

**DistributorX Inc**

and

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**RESELLER SALES AGREEMENT**

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**DistributorX Inc**  
1802 N. Carson Street  
Carson City, NV 89701

## Reseller Sales Agreement

**Effective Date: 1 July 2009**

### Parties:

(1) **DistributorX Inc** whose business address is located at 1802 N. Carson Street, Suite 108, Carson City, Nevada 89701 ("the Supplier"); and

(2) \_\_\_\_\_ whose business address is:

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

("the Reseller").

### Recitals:

- (A) The Supplier supplies computer software, hardware and accessories ("the Products") and wishes to grant to the Reseller the right to sell and distribute the Products in accordance with the terms of this Agreement.
- (B) The Reseller is engaged in the sale and distribution of complementary products and wishes to have the right to sell and distribute the Products in accordance with the terms of this Agreement.

### Operative Provisions:

#### 1. Interpretation

1.1 In this Agreement unless the context otherwise requires the following words shall have the following meanings:

"the Agreement"	means this agreement and any written modification to this Agreement entered into in accordance with clause 13.4;
"the Conditions"	means the standard terms and conditions of sale as set out in this Agreement or such replacement standard terms and conditions as are in force at the date of an order for Products and which at that date appear on the Supplier's website and/or which are available on request from the Supplier at its office address;
"the Commencement Date"	means the date this Agreement is executed by both parties;
"Electronic Delivery"	means any electronic delivery method in connection with the Products including via the world wide web by electronic software delivery ("ESD");
"Force Majeure"	means in relation to either party any circumstances beyond the reasonable control of that party (including without limitation, any strike, lock-out or other form of industrial action);
"Intellectual Property"	means any patent copyright registered design trade mark or other industrial or intellectual property right in respect of the Products and applications for any of the foregoing;
"Online Terms and Conditions"	means the Supplier's terms and conditions for online ordering as set out in Schedule 1 hereto and as amended from time to time by the Supplier;
"the Online Supplier Price List"	means the then current pricing for any Product sold by the Supplier as displayed on the Supplier's website;

"the Performance Targets"	means the sales levels required by the Reseller to achieve the Discounts against price as set out in promotions as may be amended or changed from time to time by the Supplier;
"the Products"	means the products set out in Standard Supplier Price List and those products available online on the Supplier's website and those products which are from time to time added or updated by the Supplier;
"Reseller Price"	means the price for the Products as set out in the Standard Supplier Price List and as amended from time to time by the Supplier;
"the Services"	means any services provided by the Supplier to the Reseller;
"the Standard Supplier Price List"	means the then current pricing for any Product sold by the Supplier as presented in ".pdf" format, ".xls" format or printed formats available upon request from the supplier;
"the Term"	means the term of this Agreement as set out in clause 11 hereto;
"the Territory"	means the United States of America & Canada;

- 1.2 Any reference in this Agreement to "writing" or cognate expression includes a reference to telex, cable, facsimile transmission or comparable means of communication.
- 1.3 Any reference in this Agreement to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time.
- 1.4 The schedules form part of this Agreement and shall be interpreted and construed as though they were set out in this Agreement.
- 1.5 The headings to clauses and schedules and paragraphs of the schedules are for convenience only and shall not affect the interpretation or construction of this Agreement.

## **2. Appointment of Reseller**

- 2.1 The Supplier hereby grants to the Reseller and the Reseller accepts the appointment of the non-exclusive right to resell the Products in the Territory during the Term upon the terms and conditions set out in this Agreement.
- 2.2 Nothing in this Agreement shall be construed as explicitly or impliedly granting the Reseller the right to resell any new products or upgrades offered by the Supplier during the term of this Agreement other than the Products. Upon release, any such new products and/or upgrades may be added to this Agreement at the sole discretion of the Supplier by inclusion in the Online Supplier Price List or the Standard Supplier Price List then in effect.

