee of future employment or engagement, or as a limitation upon Thin Air's sole discretion to terminate this Agreement at any time without cause. Sales Rep further agrees to be responsible for all of Sales Rep's federal and state taxes, withholding, social security, insurance, and other benefits. Sales Rep shall provide Thin Air with satisfactory proof of Sales Rep's independent corporate status upon request.

## 12. OTHER ACTIVITIES

Sales Rep is free to engage in other independent contracting activities, provided that Sales Rep does not engage in any such activities which are inconsistent with or in conflict with any provisions hereof, or that so occupy Sales Rep's attention as to interfere with the proper and efficient performance of Sales Rep's services hereunder. Sales Rep agrees not to induce or attempt to influence, directly or indirectly, any employee at Thin Air to terminate his/her employment and work for Sales Rep or any other person.

## 13. MISCELLANEOUS

- (a) Amendment. This Agreement may be amended only by a writing signed by Thin Air and by a duly authorized representative of Sales Rep.
- (b) Severability. If any term, provision, covenant or condition of this Agreement, or the application thereof to any person, place or circumstance, shall be held to be invalid, unenforceable or void, the remainder of this Agreement and such term, provision, covenant or condition as applied to other persons, places and circumstances shall remain in full force and effect.

- (c) Construction. The headings and captions of this Agreement are provided for convenience only and are intended to have no effect in construing or interpreting this Agreement. The language in all parts of this Agreement shall be in all cases construed according to its fair meaning and not strictly for or against either party.
- (d) Rights Cumulative. The rights and remedies provided by this Agreement are cumulative, and the exercise of any right or remedy by either party hereto (or by its successor), whether pursuant to this Agreement, to any other agreement, or to law, shall not preclude or waive its right to exercise any or all other rights and remedies.
- (e) Non-Waiver. No failure or neglect of either party hereto in any instance to exercise any right, power or privilege hereunder or under law shall constitute a waiver of any other right, power or privilege or of the same right, power or privilege in any other instance. All waivers by either party hereto must be contained in a written instrument signed by the party to be charged and, in the case of Thin Air, by an officer of Thin Air or other person duly authorized by Thin Air.
- (f) Notices. Any notice, request, consent or approval required or permitted to be given under this Agreement or pursuant to law shall be sufficient if in writing, and if and when sent by certified or registered mail, with postage prepaid, to the names and addresses provided below.
- (g) Assistance. Sales Rep shall, during and after termination of services rendered, upon reasonable notice, furnish such information and proper assistance to Thin Air as may reasonably be required by Thin Air in connection with work performed by Sales Rep; provided, however, that such assistance following termination shall be furnished at Sales Rep's standard hourly rate.

#### 14. ARBITRATION

In the event of any dispute between Thin Air and Sales Rep arising under or pursuant to the terms of this agreement, or any matters arising under the terms of this Agreement, the same shall be settled only by arbitration in the City of Portland, State of Oregon, in accordance with the rules and regulations of the American Arbitration Association. The determination of the arbitrators shall be final and binding upon Thin Air and Sales Rep and may be enforced in any court of appropriate jurisdiction.

15. COMPLETE AGREEMENT

This agreement contains the entire Agreement between Sales Rep and Thin Air concerning the introduction of a buyer or furnishing of a lead resulting directly in a sale of Thin Air's products or services to a buyer and correctly sets forth the rights and duties of each party to this Agreement. This the complete Agreement between the parties named herein.

**Thin Air:**

**Sale Rep:**

**Thin Air Technology, Inc., a Delaware corporation**

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

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

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

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

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

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

Address:

Address:

**10260 SW Greenburg Rd  
Portland, OR  
97223**

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

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