

1  
2  
3  
4  
5  
6  
7  
8  
9  
10

# Company X Services Reseller Agreement

This Reseller Agreement (“Agreement”) is made between Company X Services, Inc., a Texas corporation with a place of business and initial address for notice at XXX (“Company X”) and the “Reseller” identified in Schedule 1 below. This Agreement is effective as of the Effective Date as stated in Schedule 1 (if no Effective Date is there stated, then the Effective Date will be the date on which the last party to this Agreement signs it). All section references are to sections in this Agreement unless otherwise clear from the context.

## Schedule 1

Reseller full legal name	<b>[FILL IN FULL LEGAL NAME]</b>
Reseller entity type	a [STATE] [corporation]
Reseller principal place of business	[CITY, STATE]
Reseller initial address for notice	[FILL IN ADDRESS]
Products – licenses for the following:	All Company X software products
Effective Date of this Agreement	[FILL IN DATE]
Territory in which Products may be sold	[FILL IN TERRITORY]
Percentage payments to Company X (“Company X’s Percentage”)	[FILL IN PERCENTAGE]% of Reseller’s payments for the Product or Service in question from Reseller’s customers (excluding taxes).
Initial Reseller payment to Company X for setup	\$(FILL IN AMOUNT)
Minimum payment to Company X per Reseller customer installation	\$(FILL IN AMOUNT)
Term	<b>Expires [DATE]. Successive automatic extensions</b> of one year each unless either party opts out by written notice no later than 60 days before the then-current expiration date. <b>Unilateral termination</b> by either party after the first year upon at least 60 days prior written notice.
Minimum periodic sales by Reseller (separate from minimum payment per customer installation)	None
Exclusivity of Reseller’s rights under this Agreement	<b>None</b>

**The terms and conditions of this Agreement continue on the following pages.**

**AGREED:** Company X Services, Inc., by:

**AGREED:** Reseller, by:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date signed

\_\_\_\_\_  
Date signed

\_\_\_\_\_  
Printed name AND TITLE

\_\_\_\_\_  
Printed name AND TITLE

# Table of Contents

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46

1. Definitions & usages .....	2
2. Sale of Products and Services .....	4
3. Orders; payment; pricing.....	7
4. Pricing.....	9
5. Training.....	9
6. Marketing efforts.....	10
7. Confidential information .....	11
8. Recordkeeping; audits .....	12
9. Warranties – general provisions & disclaimer.....	13
10. Limitation of liability.....	14
11. Relationship management.....	15
12. Termination .....	16
13. General provisions.....	18

For the avoidance of doubt, terms in smaller print in this Agreement have the same effect as the “headlines” in larger print.

## 1. Definitions & usages

### 1.1 Affiliate status arises via a "control" relationship.

Minimum voting percentage for control: 50%.

- (a) An **affiliate** of a first individual or organization is another individual or organization that controls, is controlled by, or is under common control with, the first one, either directly or indirectly via one or more intermediaries.
- (b) For purposes of determining affiliate status, '**control**' of an organization refers to ownership or voting control of at least the specified minimum voting percentage of the securities of the organization that are entitled to vote for the election of directors or of comparable ownership interests in the organization.

### 1.2 Affiliate status also exists among the following specific persons: None.

In addition to any other definition of "affiliate" in this Agreement (if any), the specified individuals and/or organizations are deemed affiliates of the specified parties.

### 1.3 Claim, in respect of an indemnity- and/or defense obligation, is defined broadly.

The term refers to:

- (1) any and all claims, counterclaims, cross claims, and the like for monetary or injunctive relief in respect of any alleged or proven injury (including for example bodily injury or death) in or before any court, administrative agency, arbitration panel, or other forum having the legal power to adjudicate disputes, and

- 47 (2) any and all demands not yet matured into one or more of the foregoing.
- 48 1.4 **Examples are inclusive.**
- 49 Examples (and terms such as *for example*), as well as *include* and similar terms (e.g., *including*), are used in  
50 this Agreement for purposes of illustration, not of limitation, unless another meaning is clear from the con-  
51 text.
- 52 1.5 **Include, etc. — see *Examples*.**
- 53 1.6 **Level 1, 2, and 3 support refers to technical support for a product or service.**
- 54 (a) Level 1 support involves providing customers, where applicable, with "by the book" basic technical  
55 support such as compatibility information, installation assistance, general usage support, assistance  
56 with routine maintenance, and/or basic troubleshooting advice.
- 57 (b) Level 2 support refers to more in-depth efforts to confirm the existence, and identify possible known  
58 causes, of a defect in a product or an error in a service that is not resolved by Level 1 support.
- 59 (c) Level 3 support refers to advanced problem-resolution efforts.
- 60 1.7 **Party refers to an individual or organization entering into this Agreement.**
- 61 *Party*, unless otherwise clear from the context, refers to a signatory party, that is, an individual or organiza-  
62 tion entering into this Agreement.
- 63 1.8 **Person refers to an individual or organization, unless otherwise clear.**
- 64 Unless otherwise clear from the context, the term "person" means an individual, corporation, business  
65 trust, estate, trust, partnership, limited liability company, association, joint venture, government, govern-  
66 mental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.
- 67 1.9 **Protected party refers to a beneficiary of an indemnity obligation or limitation  
68 of liability.**
- 69 A *protected party* is any signatory party that is the beneficiary of (i) an indemnity- and/or defense obligation  
70 in this Agreement, or (ii) a limitation of remedies in this Agreement.
- 71 1.10 **Protected person refers to a protected party and its employees, etc.**
- 72 (a) A protected party's *protected persons* are (1) the protected party itself and (2) its employees, officers,  
73 directors, shareholders, general- and limited partners, members, and managers.
- 74 (b) The *protected persons* of a protected party also include its affiliates and their respective employees, of-  
75 ficers, directors, shareholders, general- and limited partners, members, and managers.
- 76 1.11 **Seasonably has the standard Uniform Commercial Code meaning.**
- 77 An action is taken *seasonably* if it is taken at or within the time agreed or, if no time is agreed, at or within a  
78 reasonable time.

