

Reseller Agreement

This agreement is between SEP Software Corp. residing at 4001 Discovery Drive, Suite 260, Boulder, CO 80303, USA ("MANUFACTURER") and

("RESELLER"), with offices at _____
_____.

1. PURPOSE

- 1.1 This Agreement specifies the duties, responsibilities and obligations of the parties relating to the sales of the products to end-users and other RESELLERS in the defined Territory.
- 1.2 MANUFACTURER retains all rights to the Products listed below.
- 1.3 SEP Software Corp. maintains that it has the rights to act as the Manufacturer's Representative for the territorial distribution and promotion of MANUFACTURER'S products.
- 1.4 RESELLER represents that it will market, distribute and provide support for such Products (as defined in section 4 and 6) in the Territory (as defined in section 4 and 6) and will add value to the Product through technical sales, service or market specialization.

2. KEY BUSINESS TERMS

- 2.1 "Product" shall refer to Software and Documentation collectively.
- 2.2 "Software" shall mean the executable form of the software and any updates, upgrades, enhancements, and modifications thereto.
- 2.3 "Documentation" shall mean the associated technical documentation in printed or electronic form. Products covered by this agreement are:
 - (a) All SEP sesam Backup Products
 - (b) All Xen & Now Products
- 2.4 "Territory" includes The United States, Canada and any country in North or South America.
- 2.5 "Confidential Information" includes, but is not limited to, any and all information or data of a Party that is disclosed to the other Party, either directly or indirectly, whether in writing, orally, or by visual means, and which is designated (either in writing or orally) as confidential, proprietary, or the like. However, such designation will not be necessary to deem information as Confidential Information if the nature of the information makes it generally considered confidential commercially, which information includes, but is not limited to, information that relates to:
 - (a) trade secrets or know-how,
 - (b) finance or accounting,
 - (c) technology, research, or development,
 - (d) internal processes or procedures,
 - (e) algorithms, digital data, or designs,
 - (f) business, operations, or planning thereof,
 - (g) sales or marketing strategies,

(h) the terms of any agreement, and the discussions, negotiations, or proposals related thereto, including this Agreement.

- 2.6 "CUSTOMER" means any third party that purchases, subscribes for, or otherwise uses the Services through RESELLER.
- 2.7 "Customer Data" means all lists, databases, and information relating to CUSTOMERS or prospective CUSTOMERS of RESELLER or MANUFACTURER.
- 2.8 "Customer Order" means an order for Services made by a CUSTOMER through RESELLER.
- 2.9 "Intellectual Property" means all rights, title, interest and benefit of a Party hereto in and to intellectual property of every nature, whether registered or unregistered, including all copyrights, patents, trademarks, certification marks and industrial designs, applications for any of the foregoing, trade names, brand names, business names, trade secrets, proprietary manufacturing information and know-how, instruction manuals, inventions, inventor's notes, research data, blue prints, drawings and designs, formulae, calculations, processes, prototypes, source codes, digital files, URLs, technology, the Software, marketing rights of the forgoing, Proprietary Materials, together with all rights under license agreements, sublicense agreements, strategic alliances, development agreements, technology transfer agreements and other agreements or instruments relating to any of the foregoing, that are owned by a Party hereto or used in connection with the Services.
- 2.10 "Support Services" means the services related to technical support, sales support, customer service, and billing support as provided by MANUFACTURER to RESELLER hereunder.
- 2.11 "Term" means the period commencing from the Effective Date until the date that this Agreement is terminated in accordance with the terms hereunder.

3. TERM

- 3.1 Term/Effective Date - The initial term of this Agreement shall be for period of twelve (12) months from the date signed by authorized agents of both MANUFACTURER and RESELLER ("Effective Date") and, subject to Section 8, Termination of this Agreement, this agreement may be renewed annually for an additional one-year period. It is the responsibility of the RESELLER to renew and maintain a current agreement.
- 3.2 Minimum Orders - RESELLERS must place and pay in full for at least one (1) order every six (6) months or else this contract may be terminated at the sole discretion of MANUFACTURER.

