



INDIRECT CHANNEL PARTNER AGREEMENT

To register as an Indirect Channel Partner with NComputing, your company must accept the terms and conditions of this Indirect Channel Partner Agreement (the "Agreement"). This Agreement applies to Authorized Partners that are "Resellers" as defined in Part A below.

This Agreement is between you, as identified in the applicable Partner Registration Application ("Partner"), and NComputing. For purposes of this Agreement, NComputing is defined as follows:

- If Partner's principal place of business is located in the United States, "NComputing" is defined as NComputing, Inc., a California corporation having its principal place of business at One Lagoon Drive, Suite 110, Redwood City, CA 94065.
- If Partner's principal place of business is located in Europe, Africa or the Middle East, "NComputing" is defined as NComputing UK Ltd., an English company having its principal place of business at Prince Albert House, 20 King Street, Madienhead, SL6 1DT, U.K.
- If Partner's principal place of business is located outside of the United States, Europe, Africa or the Middle East, "NComputing" is defined as NComputing (HK) Ltd, a Hong Kong company having its principal place of business at 14th Floor, Hutchinson House, 10 Harcourt Road, Hong Kong, SAR PRC.

Subject to the approval of your application to join the NComputing Channel Partner Program, this Agreement shall become effective as of the date it is click-accepted by the Partner or, if executed by the Partner in hard copy print form as of the date it is accepted and executed by NComputing (the "**Effective Date**").

This Agreement is divided into 3 Parts, which apply as follows:

- Part A Definitions**
- Part B Reseller Terms and Conditions**
- Part C General Terms and Conditions**

This Agreement comprises the complete agreement between the parties and replaces any prior oral or written communications between the parties. In the event that a Authorized Partner executes a direct resale "Master Distributor Agreement" with NComputing, the Master Distributor Agreement shall take precedence and supersede this Agreement. This Agreement may only be modified by a written document executed by NComputing and Partner.

Part A. Definitions.

1. **Added Value** is the non-NComputing component of the total solution which Partner provides to End Users. Examples of Added Value are solution design, testing and validation, pre- and post-sales design, configuration, trouble-shooting, and support and the sale of complementary products and services that comprise a significant portion of the total revenues received by the Partner. Telesales, catalog sales, and sales over the Internet do not include Added Value if inbound communications from the prospective End User purchaser were exclusively prompted by something other than a face-to-face interaction between Partner's sales representative and prospective End User. Partner further acknowledges that providing financing options to End Users does not constitute Added Value.
2. **Authorized Source** means a distributor that is authorized by NComputing to redistribute Products within the Territory to Partner.
3. **End User** is the final purchaser or licensee that: (i) has acquired Product and/or NComputing Services for its own Internal Use and not for Resale, remarketing or distribution, and (ii) is identified as such purchaser or licensee by Reseller pursuant to Section B.3.1 below.
4. **End User Obligations** means the compliance obligations of End Users when purchasing NComputing products as defined in the NComputing End User License Agreement. This agreement may be found at <http://ncomputing.com/Support/Documentation.aspx>