79 **2. Sale of Products and Services**

80 2.1 Reseller will sell Products and Services as stated in Schedule 1.

81 This authorization extends only during the Term, and in the Territory, specified in Schedule 1.

82 2.2 Reseller may use Products for demos; Reseller's internal training; and Reseller's  
83 own I-9 needs.

84 (a) Reseller need not pay a license fee or other charge for such use.

85 (b) Otherwise, Reseller will not use any Products in any manner unless Reseller has obtained the appropri-  
86 ate license(s) from Company X.

87 (c) Uses prohibited (if unlicensed) include, for example, service-bureau use for the benefit of any Reseller  
88 customer.

89 2.3 Reseller may not offer or sell competing products and/or services.

90 This restriction refers to products or services that compete with the Products or Services.

91 2.4 Company X may market and/or sell Products and Services directly to customers.

92 (a) Company X may do so in any customer or industry segment and any geographic territory.

93 (b) For example, Company X may enter into agreements with other resellers and other distribution chan-  
94 nels, and/or engage in direct marketing and -sales.

95 (c) For the avoidance of doubt, Company X need not give Reseller notice, nor compensation, nor any right  
96 of first refusal, for any such business.

97 2.5 Customer-support responsibility will be divided between Reseller and Compa-  
98 ny X.

99 Reseller provides: Level 1 and Level 2 support.

100 Company X provides: Level 3 support.

101 (a) Reseller will provide all such customer support in a prompt, courteous, and professional manner.

102 (b) If reasonably requested by Reseller, Company X will endeavor to assist Reseller in its provision of such  
103 support, to the extent consistent with Reseller's primary responsibility.

104 (c) Reseller will forward customer feedback and trouble reports to Company X. If so specified by Compa-  
105 ny X in writing, Reseller will use Company X's automated facilities for any such feedback or report.

106 (d) Reseller will furnish Company X with copies of any written customer feedback and/or trouble reports it  
107 receives, at Company X's request or on such schedule as Company X may reasonably request.

108 (e) Upon request by Company X from time to time, Reseller will brief Company X orally about any custom-  
109 er feedback and/or trouble reports received by Reseller in other than written form.

110 (f) For the avoidance of doubt, this clause does not in itself obligate Company X to take action about cus-  
111 tomer feedback or trouble reports.

- 112 2.6 Company X is free to make changes to the line of Products and Services it offers,  
113 in its sole discretion.
- 114 (a) For example, Company X may add or discontinue one or more products or services of modify existing  
115 ones, without obligation to Reseller.
- 116 (b) If Company X makes any such change, it will seasonably advise Reseller.
- 117 2.7 Reseller will not engage in deceptive or illegal practices.
- 118 (a) This obligation applies to Reseller's actions relating to the Products and Services.
- 119 (b) Reseller will defend and indemnify Company X against all claims arising from such actual or alleged  
120 practices by Reseller.
- 121 2.8 Reseller has no authority to modify Company X's warranties, etc.
- 122 (a) Reseller will not (i) make any representation on behalf of Company X, nor (ii) offer any warranty or  
123 modification of a warranty on behalf of Company X, without Company X's express written authoriza-  
124 tion in either case.
- 125 (b) Reseller will defend and indemnify Company X against any third-party claims arising out of breach of  
126 this clause.
- 127 (c) For the avoidance of doubt, Reseller may furnish prospective customers with written and/or graphic  
128 materials that are either (i) furnished by Company X, or (ii) authorized in writing by Company X for use  
129 by Reseller in promoting sales.
- 130 (d) See also the independent-contractor provisions in the "General provisions" section of this Agreement.
- 131 2.9 Reseller's customers must agree to Company X's legal terms.
- 132 (a) "Legal terms" refers to an end-user license agreement (for software) or terms of service (for services,  
133 including for example Web-based services).
- 134 (b) Reseller will ensure that its customers for Products or Services are aware that they must agree to  
135 Company X's legal terms.
- 136 (c) Company X may modify its terms of service from time to time in its sole discretion. No such modifica-  
137 tion will apply to Products or Services already sold by Reseller without the approval of the relevant end  
138 customer(s).
- 139 (d) Company X will seasonably advise Reseller if it does modify its legal terms.
- 140 2.10 Reseller must make minimum periodic sales if so specified in Schedule 1.
- 141 If Reseller fails to do so, then Company X's sole remedy will be to terminate Reseller's right to sell Products  
142 and Services effective immediately upon written notice.
- 143 2.11 Reseller may not reverse engineer, etc., any Product or Service.
- 144 The prohibition of this clause extends to Reseller's copying, disassembly, decompilation, or reverse en-  
145 gineering of any Product or Service and to assisting or knowingly permitting others to do so.

- 146 2.12 Company X retains all rights in Products and Services.
- 147 For the avoidance of doubt, Reseller does not acquire any ownership right in the physical embodiments or  
148 intellectual property rights of any Products, all title to which remains in Company X and/or its suppliers.
- 149 2.13 Company X owns and will own all “Company X IP.”
- 150 (a) The term “Company X IP” encompasses each Product and Service, including any related derivative  
151 work, modification, or improvement.
- 152 (b) To the extent that Reseller acquires any right, title, or interest in any Company X IP, Reseller hereby as-  
153 signs the same to Company X and will cooperate with Company X, at Company X’s expense, as neces-  
154 sary to document and record the assignment.
- 155 (c) Reseller represents that it has in place, and agrees to maintain, with all of its personnel (including all  
156 personnel of agents and/or subcontractors), agreements sufficient to effectuate this Section 3.4.
- 157 2.14 Company X is free to use suggestions, feedback, etc.
- 158 Company X may use, without obligation to Reseller, any suggestion, comment, or other feedback provided  
159 by Reseller or any Reseller customer.
- 160 2.15 Reseller will report any potential relevant infringement of IP rights.
- 161 (a) This reporting requirement applies to:
- 162 (1) any potential infringement of a third party’s intellectual-property rights by Company X or any  
163 Product or Service, and
- 164 (2) any potential infringement by a third party of Company X’s intellectual-property rights in any  
165 Product or Service.
- 166 (b) Reseller will make the report as soon as possible after the potential infringement comes to Reseller’s  
167 attention.
- 168 (c) Reseller will take all steps reasonably requested by Company X, at Company X’s expense, to help Com-  
169 pany X address the potential infringement.
- 170 (d) For the avoidance of doubt, this clause in itself does not require Company X to take any particular ac-  
171 tion in response to Reseller’s report.
- 172 2.16 Company X will be responsible for certain third-party infringement claims.
- 173 (a) This section applies to any claim against Reseller that Reseller’s marketing or sale of Products or Ser-  
174 vices infringes any copyright, trade-secret right, or U.S. patent right of the third party.
- 175 (b) Company X, at its own expense, will provide Reseller with a competent defense against the claim.
- 176 (c) Company X will have the right to control the defense against the claim, including on appeal.
- 177 (d) Company X will pay any settlement of the claim entered into with Company X’s prior written consent.
- 178 (e) Company X will indemnify Reseller against any monetary award made in respect of the claim by a court  
179 of competent jurisdiction in a final judgment from which no further appeal is taken or possible.
- 180 (f) This section sets forth Reseller’s **EXCLUSIVE REMEDIES** for any actual or alleged infringement of third-  
181 party rights by any Product or Service.