4. APPOINTMENT AND RELATIONSHIP OF THE PARTIES:

- 4.1 License to Resell - MANUFACTURER hereby grants to RESELLER a limited, non-exclusive, non-transferable, revocable, worldwide license to market, resell, and distribute the Services listed in the attached Schedules strictly in accordance with the terms hereunder to product end users.
- 4.2 Restrictions - RESELLER will not, and will not permit any of its CUSTOMERS or other third party to copy, use, analyze, reverse engineer, decompile, disassemble, translate, convert, or apply any procedure or process to any of the Services (including, but not limited to, the Software) to ascertain, derive, and/or appropriate for any reason or purpose the source code or source listings for the Services or any trade secret

information or process contained in the Software or remove any product identification, copyright or other notices.

- 4.3 Right of Refusal - MANUFACTURER reserves the right, at its sole reasonable discretion, to refuse any Customer Order or referral of a CUSTOMER from RESELLER.
- 4.4 Software License Agreement - RESELLER will provide to its end user a copy of the MANUFACTURER'S software license agreement terms for each user license issued to end user.
- 4.5 RESELLER Support - RESELLER will provide to all CUSTOMERS to whom it sells Product free first line technical support as prescribed in the SEP support policy. After any free support period, RESELLER will supply contract technical support for all CUSTOMERS from whom it has received support contract funds.
- 4.6 Shipping - Whenever products are shipped to the RESELLER, Prices are F.O.B. MANUFACTURER. RESELLER shall be responsible for all shipping, handling and insurance costs. Shipping costs will be prepaid and added to invoice.
- 4.7 Payment terms and discounts are stated in APPENDIX 1.
- 4.8 Pricing – MANUFACTURER will provide recommended pricing for RESELLER, although RESELLER is not obligated to follow MANUFACTURER'S retail pricing.
- 4.9 Retail Price Changes – MANUFACTURER may, from time to time and at its sole discretion, increase or decrease Retail Price for any and all products or services, without providing written, oral, electronic or any communication of any kind. It is the sole responsibility of the RESELLER to see current Retail Pricing located at <http://sepusa.com>. Any outstanding Quote will be honored for a period of 30 days from the date of price change. After 30 days, any and all outstanding quotes without confirmed receipt of PO will be subject to the new Retail Prices.
- 4.10 Amendment of Services - MANUFACTURER may, from time to time and at its sole discretion, add to, modify, or remove any particular service or product, or any aspect thereof, from the list of Products or Services. Certain Products or Services may permit customization or modification requests from RESELLER, however, MANUFACTURER reserves the right to deny such requests or restrict any customization or modifications for certain Products or Services.
- 4.11 License to Other Parties - RESELLER agrees that MANUFACTURER may grant to other parties the rights to market, sell, and distribute the Services. RESELLER understands that the grant of such rights to third parties may compete with RESELLER's own marketing, sale, and distribution of the Services.
- 4.12 Publication - For the Term of this Agreement, MANUFACTURER may identify RESELLER, individually or together with any and/or all other MANUFACTURER'S RESELLERS, as a RESELLER of MANUFACTURER in any form that MANUFACTURER elects at its sole discretion.

5. PAYMENT & BILLING

- 5.1 Payment Obligation - Payment of Fees is due in accordance with the Fee provisions below and those provisions on Appendix 1. If payment is not received when due, or in

the event of a chargeback by a credit card company (or similar action by another payment provider approved by MANUFACTURER) in connection with RESELLER'S payment, RESELLER has a further nineteen (19) days to make payment during which time the Services will remain available to RESELLER and CUSTOMERS but RESELLER cannot submit any additional Customer Orders or sign up new CUSTOMERS. On the twentieth day following the due date if payment has not been received, RESELLER understands, acknowledges, and agrees that RESELLER's account will be automatically suspended for thirty-nine (39) days. On the fortieth day following suspension if RESELLER has still not met its payment obligations, MANUFACTURER reserves the right to terminate the Agreement immediately upon provision of written notice. RESELLER will protect, defend, hold harmless, and indemnify MANUFACTURER (including, but not limited to, MANUFACTURER's Affiliates, directors, officers, managers, employees, agents, and contractors) from and against any and all liabilities, losses, costs, judgments, damages, claims, or actions (including, but not limited to, any and all reasonable legal fees and expenses) arising out of, related to, or resulting from any violation of the payment obligations as described herein and hereunder.