5. **Internal Use** is any business use of a Product for an End User's or Reseller's own internal use; it is to be distinguished from the definition of Resale provided below. For clarification purposes, "internal use" does *not* mean the use of a Product or Service by Reseller for the purpose of providing managed services to a third party.
6. **Managed Services** means providing the End User with access and use of NComputing products as part of a service offering, where the Reseller retains title to the NComputing products.
7. **Marks** means each of the NComputing Partner marks for which Partner qualifies. Such marks and the applicable qualification requirements are included in NComputing's Channel Partner Guidelines and the NComputing website.
8. **NComputing Services** means any services performed by NComputing for End Users, including without limitation, Product maintenance and technical support.
9. **Non-Genuine Products** are any and all products: (i) to which a Mark or other NComputing trademark or service mark has been affixed without NComputing's consent; (ii) that have not been manufactured by NComputing or an NComputing affiliated company or by a licensed manufacturer of NComputing in accordance with the applicable license; (iii) are produced with the intent to counterfeit or imitate a genuine NComputing Product, or (iv) Products where any form of copyright notice, trademark, logo, confidentiality notice, serial number or other product identifier have been removed, altered, or destroyed.
10. **Products** means those NComputing hardware products, Software, and related documentation, which NComputing makes available to an Authorized Source for Resale (in the case of Software, license grant to use such Software) to companies that have achieved Partner's level of registration, certification, and/or specialization within NComputing's Channel Partner Program described in the NComputing Channel Partner Program Guidelines.
11. **Professional Services** means any pre or post-sale services performed by Partner for an End User, excluding training on NComputing Products, which provide Added Value for NComputing Products. Such services include pre- and post-sales design, configuration, trouble-shooting, and support on NComputing Products.
12. **Professional Service Providers** are Authorized Partners that wish to provide their own pre and/or post-sales Professional Services to End Users.
13. **Authorized Partner** means Professional Service Providers and/or Resellers that have registered using the NComputing Partner Registration Tool and accepted the terms and conditions of this Indirect Channel Partner Agreement.
14. **Resale** includes any of the following sales or dispositions of a Product: (a) transfer of title (or, for Software, a license conferring the right to use the Software, and, for Services, the entitlement to receive such Services) to the End User of such Product or Service or (b) transfer of title (or, for Software, a license conferring the right to use the Software, and, for Services, the entitlement to receive such Services) to a financial intermediary such as a leasing company, even if such leasing company is affiliated with Reseller, where the Product or Service is used by an unaffiliated End User. "Resale" as used herein does not include the purchase, license, sublicense, distribution or use of a Product or NComputing Service for the provision, to a particular customer or the general public, of any Managed Services.
15. **Reseller** is an Authorized Partner that purchases and/or licenses NComputing Products from an Authorized Source and Resells them directly to End Users.
16. **Software** is the machine readable (object code) version of computer programs developed or marketed by NComputing and related documentation for which NComputing grants licenses for use. No 'sale' of any Software is conveyed.
17. **Territory** means the country identified by Authorized Partner in the applicable Partner Registration Application accepted by NComputing.



18. Unauthorized NComputing Product means any genuine NComputing Product that Reseller purchases or acquires from, either directly or indirectly, any party other than NComputing and/or an Authorized Source or sells to any party other than an End User.

Part B. Reseller Terms and Conditions.

1. NComputing Authorization and Resale Rules.

1.1 NComputing Authorization. During the term of this Agreement, NComputing hereby authorizes Reseller to purchase and/or license NComputing Services and Products only from an Authorized Source, and to resell and/or redistribute such NComputing Services and Products directly to End Users who deploy Products and receive NComputing Services within the Territory.

1.2 No Resale Outside the Territory. Reseller agrees not to solicit Product orders, engage salespersons, Resell, or establish warehouses or other distribution centers outside of the Territory.

1.3 Sales to End Users. Reseller certifies that it is acquiring the Products solely for Resale to End Users, in accordance with this Agreement. Reseller will not Resell, license, sublicense or distribute Products or Services to other resellers of NComputing Products or Services, whether or not such other resellers are authorized by NComputing or by any other source to resell or license Products or Services. Reseller may Resell Products or Services to any other NComputing-authorized Reseller of NComputing Products or Services in the Territory, provided that such other Reseller is purchasing and using such Products or Services strictly as an End User and for its Internal Use in the Territory. Prior to accepting a purchase order from an End User for NComputing Services, Reseller shall (a) refer the End User to the relevant Hardware Warranties and End User Software License Agreements at <http://ncomputing.com/Support/Documentation.aspx> or (b) provide a current copy of such documents to End User.