- 182 2.17 Reseller may not obligate Company X to the U.S. Government.
- 183 (a) This prohibition applies to obligating Company X to the U.S. Government as a subcontractor or other-  
184 wise.
- 185 (b) Reseller will not purport to so obligate Company X, nor to make any related representation, warranty,  
186 or certification on Company X's behalf.
- 187 (c) See also the independent-contractor provisions in the "General provisions" section of this Agreement.

### 188 3. Orders; payment; pricing

#### 189 3.1 Reseller's orders must be in writing.

- 190 (a) Each order by Reseller for Products and/or Services must include such information as Company X may  
191 reasonably request, including for example the following where applicable: (i) unit quantity; (ii) unit  
192 price; (iii) shipping destination; (iv) requested delivery date; and (v) any other relevant information.
- 193 (b) Orders are effective only upon written acceptance by Company X.
- 194 (c) Acceptance may be by email or other electronic form at Company X's option.

#### 195 3.2 Company X will invoice Reseller based on Reseller's price to its customer.

- 196 (a) Reseller must disclose to Company X the price it invoiced to each Reseller customer for a Product or  
197 Service. Company X reserves the right not to activate a Reseller customer's Product or subscription to  
198 a Service until Reseller has provided this information.
- 199 (b) Company X will treat Reseller's price charged to its customer as Reseller's confidential information.
- 200 (c) Company X will invoice Reseller for the amount specified in Schedule 1.
- 201 (d) Company X may use such electronic-invoicing method or service as it deems appropriate.

#### 202 3.3 Payment terms are net 30 days.

- 203 (a) Days are measured from: Date of a correctly-stated invoice.
- 204 (b) Payment method: Any method reasonably acceptable to the payee.

#### 205 3.4 Payment disputes must be timely raised.

206 IF: Reseller wishes to dispute an invoice or any other claim that a stated amount is owed; THEN: Reseller will  
207 (1) timely pay any undisputed portion; and (2) seasonably furnish Company X with a written explanation of  
208 its dispute together with reasonable supporting documentation.

#### 209 3.5 Payment obligations are not contingent on third-party payments.

210 Unless expressly agreed otherwise, no payment obligation of Reseller under this Agreement will be excused  
211 or abated by a failure or delay of a third party—for example, a customer or client of Reseller—to make its  
212 own full payment to Reseller.

- 213 3.6 Payment acceptance by Company X is without prejudice.
- 214 Unless otherwise agreed, Company X's acceptance of full or partial payment is without prejudice to any  
215 other right or remedy that Company X may have against Reseller and will not in itself waive any such right  
216 or remedy.
- 217 3.7 Company X may charge a late fee on past-due amounts.
- 218 (a) Maximum late fee: 5% per annum, not compounded.
- 219 (b) Late-fee start date: 30 days after the due date.
- 220 (c) The late fee may not exceed the specified amount or rate or, if less, the maximum legal rate.
- 221 (d) The parties intend for any amount charged or paid pursuant to this Agreement, in any contingency, to  
222 comply with law. Consequently, IF: One or more charges and/or payments hereunder are properly  
223 characterized as interest, and are determined to have exceeded the maximum interest permitted by  
224 law (after taking all permitted steps to spread them over time); THEN:
- 225 (1) The excess interest will be deemed the result of an inadvertent error, even if the party charging or  
226 paid the excess intended to take the action(s) resulting in the excess;
- 227 (2) if the excess interest has not yet been paid, the excess charge will be canceled; and
- 228 (3) if the excess interest has been paid, the party that was paid the excess will refund it, or credit it to  
229 any balance still owed by the payer, along with interest on the excess at the maximum rate per-  
230 mitted by law.
- 231 3.8 Credit-card and bank-transfer payments are authorized.
- 232 (a) Reseller authorizes Company X —and represents and warrants that it has the right to do so — to  
233 charge Reseller payments due under this Agreement to the credit-card account(s) and/or bank ac-  
234 count(s) specified by Reseller.
- 235 (b) Reseller will timely update its payment-account information with Company X.
- 236 (c) IF: For any reason Reseller's credit-card issuer or bank does not transfer full payment, in response to  
237 a Company X attempt to charge an amount due hereunder; THEN: Company X may treat the payment  
238 as past due.
- 239 3.9 Sales taxes are Reseller's responsibility
- 240 (a) Reseller is responsible for payment of any sales, use, and other taxes, other than taxes on Company X's  
241 net income, in respect of Reseller's sales to its customers.
- 242 (b) If Company X pays any such taxes on behalf of Reseller, then Reseller will promptly reimburse Compa-  
243 ny X for the same upon request.
- 244 (c) Reseller will defend and indemnify Company X and Company X's affiliates against any claim by any  
245 third party (including for example taxing authorities) arising from Reseller's failure to pay any such tax.