- 5.2 Payment Methods - MANUFACTURER accepts the following types of payment:
- (a) Check or Money Order
 - (b) Credit Card (VISA, MasterCard, American Express, Discover)
 - (c) Bank Wire Transfer
- 5.3 Credit Card Payment - If RESELLER provides MANUFACTURER with RESELLER'S credit card information, RESELLER authorizes MANUFACTURER to automatically charge said credit card for charges that apply to RESELLER's account as such charges become due and payable. Recurring charges will be posted to said credit card until such time that RESELLER's account is terminated in accordance with the Agreement. RESELLER is responsible for directly updating, or notifying MANUFACTURER, of any changes to said credit card (including, but not limited to card number, expiration date, billing address, or card status).
- 5.4 Reserve Balance - MANUFACTURER reserves the right to require RESELLER to maintain a reserve amount on RESELLER's account ("Reserve Balance"). Where MANUFACTURER requires a Reserve Balance, it is solely RESELLER'S responsibility to maintain the Reserve Balance and MANUFACTURER is under no obligation to issue any reminders or notices regarding the status or balance of the Reserve Balance.
- 5.5 Statements, Invoices and Receipts - MANUFACTURER does not mail paper invoices or statements. Account billing statements will be sent to RESELLER via email.
- 5.6 Additional Fees - RESELLER may be subject to the following additional fees according to method of payment and RESELLER'S account:
- 5.6.1 Returned (NSF) Checks - MANUFACTURER charges a \$25.00 fee for returned (NSF) checks. RESELLERS that issue an NSF check will be required to submit future payments with a certified check or money order.
 - 5.6.2 Credit Card Chargebacks - A \$25.00 chargeback fee will be assessed for each credit card chargeback received by MANUFACTURER.
 - 5.6.3 Bank Wire Payments - MANUFACTURER does not charge fees for accepting payment via bank wire, however, international wire transfers may be assessed a \$20.00USD processing fee. In addition, the issuing bank may also charge a fee for sending the wire. Please add such fees to the amount sent to

MANUFACTURER or the amount credited to RESELLER's account will be less than the intended payment.

- 5.7 Taxes - RESELLER will pay all sales, value-added, and other applicable taxes.
 - 5.8 Refund Policy - MANUFACTURER will not provide refunds of any Fees for any cancellation of CUSTOMER accounts or termination of the Agreement. All sales are final.
 - 5.9 Customer Billing - RESELLER will provide or ensure provision of billing support to each of the CUSTOMERS procured by RESELLER. MANUFACTURER's only obligation is to provide billing support to RESELLER through telephone and electronic mail.
 - 5.10 Records - MANUFACTURER may maintain records of all Services provided hereunder. If there is any inconsistency or conflict between MANUFACTURER'S records and that of RESELLER or any other party (including, but not limited to, CUSTOMERS), then MANUFACTURER'S records will be deemed the accurate and effective records.
 - 5.11 Non-Payment - Without limiting any other term of this Agreement, non-payment of money amounts due pursuant to this Agreement (including, but not limited to, Fees) will constitute material breach of this Agreement. All past due and unpaid balances are subject to collection. In the event of collection, RESELLER will be liable for reasonable costs and fees of collection including attorney's fees, court costs, and collection agency fees.
 - 5.12 Currency - Unless otherwise expressly stated herein, all money amounts paid by RESELLER to MANUFACTURER will be paid in lawful money of the United States Dollars.
6. OTHER OBLIGATIONS OF RESELLER
- 6.1 Good Faith - RESELLER will use good faith and commercially reasonable business practices to market, resell, and distribute the MANUFACTURER'S Products and Services.
 - 6.2 Exclusive Purpose - RESELLER will use the Products and Services only for the marketing, resale, and distribution of the Products and Services in accordance with this Agreement and for no other purpose. Non-compliance with this section will constitute a material breach of this Agreement.
 - 6.3 Contact Information - RESELLER will provide MANUFACTURER with complete and accurate contact information of RESELLER and CUSTOMERS, as required by MANUFACTURER, and RESELLER will ensure that such information is updated and kept current at all times.
 - 6.4 Conflicting Agreements - If there is any conflict between this Agreement and any other agreement RESELLER may be party to, then RESELLER will adhere to all the provisions of this Agreement despite such adherence constituting breach of such other agreement.
 - 6.5 Illegal Activity & Abuse - RESELLER will not use, nor allow any Customers to use, the Services in a manner that is, or potentially is, illegal, a legal risk to MANUFACTURER, generally objectionable in the Software Community, or degrading to the quality, goodwill, reputation, or provision of the Products or Services. Without limiting any

other term of this Agreement, breach of this section will constitute a material breach of this Agreement.