1.4 Non-Genuine Products or Unauthorized NComputing Products. Reseller acknowledges that the purchase and Resale of Non-Genuine Products or Unauthorized NComputing Products, or for the Resale of Services associated with any such Non-Genuine Products or Unauthorized NComputing Products, is not within the scope of this Agreement and Reseller is not entitled to the rights granted with respect to the resale of such Non-Genuine Products or Unauthorized NComputing Products. Reseller further acknowledges that destroyed, stolen or damaged Products are not entitled to NComputing Services. If NComputing determines that Reseller has Resold and/or redistributed Unauthorized NComputing Products purchased from non-Authorized Sources, then NComputing may, at NComputing's sole discretion: (a) audit Reseller's purchase and resale records of NComputing Product and relevant records pursuant to Section C.13.7 and/or (b) invoice Reseller for all reasonable costs incurred by NComputing in its performance of the Audit, (c) suspend shipments to Reseller and/or (d) terminate the Reseller's NComputing Reseller Agreement. For all Unauthorized NComputing Products, NComputing reserves the right to deny or withhold any NComputing Services on such Products.

2. Added Value Requirement. Each time a Reseller resells NComputing Products to an End User, Reseller will include its Added Value. Reseller must be able to demonstrate Products to prospective End Users at the End User's location and make Professional Services available for each Product Resold by Reseller.

3. Reseller Obligations.

3.1 Point of Sale Reports. Reseller shall identify the complete name and address of each End User either: (i) in the applicable Product purchase order issued to the Authorized Source; or (ii) in writing within five (5) business days of receiving the applicable request from NComputing or the Authorized Source. Reseller must comply with any other point of sale reporting requirements published by NComputing from time to time, and/or the Authorized Source(s) from which such Reseller purchases and/or licenses NComputing and Products.

3.2 Agreements with an Authorized Source. Reseller acknowledges that each Authorized Source may require Reseller to enter into other agreement/s with an Authorized Source. Partner acknowledges and accepts that each Authorized Source is an independent party who is not empowered to act on behalf of NComputing or bind or represent NComputing in any manner. Therefore, such agreement/s will be considered executed only between Reseller and each Authorized Source with which Reseller has entered into such agreements. This Agreement

shall not constitute a sale, purchase or distribution agreement with NComputing. Any arrangements between the Reseller and an Authorized Source with respect to the sale, purchase or distribution of NComputing Products will need to be defined in separate, specific agreements between Reseller and each Authorized Source selected by Reseller.

3.3 Additional Requirements. Reseller acknowledges that NComputing may require Reseller to achieve particular requirements, for example particular specializations, before permitting any Authorized Source to make available particular Products to such Reseller. Also, Reseller acknowledges that Resale of Products and NComputing Services to particular End Users with which NComputing has contracted directly (for example, state governments) may require Reseller to satisfy additional requirements and to enter into supplemental agreements with NComputing.

3.4 No Stocking of Product. Reseller may not stock Products, and may not order Products without a valid End User purchase order, as set forth in Section 3.1 above.

4. Government Sales.

4.1 For all Government Sales worldwide; Reseller may Resell Products and Services to federal, state, provincial and local governments within the Territory, subject to this Agreement and the applicable NComputing qualification and eligibility requirements, including NComputing's aforementioned disclaimers of supply representations or government flow-downs.

4.2 For Government Sales in which Authorized Partner's Territory is OUTSIDE the United States:

4.2.1 Schedule Contracts. Reseller shall not, without the express prior written consent of NComputing, distribute or sell, either directly or indirectly, any Products to any agencies, departments or entities (whether or not within the Territory) which either form part of, or are subject to the procurement requirements of, the federal government or any state or municipal government of any of the United States of America (including, for example, but without limitation, embassies, military bases, etc).

4.2.2 Government Terms. NComputing does not accept any government flow-down provisions, whether for Resale or Internal Use. Further, NComputing will not provide any government-required representations or certifications to Reseller or any of Reseller's End Users.