246 **4. Pricing**

247 4.1 Company X can increase the minimum per-installation payment

248 (a) Company X may, in its sole discretion, increase the minimum payment per Reseller customer installa-  
249 tion (see Schedule 1 for the amount of the initial minimum payment), no more than once each year, by  
250 the greater of:

251 (1) 5% of the then-current minimum payment;

252 (2) the percentage increase in CPI-U over the relevant period, as published by U.S. Bureau of Labor  
253 Statistics; and

254 (3) the amount necessary, if any, to increase the amount of the minimum payment per Reseller cus-  
255 tomer so that it is equal to Company X's Percentage (see Schedule 1) applied to Reseller's  
256 12-month trailing average sale price for Products and Services.

257 (b) As a hypothetical example to illustrate the calculation in subdivision (a)(3) above: Suppose that Com-  
258 pany X's Percentage specified in Schedule 1 is 99%; that the minimum payment to Company X per cus-  
259 tomer installation as specified in Schedule 1 is \$0.50; and that Reseller's relevant 12-month trailing av-  
260 erage sale price was \$1.00 per customer installation. In that hypothetical situation, Reseller's new min-  
261 imum payment per Reseller customer installation would be increased from \$0.50 to \$0.99 to reflect  
262 the average actual customer sale price.

263 4.2 Each party retains authority to set its own pricing to its customers.

264 As between the parties, each specified party has exclusive authority to set the prices that it charges to its  
265 own customers. Such authority, however, is subject to any pricing commitments that may be set forth here-  
266 in for transactions contemplated by this Agreement.

267 4.3 No other discounts or promotions apply.

268 No other discounts or promotions will be applied to the pricing set forth in this Agreement unless the par-  
269 ties specifically agree otherwise in writing.

270 4.4 Company X may offer different pricing to others.

271 (a) Company X may offer Products and/or Services to others at pricing or on agreement terms that may be  
272 more favorable than that offered to Reseller.

273 (b) Company X is under no obligation to offer the same or similar pricing or terms to Reseller or its cus-  
274 tomers.

275 **5. Training**

276 5.1 Initial training is required for Reseller's sales- and help-desk personnel.

277 Reseller must ensure that its sales- and help-desk personnel undergo initial training prescribed by Compa-  
278 ny X; unless otherwise agreed, Reseller may not engage in offering or selling Products or Services until this  
279 initial training has been completed.

280 5.2 Periodic refresher training is also required.

281 Reseller must ensure that its sales- and help-desk personnel who deal with any Product or Service complete  
282 the specific annual E-Verify refresher training offered by Company X.

283 5.3 Reseller is responsible for all of its own costs of initial- and refresher training.

284 (a) Such costs include (1) all travel- and lodging expenses for Reseller's personnel, as well as

285 (2) Company X's then-standard training fees, if any.

286 (b) Company X may adjust its training fees in its discretion from time to time.

## 287 **6. Marketing efforts**

288 6.1 Reseller may identify itself as an authorized Company X reseller.

289 (a) Such identification may include, for example, displaying a Company X-approved Company X logo on  
290 Reseller's Web site and in its promotional literature.

291 (b) Any such logo on Reseller's Web site must include a link to an appropriate page of Company X's Web  
292 site.

293 (c) Reseller must remove any such logo within two business days after a written request by Company X.

294 (d) Reseller will not use any Company X trademark, trade name, or corporate name except in connection  
295 with Reseller's sale of Products and Services.

296 (e) Reseller's use of Company X's trademarks will inure exclusively to Company X's benefit.

297 6.2 Company X may identify Reseller as being a Company X reseller.

298 Company X will have the same rights and obligations in respect of Reseller's trademarks as Reseller does  
299 under §§ 6.1 and 6.8 in respect of Company X's trademarks.

300 6.3 Reseller will comply with Company X's marketing guidance concerning the Prod-  
301 ucts and Services.

302 6.4 Company X will furnish Reseller with samples of Company X's marketing materi-  
303 als upon request.

304 (a) The marketing materials will be of such type(s) as Company X may determine in its discretion.

305 (b) Such materials may include, for example, instruction books, catalogues, circulars, and other promo-  
306 tional or technical material.

307 (c) Company X reserves the right to charge Reseller for Company X's reasonable cost of such materials.

308 (d) Reseller may use such materials only for the purpose of promoting sales of Products and Services.

309 6.5 Reseller may make (and have made) copies of Company X's marketing materials.

310 (a) All such copies must be of at least the same quality as the originals or as otherwise specified in writing  
311 by Company X.

312 (b) All such copies are to be made at Reseller's own expense.

- 313 (c) Reseller may use such copies only for the purpose of promoting sales of Products and Services.
- 314 6.6 Each party will comply with the other party's written trademark-usage policies.
- 315 This requirement applies to policies and guidelines seasonably provided by the other party for its trade-  
316 mark(s), including for example instructions for display of trademark-rights or -registration notices.
- 317 6.7 Each party's trademarks are its exclusive property.
- 318 (a) Alternatively, one or more of a party's trademarks might be the property of another organization asso-  
319 ciated with that party.
- 320 (b) For the avoidance of doubt, the other party is not and will not be entitled, either by implication or oth-  
321 erwise, to any title or other ownership interest in the trademark owners trademarks.
- 322 6.8 Company X will defend Reseller against relevant trademark-infringement claims.
- 323 (a) For this purpose, "relevant trademark infringement claim" refers to a claim, by a third party not affili-  
324 ated with Reseller, that Reseller's use of a Company X trademark infringes the third party's trademark  
325 right.
- 326 (b) Company X will indemnify Reseller against any resulting damage award, up to a maximum of Compa-  
327 ny X's relevant insurance.
- 328 6.9 Neither party will use any trademark of the other party without authorization.
- 329 (a) **Trademark**, as used in this Agreement, refers to trademarks, service marks, and trade names; exam-  
330 ples include brand names; designs; domain names; and logos.
- 331 (b) For purposes of this Agreement, "use" of a trademark includes, among other things, registering or li-  
332 censing a domain name.
- 333 (c) Any authorization to use the other party's trademark must be in an express writing.