- 6.6 Customer Service & Technical Support - RESELLER must provide or ensure provision of customer service and technical support to each of the CUSTOMERS procured by RESELLER. RESELLER may escalate CUSTOMERS' technical support issues to MANUFACTURER only if RESELLER is unable to resolve the matter and the matter is directly related to MANUFACTURER's provision of the Services. MANUFACTURER's only obligation is to provide Support Services to RESELLER through telephone and electronic mail. MANUFACTURER may at its sole discretion, but is in no way obligated to, provide Support Services directly to Customer. If MANUFACTURER receives communications from CUSTOMERS or from third parties regarding any Services procured through RESELLER, MANUFACTURER may forward such communications to RESELLER without taking any other action. However, MANUFACTURER reserves the right to respond to such communications directly and to take any action MANUFACTURER deems necessary. If MANUFACTURER determines that RESELLER is providing inadequate support to CUSTOMERS (including, but not limited to, situations resulting in excessive numbers of support calls directly from CUSTOMERS to MANUFACTURER), then MANUFACTURER may, at its sole discretion, terminate this Agreement for cause.

7. CUSTOMERS

- 7.1 Customer Registration – RESELLER must provide new customer information, including, but not limited to company name, contact name, company address, contact's phone number and contact's email address, via electronic communication to MANUFACTURER. If the customer is not already a direct customer of the MANUFACTURER and the MANUFACTURER has not had direct contact with the customer within the past six (6) months, the customer will become a registered CUSTOMER of RESELLER.
- 7.2 CUSTOMERS - A Customer will remain at all times the customer of RESELLER unless the CUSTOMER subscribes for or otherwise approaches MANUFACTURER, or any one of MANUFACTURER'S other RESELLERS, for Services without any solicitation from MANUFACTURER or upon termination of this contract. Upon such subscription for Services or termination of this contract, the CUSTOMER will become a CUSTOMER of MANUFACTURER or one of MANUFACTURER'S other RESELLERS, as applicable. Under no circumstances will MANUFACTURER be obligated to intervene in any dispute of any nature between RESELLER and CUSTOMER.

8. SUSPENSION AND TERMINATION

- 8.1 Suspension - MANUFACTURER may suspend Services to RESELLER at any time for any reason. Upon suspension, all Services to RESELLER will be stopped.
- 8.2 Termination by Either Party - Either Party may terminate this Agreement under the following circumstances:
- (a) By written instrument executed by both the Parties;
 - (b) By execution of any right of termination under this Agreement or the Registration Agreement;
 - (c) If a Party breaches this Agreement and such breach is not cured within thirty (30) calendar days of the breaching Party receiving from the non-breaching Party written notice to cure such breach;
 - (d) If a Party materially breaches this Agreement and such material breach is not cured within fifteen (15) calendar

days of the breaching Party receiving from the non-breaching Party written notice to cure such material breach; or

- 8.3 Termination by MANUFACTURER - Without limiting any other right of termination contained in this Agreement in its entirety, MANUFACTURER may immediately terminate this Agreement under any of the following circumstances:
- (a) If RESELLER:
 - (i) makes a general assignment for the benefit of RESELLER's creditors;
 - (ii) appoints or has appointed a receiver, trustee in bankruptcy or similar officer to take charge of all or part of RESELLER's assets;
 - (iii) files or has a petition filed against RESELLER in any bankruptcy;
 - (iv) is adjudicated insolvent or bankrupt; or
 - (b) If RESELLER uses any of the Services for, or otherwise engages in, any activity that is:
 - (i) actually or potentially illegal;
 - (ii) a legal risk to MANUFACTURER;
 - (iii) generally and materially considered objectionable in the Software Community; or
 - (iv) otherwise deemed by MANUFACTURER (at its sole commercially reasonable discretion) to be material abuse of the Services.
 - (c) If RESELLER represents either MANUFACTURER or Product in any way to be deemed negative at the sole discretion of the MANUFACTURER.
- 8.4 Effect of Termination - Upon expiration or termination of this Agreement:
- (a) RESELLER, RESELLER's Affiliates, employees, contractors, and agents will cease, all activities related in any way to this Agreement, including, but not limited to, marketing, selling or distributing the Services;
 - (b) Each Party will cease displaying, advertising, and using the other Party's Intellectual Property;
 - (c) Within thirty (30) calendar days of termination of this Agreement, RESELLER will pay to MANUFACTURER all outstanding Fees due and payable prior to the effective date of such termination; and
 - (d) The terms of this Agreement that by their nature continue beyond the expiration or termination of this Agreement will continue to be effective (including, but not limited to, the terms relating to payment of Fees, termination, ownership of CUSTOMERS, Intellectual Property, limitation of liability, indemnity, Confidential Information, and governing law).
 - (e) MANUFACTURER may, at its sole discretion, continue to provide update licenses and support to any and all mutual CUSTOMERS of RESELLER.
- 8.5 Termination for Convenience - This Agreement may be terminated by either party, without cause, upon thirty (30) days' written notice to the other party.