## **3. Conditions of Sale**

### **3.1 Pricing**

- 3.1.1 Product pricing, description, availability and related information provided by the Supplier in any form is the property of the Supplier or its suppliers. The Supplier hereby grants to the Reseller a limited non-exclusive non-transferable license to use this information for its internal use only for the purpose of the Reseller's purchases and sale of the Products sold by it and the Reseller warrants that such information shall only be used by it for such purposes. The Supplier shall be entitled to stop the provision of information at any time without notice. The Supplier gives no warranty either express or implied as to the information so given or its accuracy.
- 3.1.2 Product pricing and other information provided by the Supplier to the Reseller does not amount to an offer by the Supplier to sell such Product at that price or on any other terms.
- 3.1.3 In the case of orders placed for Products, notwithstanding any acceptance or deemed acceptance by the Supplier of any offer for any Product, if there has been a material and obvious pricing error by the Supplier then the Supplier shall be entitled prior to dispatch of such order and with confirmation from the Reseller to either amend the order, notify the Reseller of the change and invoice the Reseller for the correct price of the Product at the date of the order, or at the Supplier's sole discretion, cancel the order with no penalty or

- 3.1.4 All prices are subject to change without notice and errors and omissions are excepted from all price lists, promotions or other information as provided from time to time by the Supplier to the Reseller.
- 3.1.5 Unless otherwise agreed in writing by an authorized representative of the Supplier, all prices exclude the cost of delivery.
- 3.1.6 All prices and charges are exclusive of any applicable Sales Tax, which the Reseller will be additionally liable to pay to the Supplier.

### **3.2 Performance Targets**

- 3.2.1 The Reseller shall receive a Reseller Price for all Products purchased as specified in the then current Online Supplier Price List or the Standard Supplier Price List.
- 3.2.2 Upon request, the Supplier will set Performance Targets for the Reseller on a quarterly basis which may be updated by the Supplier from time to time and the relevant Reseller Price will be applied to future Reseller purchases of qualifying products should the Performance Targets be achieved as set out in clause 3.2.3
- 3.2.3 Any modified Reseller Price that will apply to Reseller purchase of Products from the Supplier shall be dependent upon the level of business transacted with the Supplier on a periodic basis and will be specifically linked to the Performance Targets and may be modified from time to time based on the quantity of qualifying Products purchased.
- 3.2.4 The Supplier shall review the Reseller's achievement of Performance Targets in its absolute discretion from time to time and reserves the right to change the Reseller Price if the Reseller does not maintain the previously achieved periodic Performance Targets.

### **3.3 Ordering**

- 3.3.1 The Reseller shall be responsible to the Supplier for ensuring the accuracy of the quantities, pricing and terms of any order.
- 3.3.2 No order that has been placed by the Reseller and accepted by the Supplier may be withdrawn or canceled by the Reseller except with the agreement in writing of an authorized representative of the Supplier.
- 3.3.3 All orders placed with the Supplier by the Reseller for Products shall constitute an offer to the Supplier under these terms and conditions subject to the availability of the Products and to acceptance of the order by the Supplier's authorized representative.
- 3.3.4 All orders are accepted and Products supplied subject to the terms and conditions of this Agreement and any terms and conditions referred to herein only and it is hereby agreed that these terms and conditions shall prevail over any of the Reseller's terms and conditions of purchase.

## **4. Payment Terms**

- 4.1 Orders of Products shall be placed by the Reseller in accordance with the Supplier's policies notified to the Reseller from time to time.
- 4.2 The price for the Products shall be as stated in the Online Supplier Price List or the Standard Supplier Price List whichever is the greater at the time of the order. The Supplier shall not require the Reseller to sell the Products at the recommended retail price as specified in the Online Supplier Price List or the Standard Supplier Price List.
- 4.3 Unless the Supplier has previously agreed in writing with the Reseller that the Products will be supplied on credit terms, payment for the Products shall be made in full by the Reseller with the Reseller's order.
- 4.4 Where the Supplier has agreed to supply the Products to the Reseller on credit terms the Reseller shall pay the price of the Products within 30 days of the date of the Supplier's invoice notwithstanding that the ownership of the Products may not have passed to the Reseller at such time. Invoices will be dated the day of Product shipment. The Supplier is entitled in its sole discretion to alter payment terms and withdraw or alter any credit limit granted at any time without notice.
- 4.5 Any payment not received by the due date for payment will be considered overdue and will remain payable by the Reseller together with interest for late payment. Interest will be charged at the rate of 2.5 % of the invoice total value until payment in full is made with interest compounded on a daily basis

- 4.6 The Reseller must notify the Supplier in writing within 7 days of the date of an invoice of any errors within the invoice. Failure to notify the Supplier within 7 days will result in an assumption by the Supplier that the Reseller has accepted its invoice in full.
- 4.7 No title to the Products shall pass to the Reseller unless and until the Supplier has been paid in full. Notwithstanding the Supplier's retention of title in the Products until relevant invoice amounts have been paid the Supplier reserves the right to undertake legal proceedings to recover the cost of the Products supplied should the Reseller not make full payment by the due date for payment. Any and all associated costs in connection with any legal proceedings undertaken to recover amounts due will be payable in full by the Reseller.