## 334 7. Confidential information

- 335 7.1 The Confidential Information of each party ("Disclosing Party") is protected.
- 336 (a) The term **Confidential Information** refers to information that is:
- 337 (1) maintained in confidence by or on behalf of a specified Disclosing Party; and
- 338 (2) made available to any other party to this Agreement (each, a Receiving Party), by or on behalf of  
339 the Disclosing Party, in connection with the parties' dealings under this Agreement.
- 340 (b) For the avoidance of doubt, at any particular time, Confidential Information does not include infor-  
341 mation shown to be or to have been, at that time, within one or more of the following categories:
- 342 (1) The information was known by the Receiving Party before it obtained access to the information  
343 under this Agreement; or
- 344 (2) The information was provided to the Receiving Party by a third party that, so far as the Receiving  
345 Party was aware, was not under an obligation of confidence benefiting the Disclosing Party at the  
346 time in respect of the information; or

- 347 (3) The information was independently developed by the Receiving Party without use of Confidential  
348 Information; or
- 349 (4) The information was published, or otherwise made generally available to one or more others not  
350 under an obligation of confidence to the Disclosing Party, without breach of this Agreement by  
351 the Receiving Party; or
- 352 (5) The information was disclosed, by the Disclosing Party or with its authorization, to one or more  
353 third parties that, at the time of such disclosure or any time afterwards, were not under an obliga-  
354 tion of confidence that (i) benefited the Disclosing Party and (ii) included restrictions on disclosure  
355 and use comparable to those of this Agreement.

356 7.2 A Disclosing Party must mark its confidential information as such.

357 Catch-up marking is permitted for 10 business days after an unmarked disclosure.

358 7.3 A Receiving Party may not use confidential information except for purposes of  
359 this Agreement.

360 7.4 A Receiving Party may not disclose confidential information to others without  
361 the Disclosing Party's authorization.

## 362 **8. Recordkeeping; audits**

363 8.1 Reseller will keep records sufficient to confirm compliance with this Agreement.

- 364 (a) Record-retention period: At least one year after completion of the relevant transaction.
- 365 (b) All such records are to be accurate and materially-complete and conform at least to commercially-  
366 reasonable standards of recordkeeping.
- 367 (c) In Reseller's customer-information records, the required records include, for each customer, at least  
368 the following: the customer's name and address; the quantity and prices of Company X's Products  
369 and/or Services acquired (or offered but not acquired); and such other categories of information as  
370 may be reasonably specified in writing by Company X from time to time.
- 371 (d) All records required to be maintained pursuant to this Agreement are to conform to the relevant re-  
372 quirements of applicable law, if any, in addition to any other requirements that may be stated herein.
- 373 (e) Required records are to be retained for the specified record-retention period, and, if longer, for as long  
374 as required by law.

375 8.2 Company X may audit Reseller's required records.

- 376 (a) Expense-shifting threshold: 5%.
- 377 (b) Audits must be conducted at reasonable times and places during normal business hours.
- 378 (c) Except as may be otherwise agreed, each audit will be conducted (i) during normal business hours,  
379 (ii) at reasonable times designated by the auditing party in consultation with the recordkeeping party,  
380 (iii) where the records are kept in the ordinary course of business, or other reasonable location desig-  
381 nated by the recordkeeping party in consultation with the auditing party.

- 382 (d) For each audit, the recordkeeping party will: (i) provide the auditing party with reasonable access to its  
383 relevant documents and records; and (ii) at the auditing party's request, direct its relevant personnel to  
384 provide reasonable information to the auditing party about the records in question and the matters  
385 recorded therein.
- 386 (e) The auditing party may make and keep copies of the recordkeeping party's relevant records; if it does  
387 so, it will (1) preserve the copies and their contents in strict confidence; (2) not use or disclose them  
388 except to the minimum extent necessary to protect its rights under this Agreement; (3) instruct its rel-  
389 evant employees concerning its confidentiality obligations; and (4) contractually obligate any outside  
390 auditing personnel to abide by such obligations.
- 391 (f) IF: An audit reveals that incorrect billing by the recordkeeping party resulted in a net overpayment to  
392 the recordkeeping party by the auditing party; THEN: the recordkeeping party will pay interest to the  
393 auditing party on the overpayment, from the date (over)paid by the auditing party until the date repaid  
394 by the recordkeeping party, on the specified terms.
- 395 (g) The recordkeeping party will reimburse the auditing party for reasonable audit expenses actually in-  
396 curred if the audit reveals either: (1) a net disparity for the period being audited, in favor of the  
397 recordkeeping party and resulting from the recordkeeping party's error, of at least the specified ex-  
398 pense-shifting threshold; or (2) a material breach of this Agreement by the recordkeeping party.

## 399 **9. Warranties – general provisions & disclaimer**

### 400 9.1 Reseller represents and warrants the accuracy of its statements to Company X.

401 This representation and warranty applies to statements Reseller has made to Company X concerning Re-  
402 seller's financial condition.

### 403 9.2 Each party disclaims all warranties, etc., not stated in this Agreement.

- 404 (a) This disclaimer is made on behalf of each party and its suppliers.
- 405 (b) This disclaimer applies to all representations, warranties, duties, conditions, and terms of quality not  
406 expressly stated in this Agreement (or expressly stated in a document expressly incorporated by refer-  
407 ence herein).
- 408 (c) This disclaimer includes, for example, any implied warranties (*BUT NOT express warranties stated in*  
409 *this Agreement*) of merchantability; fitness for a particular purpose (whether or not the disclaiming  
410 party or any of its suppliers know, have reason to know, have been advised, or are otherwise in fact  
411 aware of any such purpose); quiet enjoyment; title; noninfringement; absence of viruses; or results.
- 412 (d) This disclaimer applies regardless whether any allegedly-implied warranty, etc., is claimed to arise by  
413 law; by reason of custom or usage in the trade; by course of dealing; or in any other manner.
- 414 (e) For the avoidance of doubt, express warranties stated in this Agreement (if any) are unaffected by this  
415 disclaimer.
- 416 (f) Each party specifically agrees not to make any claim inconsistent with this disclaimer.

417 **10. Limitation of liability**

418 10.1 Consequential damages, etc., are disclaimed by each party.