9. INTELLECTUAL PROPERTY LICENSE

- 9.1 License - Subject to the limitations in this Agreement, the Parties grant to each other the non-exclusive, royalty-free, worldwide, revocable license to use each other's Intellectual Property solely in conjunction with the Services and all strictly in accordance with the provisions of this Agreement. Neither Party will, at any time during or after the expiration or termination of this Agreement, assert or claim any interest in, or do anything that may adversely affect the validity of, the Intellectual Property of the other Party (including, registering or attempting to register any trademark of the other Party or a mark confusingly similar thereto). Each Party will at all times retain sole and exclusive right, title and ownership in and to all of its own Intellectual Property and other Proprietary Materials.

- 9.2 Term of License - The Intellectual Property license set forth herein will cease immediately upon the expiration or termination of this Agreement. Each Party's use of the license granted herein, and any goodwill arising therefrom, will inure to the sole benefit of the Party owning the Intellectual Property.

10. REPRESENTATION & WARRANTY

The Parties represent and warrant to each other as follows:

- 10.1 Each Party has the full power and authority to execute, deliver, and perform under this Agreement;
- 10.2 This Agreement is valid, binding, and enforceable against each Party in accordance with the terms herein and no provision requiring each Party's performance is in conflict with such Party's obligations under any other agreement;
- 10.3 Each Party is duly organized, authorized and in good standing under the laws of the jurisdiction of its organization and is duly authorized to do business in all other jurisdictions in which such Party's business makes such authorization necessary or required; and
- 10.4 Each Party has the full and exclusive right to grant or otherwise permit the other Party to access and use its products, services, Intellectual Property, and Confidential Information.
- 10.5 With respect to the performance of its obligations hereunder, each Party will comply with all applicable laws, rules and regulations.

11. LIMITATION OF LIABILITY

- 11.1 Under no circumstances will either Party be liable to the other Party or to any third party for any consequential, indirect, special, incidental, reliance, exemplary, or punitive damages arising out of or relating to this Agreement or the Services, whether foreseeable or not, and whether based on breach of any express or implied warranty, breach of contract, misrepresentation, negligence, or strict liability (including damages for loss of data, goodwill, reputation, business, money, or opportunity), even if such Party has been advised of the possibility of such damages. Except for the Parties' indemnification obligations set out herein, neither Party's aggregate liability to the other Party will exceed the aggregate amount of the Fees paid hereunder

12. DISCLAIMER & FORCE MAJEURE

- 12.1 Except as otherwise expressly agreed to herein, MANUFACTURER makes no warranty of any kind, either express or implied, regarding the quality, accuracy, reliability, or validity of the applications, software, data, or information related to MANUFACTURER's network, systems, or the Services. MANUFACTURER provides the Services "as is" and specifically disclaims all warranties of merchantability and fitness for a particular purpose. RESELLER understands, acknowledges, and agrees that it will use the Services, and all aspects thereto, at RESELLER's sole risk. MANUFACTURER will not be liable for delays in its performance of this Agreement caused by circumstances beyond its reasonable control ("Force Majeure"), including acts of God, wars, riots, national disasters, natural disasters, or governmental restrictions. MANUFACTURER will make all reasonable efforts to reduce to a minimum and mitigate the effect of any Force Majeure

13. INDEMNIFICATION

- 13.1 RESELLER will indemnify, defend, and hold harmless MANUFACTURER including MANUFACTURER's Affiliates, directors, officers, managers, employees, contractors, agents, licensors, and any third party vendors and service providers from and against

any claim, action, loss, liability, damage, penalty, cost or expense (including reasonable legal fees for attorneys, witnesses, and defense) that MANUFACTURER may suffer or incur as a result of:

- (a) Any CUSTOMERS' use of the Product;
- (b) RESELLER's use of the Services;
- (c) Any failure by RESELLER to comply with the terms of this Agreement;
- (d) Any representation or warranty made by RESELLER, its employee, contractor, agent or Sub-RESELLER being false or misleading;
- (e) Any gross negligence or willful misconduct of RESELLER, its employee, contractor, agent or Sub-RESELLER;
- (f) Any Chargeback related to any of the Services;
- (g) Any alleged or actual violations by RESELLER of any law, regulation or rule; or
- (h) Any other act or omission of RESELLER, its employee, contractor, agent or Sub-RESELLER.