- 4.8 The Supplier reserves the right to stop supplying a particular Product to the Reseller at any time.

## **5. Shipment and Delivery**

- 5.1 Any date or time supplied by the Supplier for shipment and delivery is to be treated as an estimate only. Shipment may be postponed because of conditions beyond the Supplier's reasonable control and in no event shall the Supplier be liable for any damages or penalty for delay in shipment or delivery.
- 5.2 Products supplied by the Supplier are delivered at the risk of the Supplier unless the Reseller stipulates a special method of delivery in which case Products are delivered at the risk of the Reseller.
- 5.3 The Reseller must inspect the Products immediately after delivery is complete. If any Products are damaged (or not delivered) the Reseller must notify the Supplier within 48 hours of the delivery or expected delivery. If proof of delivery is required this must be requested within 7 days of the date of the invoice.
- 5.4 The Supplier shall be entitled to assume that any person who both reasonably appears and claims to have authority to accept delivery and who signs a delivery record in respect of the Products on behalf of the Reseller or the Reseller's customer (if the Supplier has agreed to deliver direct) shall in fact have that authority to do so.
- 5.5 For the purpose of this Agreement and where the Supplier has agreed to deliver Products direct to the Reseller's customer any such delivery shall be deemed to be delivery to the Reseller and any refusal by the Reseller's customer to accept delivery shall be deemed a refusal by the Reseller.

## **6. Returns**

- 6.1 Product returns to the Supplier may only be made after obtaining the Supplier's permission to do so. If the Supplier does agree to accept Products for return a Return Material Authorization ("RMA") will be supplied to the Reseller.
- 6.2 Requests for returns must be made within 21 days of the date of invoice and the relevant Products must be returned within 14 days of the issuance of the RMA.
- 6.3 Products must be returned unopened and in pristine condition properly packed and the Products must be accompanied by a list of the returned Products authorized under the RMA issued by the Supplier.
- 6.4 The Reseller acknowledges that certain Products are not eligible for return in any circumstances under the terms of the Supplier's distribution agreement for that Product and that such Products are so notated on the Online Supplier Price List or the Standard Supplier Price List as issued from time to time by the Supplier.
- 6.5 The Supplier may in its sole discretion accept returns of Products by way of stock rotation but in any such case reserves the right to make an administration charge of up to 25% of the price paid by the Reseller for the particular Product.
- 6.6 The Supplier accepts no liability for any damage to or loss in transit of the Products returned to the Supplier and the Reseller will bear any such risk and costs.
- 6.7 The Supplier reserves the right to reject any returned Products that do not comply with the provisions set out in this clause 6.

## **7. Dead on Arrival**

- 7.1 Products received by an end-user and found to be non-functional or faulty within 10 days from the date of the end-user invoice are deemed to be Dead On Arrival ("DOA"). Provided that the defect is confirmed by the Supplier's technical support and the end-user proof of purchase date is supplied, such Products will be replaced

user transactions exceeding the 10 day period and/or where originally purchased from the Supplier earlier than 3 months prior to the date of the end-user invoice will not qualify for replacement or credit and will fall under the standard warranty terms of the manufacturer.