419 Except as provided by law, or otherwise agreed in writing, **NEITHER THE SPECIFIED PARTY (or parties) NOR**  
420 **ITS PROTECTED PERSONS WILL BE LIABLE FOR**, and each other party agrees not to seek from them, conse-  
421 quential, indirect, special, punitive, exemplary, or similar damages arising out of breach of this Agreement,  
422 whether in contract, tort, or otherwise, and even if the party has been advised of the possibility of such  
423 damages.

424 10.2 A general damages cap applies to awards against either party.

425 Damages-cap amount: Two times the aggregate amounts paid and payable in the transaction  
426 in question.

427 Except as provided by law, or otherwise agreed in writing, **THE AGGREGATE LIABILITY OF THE SPECIFIED**  
428 **DISCLAIMING PARTY (or parties) AND ITS PROTECTED PERSONS** arising out of breach of this Agreement  
429 SHALL NOT EXCEED — and in respect thereof the other party agrees not to seek damages from them great-  
430 er than — the specified damages-cap amount.

431 10.3 Certain property- and injury damages are carved out of limitations of liability.

432 The limitations of liability of this Agreement do not apply to (1) bodily injury to persons, including but not  
433 limited to death, or (2) damage to tangible property, where the injury or damage was proximately caused  
434 by breach of this Agreement.

435 10.4 Avoidable damage to stored information is subject to limitations of liability.

436 The limitations of liability of this Agreement do apply to property damage to the extent that the damage  
437 takes the form of loss of information, where the tangible media in which the information was stored are not  
438 otherwise damaged.

439 10.5 Indemnity obligations are not subject to the general damages cap.

440 (a) The general damages-cap provisions above do not apply to a party's indemnity- and claim-defense ob-  
441 ligations under this Agreement.

442 (b) Subdivision (a) does not apply to a specific cap on liability for defense or indemnity except to the ex-  
443 tent that the Agreement expressly states otherwise.

444 10.6 Damages for infringement of a party's IP rights are not subject  
445 to limitations of liability.

446 (a) The limitations of liability of this Agreement do not apply to infringement, by a party to this Agree-  
447 ment, of one or more intellectual-property rights of another party to this Agreement; the parties in-  
448 tend that any damages for any such infringement be determined in accordance with applicable law.

449 (b) For the avoidance of doubt, for purposes of this clause the term "intellectual-property rights" includes,  
450 for example, rights in confidential information.

- 451 10.7 *Himalaya* clause applies to protect employees, etc., from contractual liability.
- 452 Protected party: Each party.
- 453 (a) Each party expressly agrees that no servant, agent, or direct- or indirect subcontractor (each, a "protected person" for purposes of this clause) of a specified protected party, whose services are utilized in  
454 the performance of the protected party's obligations or the exercise of its rights under this Agreement,  
455 is to be liable to the agreeing party, nor to any individual or organization claiming under or through  
456 the agreeing party, for any loss, damage or delay arising or resulting (directly or indirectly) from such  
457 services.  
458
- 459 (b) Without limiting subdivision (a), every disclaimer of warranties, etc., and limitation of liability of this  
460 Agreement benefiting the protected party is to benefit each protected person as if the provision in  
461 question were expressly for the protected person's benefit; to that extent, in entering into this Agree-  
462 ment the protected party is deemed acting as agent or trustee on behalf of and for the benefit of each  
463 protected person.

464 10.8 Limitations of liability apply even if remedies fail of their essential purpose.

465 The parties have specifically agreed to this allocation of economic risk.

466 10.9 Limitations of liability are to be applied to the greatest extent permitted by law.

- 467 (a) IF: One or more limitations of liability in this Agreement is void or unenforceable under applicable law;  
468 THEN: the liability of the party protected by that limitation or limitations is nevertheless to be limited  
469 to the greatest extent consistent with that law.
- 470 (b) The parties have specifically agreed to this allocation of economic risk.

471 **11. Relationship management**

472 11.1 Each party will designate a senior representative upon request.

473 Upon request by either party, each specified party will, from time to time, designate to the other party, in  
474 writing (including for example by email), a senior-level individual who is authorized by the designating party  
475 (1) to act as that party's primary representative and contact point for the other party under this Agreement;  
476 and (2) to make decisions for the designating party hereunder.

477 11.2 Status-review conferences are to be held quarterly or upon reasonable request.

- 478 (a) Such conferences are to be by phone or, if so agreed, in person; conference details will be arranged by  
479 the requesting party.
- 480 (b) Each party will participate in status conferences as stated.
- 481 (c) The parties anticipate that conference agendas will typically include, as appropriate and without limita-  
482 tion: (A) progress made; (B) problems encountered or anticipated; (C) plans for future action; and  
483 (D) assumptions being made.
- 484 (d) Any party may prepare and circulate minutes of a status conference; any party may object to minutes  
485 prepared by another party by seasonably so advising all other parties in writing.

- 486 11.3 Disagreements are to be escalated at least two levels at the request of either  
487 party.
- 488 (a) Whenever requested by the specified party, the parties are to jointly refer any disagreement between  
489 them to at least the specified number of higher management levels, one level at a time (but no higher  
490 than the CEO level).
- 491 (b) In the interest of avoiding satellite litigation, neither party will be liable, for breach of contract or oth-  
492 erwise, for any alleged failure to appropriately escalate a dispute, in itself.

## 493 12. Termination

### 494 12.1 Termination for material breach of this Agreement by either party

- 495 Cure periods:
- 496 ○ Five business days for nonpayment of an amount due or failure to meet an agreed dead-  
497 line.
  - 498 ○ One business day for a curable breach of a confidentiality obligation.
  - 499 ○ 30 days for other curable breaches.
  - 500 ○ No cure period for noncurable breaches.
- 501 (a) A specified party that commits a material breach of this Agreement will have the specified cure period,  
502 beginning upon the effective date of notice of breach, in which to cure the breach.
- 503 (b) At the other party's reasonable request from time to time, the breaching party will provide the other  
504 party with reasonable information about its curative efforts, if any, including (where applicable) pro-  
505 gress, problems, plans, and assumptions.
- 506 (c) In appropriate circumstances, multiple- or repeated non-material breaches, even though cured, may  
507 in the aggregate constitute a material breach.
- 508 (d) In cases of material breach, the other party may in its discretion suspend performance of its own obli-  
509 gations under this Agreement until the breach is substantially cured.
- 510 (e) Termination for breach is without prejudice to any other remedies available to the terminating party  
511 except as expressly agreed otherwise.