4.3 For Government Sales in which Authorized Partner's Territory INCLUDES the United States:

4.3.1 Schedule Contracts. With respect to US General Services Administration ("**GSA**"), California Multiple Award Schedule ("**CMAS**"), and other schedule contracts, Reseller is prohibited from placing NComputing Products and Services on Reseller's GSA, CMAS, or any other schedule contract(s) without the express written approval from an authorized representative of NComputing...

4.3.2 Government Terms. NComputing does not accept any government flow-down provisions, including but not limited to, the United States Government Federal Acquisition Regulations ("**FARs**") and its supplements, Defense FARs, or NASA FARs, whether for Resale or Internal Use. Further, NComputing will not provide any government-required representations or certifications to Reseller or any of Reseller's End Users.

4.3.3 Reseller acknowledges that the Trade Agreements Act, 19 U.S.C. §2511 et seq., and its implementing regulations (collectively, the "**TAA**") limit the ability of the federal government to purchase items produced outside the United States and certain designated countries. Reseller acknowledges that not all NComputing items are produced in the United States or designated countries and that only certain items specifically identified by NComputing ("**Designated Country Items**") are certified as being produced in the United States or designated countries. If Reseller undertakes to sell items other than Designated Country Items to the federal government, Reseller accepts sole responsibility for ensuring that such sales may be made to the federal government.

5. Pricing.

5.1 Reseller Prices. The prices Reseller pays for NComputing Products will be set unilaterally by the Authorized Source from which Reseller purchases such NComputing Services and Products. Reseller is free to unilaterally determine its Resale prices.

5.2 Special Pricing. Any commitment from NComputing to provide special pricing will only occur through the provision of an approved Deal ID. Unless you are notified in writing, including by email, of the Deal ID in relation to special pricing, then any other notification of pricing is indicative only, and is not binding upon NComputing.

6. Reseller's Distribution Rights.

6.1 Grant of Rights. During the term of this Agreement, NComputing grants to Reseller a limited, nonexclusive, revocable license to receive from an Authorized Source and distribute to End Users located in the Territory all proprietary rights embodied in or contained in any Product. Reseller may continue such distribution for thirty (30) days following the expiration of this Agreement. Any distribution of Products containing NComputing proprietary rights (including, without limitation, all Software) outside the scope permitted by Section B.1 of this Agreement is prohibited to the extent permitted by law. NComputing Products are subject to license terms which impose additional restrictions on the use, copying, or distribution of Software.

6.2 Rights Reserved by NComputing. Except for the limited license provided to Reseller in the preceding Section B.6.1, NComputing reserves all right, title, and interest in and to each proprietary right embedded in or contained in any Product. Reseller acknowledges that, except as provided in Section B.6.1 above, it shall not copy Software for the benefit of, or distribute any Software to, any other person or entity, including, without limitation, other resellers or Authorized Partners.

6.3 License Restrictions and Conditions. Reseller will not remove, alter, or destroy any form of copyright notice, trademark, logo, or confidentiality notice provided with any Product. Reseller will not copy or redistribute any item of Software except as specifically permitted in this Section B.6. Reseller agrees that it will not redistribute Software (including Software received as part of a Product) received from any source other than NComputing or an Authorized Source. Reseller will not translate, reverse compile or disassemble the Software, and will transfer to each End User to which Reseller resells Products all end-user license terms and end-user documentation provided by NComputing and accompanying such Products. A current copy of such end-user license terms is available at the following URL: <http://ncomputing.com/Support/Documentation.aspx>