## **8. Risk and Title**

- 8.1 Any risk of loss and damage to the Products supplied under this Agreement shall pass to the Reseller upon delivery of the Products to the Reseller or its customer except where the Reseller requests a special shipment method in which case the risk shall pass to the Reseller when the Products leave the Supplier's premises.
- 8.2 Full legal title and interest in all Products shall remain vested in the Supplier and shall not pass to the Reseller unless and until the Supplier has received payment in full of all amounts due and owing from the Reseller to the Supplier.
- 8.3 During such time as the Products remain in the Supplier's ownership the Reseller shall store or otherwise keep and mark the Products in such a way as to clearly identify that the Products are owned by the Supplier and shall not remove, obscure or delete any mark placed on the Products by the Supplier which may enable the Products to be identified.
- 8.4 Without prejudice to any other rights or remedies arising out of any breach of contract by the Reseller the Supplier shall be entitled to repossess all or any of the Products and to take possession of all or any goods incorporating the Products upon the happening of any of the events specified in clause 9. For the purpose of the repossession pursuant to this clause the Supplier or its agent shall be entitled to enter upon any relevant land or buildings with such transport as may be necessary to remove the Products and/or goods. All costs incurred by the Supplier or the Supplier's agent for any such repossession shall be borne by the Reseller.

## **9. Term and Termination**

- 9.1 This Agreement shall come into force on the Commencement Date and shall remain in force for a 6 months initial trial period, unless terminated earlier as provided for in this Agreement. After the initial trial period the Agreement shall be automatically renewed for successive one year periods without further notice save and until terminated in accordance with the provisions of this Agreement.
- 9.2 Either party may terminate this Agreement with or without cause (and without payment of compensation) at any time by giving 90 days written notice to the other party.
- 9.3 The Supplier may terminate this Agreement immediately by notice if:
  - 9.3.1 the Reseller fails to pay any sums due hereunder by the due date notwithstanding any provisions for late payment contained herein;
  - 9.3.2 If a petition is filed in any court to declare one of the parties bankrupt or for a reorganization under the Bankruptcy Law or any similar statute and such petition is not dismissed in 30 days or if a Trustee in Bankruptcy or a Receiver or similar entity is appointed for one of the parties;;
  - 9.3.3 the Reseller goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting there from effectively agrees to be bound by or assume the obligations imposed on the Reseller under this Agreement);
  - 9.3.4 the Reseller ceases or threatens to cease to carry on business;
  - 9.3.5 Anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the Reseller;
- 9.4 In the event that the Reseller fails to observe or perform any of its obligations under this Agreement then the Supplier may terminate this Agreement on 30 days written notice provided that the breach complained of cannot be remedied by the Reseller within the 30 day period to the satisfaction of the Supplier.
- 9.5 The Supplier reserves the right to terminate this Agreement immediately by written notice to the Reseller if the Reseller repeats any breach of this Agreement after receiving a written notice from the Supplier warning the Reseller that repetition of the breach will or may lead to termination (whether or not the repeated breach is remedied within 30 days).
- 9.6 The Supplier reserves the right to immediately terminate this Agreement upon change of the Reseller's management or a change of control (as defined in the Companies Act 1985) within 28 days of the Supplier being made aware of such a change. The Reseller shall notify the Supplier in advance of any anticipated change of management or control.

## **10. Force Majeure**

- 10.1 If either party is affected by Force Majeure it shall forthwith notify the other party of the nature and extent thereof.
- 10.2 Neither party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, by reason of any delay in performance, or non-performance of any of its obligations hereunder to the extent that such delay or non-performance is due to any Force Majeure of which it has notified the other party; and the time for performance of that obligation shall be extended accordingly.
- 10.3 If the Force Majeure in question prevails for a continuous period in excess of six months the parties shall enter into bona fide discussions with a view to alleviating its effects or to agreeing upon such alternative arrangements as may be fair and reasonable.

## **11. Liability**

- 11.1 The Reseller will indemnify and keep indemnified the Supplier from and against any and all loss, damage or liability (whether criminal or civil, and including reasonable legal fees and costs) suffered by the Supplier arising out of or in connection with the Reseller's acts omissions or representations including any act, neglect or default of the Reseller's agents, employees, licensees or customers and including breaches resulting in any successful claim by any third party alleging libel or slander in respect of any matter arising from the supply of Products in the Territory.
- 11.2 The Reseller hereby acknowledges that any Intellectual Property or proprietary rights in the Products shall at all times and for all purposes vest and remain vested in the product manufacturer.
- 11.3 The Supplier shall not in any circumstances be liable for loss of profits or revenue, loss of business or contracts, loss of anticipated savings, losses arising from loss of data and any other consequential losses or any losses which arise other than directly and naturally from a breach of contract.
- 11.4 Notwithstanding the provisions of clause 11.3 the total aggregate liability of the Supplier arising out of or in connection with this Agreement whether for negligence or breach of contract or any case whatsoever shall in no event exceed \$10,000. The Reseller acknowledges that the Supplier developed its pricing on the basis of this liability limit and that any increase in this liability limit would result in an increase in the prices charged by the Supplier and will be subject to the reimbursement by the Reseller of the Supplier's additional insurance costs.