### 512 12.2 Termination for insolvency, etc., on the part of either party

513 Effective date of termination: Five business days after notice.

514 The other party may terminate this Agreement, effective at the specified time after written notice of termi-  
515 nation, if the specified party does any of the following:

- 516 (1) ceases to do business in the normal course;
- 517 (2) becomes insolvent;
- 518 (3) admits in writing its inability to meet its debts or other obligations as they become due;
- 519 (4) makes a general assignment for the benefit of creditors;
- 520 (5) has a receiver appointed for its business or assets;



- 521 (6) files a voluntary petition for protection under the bankruptcy laws;  
522 (7) becomes the subject of an involuntary petition under the bankruptcy laws that is not dismissed  
523 within 60 days.

524 12.3 **Termination by Company X for potential damage to its business reputation**

525 Required written notice: Five business days.

526 The specified party may terminate this Agreement, effective at the stated time after written notice, if the  
527 other party engages in conduct that, in the terminating party's reasonable judgment, could create a signifi-  
528 cant risk of damage to the terminating party's business reputation.

529 12.4 **Termination by Company X for Reseller merger, etc., with Company X competitor**

530 Required written notice of termination: 30 days.

531 The specified terminating party or parties may terminate this Agreement, effective the specified time after  
532 written notice of termination, if the specified merging party merges with, or otherwise becomes an "affili-  
533 ate" (as defined in this Agreement) of, a competitor of the terminating party.

534 12.5 **Termination by Company X for change of control of Reseller**

535 Required written notice of termination: 30 days.

536 The specified terminating party or parties may terminate this Agreement, effective the specified time after  
537 written notice of termination, if the other party undergoes a "change of control," which for purposes of this  
538 section means that a third party acquires the ability to direct the affairs of another whether by virtue of the  
539 ownership of shares, contract or otherwise.

540 12.6 **Specific transactions may be terminated without terminating this Agreement.**

- 541 (a) A party that has the right to terminate this Agreement upon the occurrence of an event other than  
542 breach or for convenience, as set forth above, may instead, at its option, terminate one or more specif-  
543 ic pending transactions entered into pursuant to this Agreement.
- 544 (b) All provisions of this Agreement concerning termination of this Agreement will apply to termination of  
545 such transactions (any necessary changes being made).

546 12.7 **Post-termination wrap-up actions.**

547 Upon termination of this Agreement for any reason (including expiration):

- 548 (a) Reseller will immediately stop marketing and selling Products and Services.
- 549 (b) Reseller's customers' licenses will be unaffected by the termination.
- 550 (c) Reseller will continue to provide support to its customers pending transition of those customers to  
551 Company X support.
- 552 (d) Each party will take such other action (if any) as may be reasonably necessary to wrap up their relevant  
553 business together in a responsible manner; each party's action in this regard is to be at its own expense  
554 and risk unless (1) otherwise provided by law or by this Agreement or (2) otherwise agreed in writing.

- 555 12.8 Survival of certain rights and obligations
- 556 (a) The rights and obligations set forth in this Agreement (if any) concerning the following subjects, along  
557 with any others specified herein, will survive termination of this Agreement for any reason (including  
558 expiration):
- 559 (1) confidentiality;
  - 560 (2) indemnification and defense against third-party claims;
  - 561 (3) intellectual-property ownership;
  - 562 (4) warranty rights and -disclaimers;
  - 563 (5) limitations of liability;
  - 564 (6) choice-of-law;
  - 565 (7) choice-of-forum;
  - 566 (8) any other provision where post-termination rights or obligations are clearly intended.
- 567 (b) For the avoidance of doubt, termination will not affect already-accrued rights and obligations under  
568 this Agreement.

## 569 **13. General provisions**

- 570 13.1 Additional or different terms in purchase orders, invoices, etc., have no effect
- 571 (a) For the avoidance of doubt, neither party is obligated to give effect to additional or different terms  
572 ('new terms') in any purchase order, confirmation, invoice, or similar document that may be provided  
573 by the other party in connection with this Agreement ('new-terms document') unless the new-terms  
574 document meets the requirements of this Agreement to be an amendment hereof.
- 575 (b) Performance of actions called for by a new-terms document, without more, is not to be deemed the  
576 performing party's assent to the new terms.
- 577 13.2 Amendments must be express and in writing.
- 578 This Agreement may not be amended except by a written document, signed by the parties, that expressly  
579 (1) refers to this Agreement, so as to avoid disputes whether "stray" language constitutes an amendment;  
580 (2) states that this Agreement is being amended, and (3) sets out the amendment's terms.
- 581 13.3 Company X may unilaterally amend this Agreement.
- 582 (a) Required advance notice of amendment: 60 days.
- 583 (b) The specified party may, from time to time, give the other party written notice of amendment to this  
584 Agreement or the specified portion of it (for example, a schedule), as stated.
- 585 (c) Subject to any exceptions that may be expressly stated in this Agreement, any such amendment will  
586 automatically become effective as specified in the notice UNLESS, within the specified time after re-  
587 ceiving the notice, the other party responds by giving notice of termination of this Agreement.

- 588 (d) Unless otherwise agreed, any unilateral amendment will be effective only on a going-forward basis,  
589 that is, as to:
- 590 (1) new transactions agreed to after the end of the other party's response period, and  
591 (2) agreed renewals of expiring renewable transactions.
- 592 (e) For the avoidance of doubt, a unilateral amendment will not retroactively modify any vested right of  
593 the non-amending party, nor any vested obligation of the amending party, under this Agreement.
- 594 (f) Any unilateral amendment will be effective as to all transactions under this Agreement, including com-  
595 pleted- and pending ones, but a non-amending party may opt out of having a particular such amend-  
596 ment apply to one or more completed- or pending transactions by giving the amending party notice to  
597 that effect before the amendment takes effect.
- 598 (g) IF: A unilateral amendment to this Agreement modifies dispute-resolution provisions hereof (such as,  
599 for example, arbitration provisions, if any); AND: At the time the amendment becomes effective,  
600 a party has given notice of a dispute that is subject to those dispute-resolution provisions; THEN: The  
601 dispute-resolution provisions as in effect immediately prior to the amendment will continue to apply to  
602 that particular dispute unless the parties specifically agree otherwise.