Part C. General Terms and Conditions

1. **Partner Benefits.** Partner shall be entitled to benefits described in the NComputing Channel Partner Program Guidelines or on the NComputing website. Participation in Select and Premier Levels of the program is subject to review and by invitation only. NComputing reserves the right to modify the program and the NComputing Channel Partner Program Guidelines at its sole discretion and without notice.
2. **Term and Termination.**
 - 2.1 Term. This Agreement will expire upon the later of (a) one (1) year after the date it is accepted by NComputing, unless extended by written agreement of both parties or sooner terminated pursuant to this Agreement, or (b) the date that the Partner's most recent certification or specialization expires.
 - 2.2 Termination. This Agreement may be terminated for convenience, for any reason or no reason, by either party upon no less than thirty (30) days prior written notice to the other. This Agreement may be terminated by NComputing for cause at any time upon Partner's material breach of the Agreement, on ten (10) days notice, except that this Agreement may be terminated by NComputing immediately upon Partner's breach of any provision of Sections B.1.2, B.1.3, B.2, B.6, C.3, C.4, C.9 and C.12.
 - 2.3 Effect of Termination. Upon the termination or expiration of this Agreement, Partner's rights to purchase NComputing Services and Products from any Authorized Source shall immediately terminate, NComputing shall



discontinue all Partner benefits listed in Section C.1 above, and Partner shall immediately (a) cease to represent itself as a NComputing Authorized Partner, and (b) cease its use of any of the Marks.

3. Use of the NComputing Partner Marks.

3.1 NComputing grants to Partner, the right to use the approved NComputing Partner Marks, in the Territory, solely to promote the Resale of NComputing Products to End Users, provided that such Resale are pursuant to all the terms and conditions of this Agreement. Partner shall not affix any NComputing trademarks or service marks to any products. Partner's usage of the Marks must conform to the Guidelines provided on the NComputing website. Partner's usage of the Marks must also conform to the Trademark Usage Policy set out at the following <http://ncomputing.com/Company/Presscenter/pressCenterLogoUsageGuides/tabid/512/language/en-US/Default.aspx>

3.2 Partner shall not acquire, use, promote or Resell Non Genuine Products. Partner will not remove, alter, or destroy any form of copyright notice, trademark, logo, confidentiality notice, serial number or other product identifier provided with any Product.

3.3 If Partner acquires, uses, promotes or Resells Non-Genuine Products, NComputing may take one or more of the following actions, at NComputing's discretion: (i) require Partner, within ten (10) business days of NComputing's request, to recall and destroy all Non-Genuine Products that Partner has sold to End Users and replace such products with legitimate, equivalent Products, (ii) require Partner, within five (5) business days of receiving NComputing's written request, to provide NComputing with all details related to Partner's acquisition of all Non-Genuine Products, including without limitation, its suppliers, shipping details and all buyers to whom Partner resold Non-Genuine Products; (iii) decline the provisioning of any kind of service support for such Non-Genuine Products; and/or (iv) immediately terminate this Agreement pursuant to Section C.2.

4. **Confidentiality and Publicity.** In the event that Partner receives from NComputing information that is marked as confidential, Partner shall protect that information using the same degree of care as it uses to protect its own sensitive business information, but not less than a reasonable degree of care, and shall not disclose such information to any third party without NComputing's prior written consent. Partner shall only use such information in connection with the promotion and Resale of Products and Services. Upon the termination or expiration of this Agreement, Partner will promptly return any confidential information provided by NComputing to Partner. Except as expressly provided in this Agreement, neither NComputing nor Partner will issue press releases or make other public announcements that identify Partner as an authorized Partner without the express written consent of the other party. In addition, Partner shall at no time (nor cause any third party to) take any action, publish or otherwise communicate anything which is or may be detrimental to the business reputation of NComputing.

5. **License to Information.** Information made available to Partner through NComputing.com is made available subject to the terms as NComputing may notify Partner of through NComputing.com. Information provided through NComputing.com may be used only in connection with Partner's promotion and Resale of Products and Services.