## **12. Confidential Information**

- 12.1 Any data, knowledge or other information disclosed by either party which has been marked as confidential or proprietary by the disclosing party will be treated by the receiving party as confidential and proprietary information. The party receiving such information will not disclose the same. The obligation under this clause will not apply to any:
  - 12.1.1 information that is in the public domain at the time of disclosure;
  - 12.1.2 information that is acquired from a third party other than in connection with this Agreement and without an obligation of non-disclosure;
  - 12.1.3 disclosure which is consented to by the other party in writing.
- 12.2 Both parties acknowledge that this Agreement is to be considered confidential. The terms and conditions of this Agreement shall not be disclosed to third parties.
- 12.3 In the event that either party should terminate this Agreement for any reason in the future, upon request, each party shall return to the other all confidential and proprietary information disclosed to it under this Agreement and which is in its possession or under its control at the time of the termination, regardless of format, within ten days following written request by the other party. Notwithstanding any such termination the obligations in this clause shall survive such termination.

## **13. Nature of Agreement**

- 13.1 The Supplier may assign this Agreement and the rights and obligations thereunder.
- 13.2 The Reseller may assign this Agreement and the rights and obligations thereunder only with the consent of the Supplier.

- 13.3 This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, supersedes all previous agreements and understandings between the parties with respect thereto and may not be modified except by an instrument in writing signed by the duly authorized representatives of the parties.
- 13.4 Each party acknowledges that in entering into this Agreement it does not do so on the basis of and does not rely on any representation warranty or other provision except as expressly provided herein and all conditions warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.
- 13.5 With the exception of statements made fraudulently each party agrees that they will have no remedy in respect of any untrue statement made to them upon which they rely in entering into this Agreement and that their only remedies can be for breach of contract.
- 13.6 If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or in part this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.
- 13.7 In all matters pertaining to this Agreement the Reseller is and shall be an independent contractor. No employee of the Reseller shall be deemed to be an employee of the Supplier and vice versa. Nothing herein contained shall be construed to create a partnership, joint venture, or agency and neither party shall be liable for the obligations of the other.
- 13.8 Any waiver of either party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provisions thereof.

#### **14. Jurisdiction and Law**

- 14.1 This Agreement shall be governed by and construed in all respects in accordance with the Laws of the State of Nevada and each party hereby submits to the non-exclusive jurisdiction of the Nevada Courts.

#### **15. Notices and Services**

- 15.1 Any notice to a party under this Agreement shall be in writing signed by or on behalf of the party giving it and shall, unless delivered to a party personally, be left at, or sent by prepaid first class post, prepaid recorded delivery or facsimile to the address of the party as set out on the first page of this Agreement or as otherwise notified in writing from time to time.
- 15.2 A notice shall be deemed to have been served:
- 15.2.1 at the time of delivery if delivered personally;
  - 15.2.2 48 hours after posting in the case of an address in the United States of America and 96 hours after posting for any other address;
  - 15.2.3 2 hours after transmission if served by facsimile on a working day prior to 3.00pm or in any other case at 10.00am on the next working day after dispatch.
- 15.3 In proving service it will be sufficient to prove:
- 15.3.1 in the case of personal service that it was handed to the party or delivered to or left in an appropriate place for receipt of letters at its address;
  - 15.3.2 in the case of a letter sent by post, that the letter was properly addressed, stamped and posted; or
  - 15.3.3 in the case of facsimile, that it was properly addressed and dispatched to the number of that party.

#### **16. Exclusion of third party rights**

- 16.1 Unless expressly provided in this Agreement no express term of this Agreement is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

**Signed for and on behalf of the Supplier** *-DistributorX authorized use only*

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

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

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

**Dated:** \_\_\_\_\_

**Signed for and on behalf of the Reseller**

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

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

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

**Dated:** \_\_\_\_\_