13.2 MANUFACTURER shall defend, indemnify, and hold RESELLER harmless from and against any third party claims, damages, demands, liabilities, or expense arising from injury or damages resulting in any way from product defect or malfunction; misrepresentation by MANUFACTURER, its employees, agents or representatives.

13.3 MANUFACTURER shall extend to RESELLER all indemnifications relating to any claims, demands actions, suits, arbitrations, assessments, and adjustments or other proceedings alleging that any MANUFACTURER products infringe upon the copyright, trademark, patent, trade secret or other intellectual property or proprietary rights of a third party.

14. CONFIDENTIALITY

14.1 Each Party (the "Recipient") will protect the confidentiality of any Confidential Information disclosed by the other Party (the "Discloser") and will not use such Confidential Information except in strict accordance with this Agreement. Confidential Information as defined herein does not include information that:

- (a) is generally available to the public through no fault of the Recipient and without breach of this Agreement;
- (b) was already in the possession of the Recipient prior to disclosure by the Discloser and without any confidentiality obligation attached thereto, as evidenced by the Recipient's records existing prior to the time of disclosure;
- (c) was disclosed to the Recipient by a third party without a breach of such third party's confidentiality obligations thereto;
- (d) was independently developed by the Recipient without a breach of this Agreement or reliance on any Confidential Information;
- (e) is disclosed by the Recipient after obtaining the Discloser's prior written approval; or
- (f) is required to be disclosed by law, provided that the Recipient promptly notifies the Discloser of the legal obligation and provides the Discloser with a reasonable opportunity to seek a protective court order, or the equivalent.

15. NOTICES

15.1 Method - Any notice or other communication between the Parties required or permitted under this Agreement will be in writing and will be delivered by hand, sent by first class mail (postage prepaid), sent by commercial courier, or transmitted by electronic mail or facsimile to a Party at the registered office, in the case of MANUFACTURER, and the contact information provided in the Registration Form, in the case of RESELLER, or to such other contact information as the applicable Party may notify to the other Party.

- 15.2 Effectiveness - Any notice or other communication sent will: (a) if delivered by hand, be deemed to have been received on the date of delivery; (b) if sent by first class mail, be deemed to have been received on the third business day following the date of mailing; and (c) if sent by electronic mail or facsimile, be deemed to have been received on the date the sender transmitted the notice or other communication.

16. COMPLETE AGREEMENT

- 16.1 This Agreement includes the attached Schedules and all other agreements, policies, and documents incorporated into this Agreement by specific reference herein. This Agreement constitutes the complete agreement between the Parties relating to the subject matter hereof and supersedes all prior and other understandings, representations, warranties, and agreements relating hereto – whether verbal, written, or otherwise. If there is any conflict between the main body of this Agreement and any Schedule then the order of prevalence will be as follows: (1) This Agreement; then (2) The most recent Schedule.

17. NO THIRD PARTY BENEFICIARIES

- 17.1 This Agreement is for the sole benefit of the Parties, and does not create any rights on the part of any third party (including, but not limited to, any CUSTOMER), and RESELLER will not commit any act or omission that would give rise to any such third party rights.

18. AMENDMENTS & WAIVER

- 18.1 The operative and effective version of this Agreement shall be the latest version available at <http://sepusa.com/sitemap/reseller-agreement>. MANUFACTURER may, at its sole discretion, make modifications to this Agreement and any Schedules attached hereto, from time to time and as reasonably necessary. Such modifications will take effect immediately upon posting of the updated Agreement on MANUFACTURER's website or otherwise made available online. It is RESELLER's responsibility to frequently visit MANUFACTURER's Web site for updates to this Agreement. RESELLER acknowledges and agrees that RESELLER's sole remedy is to terminate this Agreement in accordance herewith if RESELLER does not agree to any of the modifications MANUFACTURER may make to this Agreement. RESELLER may amend this Agreement only by a written instrument executed by both the Parties. No waiver by a Party of a breach of any provision hereof will take effect or be binding upon that Party unless expressly waived in writing, and such waiver will extend and apply only to the particular breach so waived and will not limit or affect the rights of the waiving Party in respect of any future breach or in respect of any breach of any other provision hereof.