603 13.4 Assignment of this Agreement by Reseller requires Company X's consent.

- 604 (a) The specified party (or parties; each a **restricted party**) may not assign this Agreement without the pri-  
605 or written consent of the other specified party except to the extent (if any) expressly authorized by this  
606 Agreement. Any other purported assignment of this Agreement by a restricted party will be void.
- 607 (b) Any breach of subdivision (a) is to be considered material.

608 13.5 *Contra proferentem* Interpretation rule does not apply

- 609 (a) Any ambiguities or inconsistencies in this Agreement are to be resolved in accordance with the most  
610 reasonable construction and not strictly for or against either party.

611 13.6 Entire agreement

612 This Agreement, including any exhibits, attachments, riders, or appendices as well as any other document  
613 expressly incorporated by reference, is the parties' final, complete, exclusive, and binding statement of the  
614 terms and conditions of their agreement concerning its subject matter; except as stated in this Agreement,  
615 there are no promises, understandings, representations, or warranties of any kind between the parties con-  
616 cerning that subject matter.

617 13.7 Freedom of action is retained by each party.

618 Except as expressly provided otherwise herein, this Agreement is non-exclusive. Apart from its express  
619 terms of this Agreement, nothing in it is to be construed as limiting the right of any specified party to do  
620 business with any other individual or organization, including for example (1) business of the same kind as  
621 contemplated by this Agreement and business, and/or (2) business competitive with that of the other party.

622 13.8 Independent contractors — each party will conduct itself as such.

- 623 (a) Except as may be expressly provided otherwise in this Agreement, the parties intend for their relation-  
624 ship defined by this Agreement to be strictly that of independent contractors; each party will conduct  
625 itself accordingly.

- 626 (b) Neither party will hold itself out as an employee, agent, partner, joint venturer, division, subsidiary, or  
627 branch of the other party, and nothing in this Agreement is to be interpreted as creating any such rela-  
628 tionship between the parties.
- 629 (c) Neither party has, nor will it hold itself out as having, authority to make commitments or representa-  
630 tions on behalf of the other party except to the extent, if any, that this Agreement expressly states  
631 otherwise.
- 632 (d) For the avoidance of doubt, except as may be expressly stated otherwise in this Agreement, no signa-  
633 tory party, in entering into this Agreement, intends to enter into a fiduciary relationship with, nor to  
634 commit to acting on behalf of or for the benefit of, any other individual or organization.

635 13.9 **Invalidity of one provision does not affect others.**

- 636 (a) IF: Any provision of this Agreement is held to be invalid, void, unenforceable, or otherwise defective by  
637 a court or other tribunal of competent jurisdiction;
- 638 (b) THEN: (1) all other provisions will remain enforceable, and (2) the provision will be deemed modified,  
639 solely in the jurisdiction in question, to the minimum extent necessary to cure the defect.

640 13.10 **Notices must be in writing and specifically addressed.**

- 641 (a) All notices required or permitted by this Agreement must be in writing and addressed either to a spe-  
642 cific individual or for the attention of a specific position.
- 643 (b) Any notice required or permitted by this Agreement is effective when received or refused by that indi-  
644 vidual or position as shown for example by delivery-service confirmation.
- 645 (c) Notices may be sent to the parties' respective addresses shown in this Agreement, or to such other ad-  
646 dress as a party designates by notice or by other reasonable written communication.
- 647 (d) Any party sending a specified notice is encouraged (but not required) to separately send a courtesy  
648 copy, by any reasonable method, to the attention of the general counsel of the party being notified.
- 649 (e) IF: A party is unable, after reasonable efforts, to cause notice to be delivered to another party, either at  
650 its then-current address for notice or at another address at which it can be found, THEN: The notice  
651 will be deemed to have been delivered as of the completion of such reasonable efforts.

652 13.11 **Publicity requires approval of: (Each party)**

653 Neither party will issue press releases, etc., about this Agreement or the parties' relationship without the  
654 prior written approval of the specified party.

655 13.12 **Prohibitions and restrictions extend to attempts, inducing, aiding, etc.**

656 Wherever this Agreement prohibits or restricts a party from doing something, that party is also prohibited  
657 or restricted from attempting to do so and from inducing, soliciting, permitting, or knowingly assisting any-  
658 one else to do so, whether for its own benefit or otherwise.

659 13.13 **REDLINING — ALL CHANGES HAVE BEEN FLAGGED.**

660 Each party represents that it has "redlined" or otherwise flagged its revisions (if any) of drafts of this  
661 Agreement and associated documents that it has sent to the other party.

662 13.14 **Reliance on external representations is disclaimed by each party.**

663 In entering into this Agreement, the specified party is not entitled to rely, and represents that it is not rely-  
664 ing, on any promise or representation by the other party that is not stated in (or expressly incorporated by  
665 reference into) this Agreement.

666 13.15 **Third-party beneficiaries are disclaimed except as expressly stated.**

667 For the avoidance of doubt, no individual or organization is entitled to claim any right, remedy, or benefit,  
668 of any kind, under this Agreement except: (1); the signatories to this Agreement and their respective suc-  
669 cessors and permitted assigns; and (2); to the extent, if any, that this Agreement expressly states otherwise.

670 13.16 **Waivers by either party must be in writing and are to be strictly construed.**

671 A purported waiver by a specified party of a particular condition, right, remedy, obligation, or breach of this  
672 Agreement (collectively, *entitlements*): (1) is to be given effect only if it is expressly stated in a writing  
673 signed by that party; (2) is to be strictly construed; (3) is not to be construed as a waiver by that party of  
674 any other entitlement; and (4) for the avoidance of doubt, is not to be implied from the party's non-  
675 assertion of an entitlement on one or more occasions.

676

—END OF AGREEMENT—