19. RELATIONSHIP OF THE PARTIES

- 19.1 Nothing in this Agreement will be construed as creating a relationship of employer and employee, principal and agent, partnership or joint venture between the Parties. Each Party will be deemed an independent contractor at all times and will have no right or authority to assume or create any obligation on behalf of the other Party except as may be expressly provided herein.

20. ASSIGNMENT

- 20.1 RESELLER will not assign or otherwise transfer its respective rights or obligations under this Agreement without the prior written consent of MANUFACTURER, which will not be unreasonably withheld. Any assignment or transfer in violation of this hereof will have no effect. This Agreement will be binding and have effect upon the Parties and their respective successors and permitted assigns. Nothing herein, express or implied, is intended to confer upon any person, other than the Parties and

their respective successors and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

21. GOVERNING LAW & SEVERABILITY

21.1 This Agreement will be governed and construed in accordance with the laws of the State of Colorado without giving effect to any rule of conflicts of law. This Agreement will not be governed by or construed in accordance with the United Nations Convention on Contracts for the International Sale of Goods. Jurisdiction - The laws of the State of Colorado shall govern the validity, interpretation, construction and performance of this Agreement. Any legal action may be brought only in the State of Colorado, USA. If any portion of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, such illegality, invalidity or unenforceability will not affect the validity of the remainder of this Agreement.

22. CONSTRUCTION & INTERPRETATION

- 22.1 References - All references in this Agreement to particular sections, titles, and Schedules will be references to the sections, titles, and Schedules of this Agreement only unless specific reference is made otherwise. The words “herein”, “hereof”, “hereto”, and “hereunder” and words of similar meaning will refer to this Agreement in its entirety and not to any particular provision of this Agreement. Wherever in this Agreement that the masculine, feminine or neutral gender is used, it will be construed as including all genders, and wherever the singular is used, it will be deemed to include the plural and vice versa, where the context so requires.
- 22.2 Without Limitation - When used for listing purposes, the term “including” or “includes” shall be deemed to mean “including, but not limited to” or “includes, but is not limited to,” as applicable. Wherever in this Agreement that the masculine, feminine or neutral gender is used, it shall be construed as including all genders, and wherever the singular is used, it shall be deemed to include the plural and vice versa, where the context so requires.
- 22.3 Translations - This Agreement has been executed in the English language. If there is any discrepancy or conflict between the English version and a version in any other language, then the English version will control in all respects.
- 22.4 Contra Proferentum - Any rule of construction to the effect that any ambiguity is to be resolved against the drafting party will not be applicable in the interpretation of this Agreement

23. EXECUTION

23.1 The individual executing this Agreement, by signing this Agreement, on behalf of RESELLER represents and warrants that s/he is authorized to execute this Agreement on behalf of RESELLER and, to the best knowledge of such individual, all representations made in this Agreement by RESELLER are true and correct. The parties acknowledge and agree that they have read this Agreement, understand it and agree to be bound by it.

24. SIGNATURES

SEP Software Corp.

Name of Company

Name of Company

Print Name of Authorized Agent

Print Name of Authorized Agent

Signature

Signature

Date

Date

Appendix 1 – Additional Payment Terms, Reseller Points and Discounts

1. RESELLER will receive a twenty percent (20%) discount from list price for all end-user sales.
2. Software Update contracts are calculated at eighteen percent (18%) of current retail value of installed software. RESELLER will receive 20% percent of the Software Update fee for RESELLER'S CUSTOMERs for whom RESELLER provides support. 80% of the Software Update fee will be forwarded to the MANUFACTURER.
3. RESELLER will receive one hundred percent of all installation fees and any other on-site custom services it performs for MANUFACTURER'S software. If RESELLER contracts MANUFACTURER for support in regards to a custom service or installation, 80 percent of the installation or custom support fee will be submitted to the MANUFACTURER when payments for the month are due.
 - (a) Payment will be made to the SEP Software Corp. within 30 days after date of invoices.
 - (b) Permanent licenses will not be sent to RESELLER or CUSTOMER until the relevant invoice is paid in full.
4. An itemized accounting of all sales will be included with each payment.