6. Limited Warranty / Warranty Disclaimer.

6.1 **Warranty.** The only warranty NComputing provides with respect to any Product is the written limited warranty statement provided with that Product or, if no warranty statement is provided with a Product, the Limited Warranty Statement available at the following URL: <http://ncomputing.com/Support/Documentation.aspx>

6.2 **Disclaimer.** EXCEPT AS SPECIFIED IN THE LIMITED WARRANTY STATEMENT SPECIFIED IN SECTION C.6.1 ABOVE, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS OR WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF KNOWN TO NCOMPUTING), NONINFRINGEMENT, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE ARE HEREBY EXCLUDED TO THE GREATEST EXTENT ALLOWED BY APPLICABLE LAW. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED TO PERIOD SPECIFIED IN SECTION C.6.1. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE. PARTNER SHALL NOT MAKE ANY WARRANTY COMMITMENT BEYOND THE LIMITED WARRANTY REFERENCED IN SECTION C.6.1 ON NCOMPUTING'S BEHALF. PARTNER AGREES TO INDEMNIFY NCOMPUTING AND HOLD



NCOMPUTING HARMLESS FROM ANY WARRANTY MADE BY PARTNER BEYOND THE LIMITED WARRANTY REFERENCED IN SECTION C.6.1.

7. Limitation of Liability and Consequential Damages Waiver. The limits of liability for this Agreement are as follows:

7.1 If this Agreement is governed by California law, as set forth in Section C.13.1, below, the following Sections C.7.1.1 and C.7.1.2 will apply:

7.1.1. **Limitation of Liability.** NOTWITHSTANDING ANYTHING ELSE HEREIN, ALL LIABILITY OF NCOMPUTING AND ITS SUPPLIERS FOR CLAIMS ARISING UNDER THIS AGREEMENT OR OTHERWISE SHALL BE LIMITED TO THE MONEY PAID BY PARTNER TO ITS AUTHORIZED SOURCE FOR NCOMPUTING SERVICES AND PRODUCTS IN THE THREE (3) MONTHS PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER-INCIDENT.

7.1.2. **Waiver of Consequential Damages.** IN NO EVENT SHALL NCOMPUTING OR ITS SUPPLIERS BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST REVENUE, LOST PROFITS, OR LOST OR DAMAGED DATA, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF NCOMPUTING OR ITS SUPPLIERS HAVE BEEN INFORMED OF THE POSSIBILITY THEREOF.

7.2 If this Agreement is governed by the laws of England, as set forth in Section C.13.1 below, the following Sections C.7.2.1, C.7.2.2, and C.7.2.3 will apply:

7.2.1. **Limitation of Liability.** The aggregate total liability of NComputing and its suppliers under or in connection with this Agreement, whether in contract, tort (including, without limitation, negligence) or otherwise, shall be limited to the higher of (i) 5,000 USD, or (ii) price paid by Partner to its NComputing Distribution Partner (or Authorized Channel) for NComputing Products and Services in the three (3) month period prior to the event or circumstances giving rise to the liability.

7.2.2. **Waiver of Consequential Damages.** In no event shall NComputing or its suppliers be liable for any of the following losses or damage (whether such losses were foreseen, foreseeable, known or otherwise): loss of use, interruption of business, loss of actual or anticipated profits (including, without limitation, loss of profit on contracts), loss of revenue, loss of the use of money, loss of anticipated savings, loss of opportunity, loss of goodwill, loss of reputation, loss of, damage to or corruption of data, or indirect, special, incidental or consequential loss or damage of any kind (including, without limitation, where such loss or damage is also of a type or category expressly specified in this Section C.7.2) regardless of the form of action, whether in contract, tort (including, without limitation, negligence), strict liability or otherwise. Such liabilities will be exclusively governed by the specific agreements between Partner and any NComputing Distribution Partner (or other Authorized Channel) of its choice, under which specific NComputing Products and/or Services are purchased.

7.2.3. Notwithstanding C.7.2.1 or C.7.2.2, nothing in this Agreement shall limit NComputing's or its suppliers' liability to Partner for (1) personal injury or death caused by its negligence, (2) NComputing's liability in the tort of deceit or for fraud, (3) any breach of the obligations implied by section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982 or (4) any liability which cannot be excluded under applicable law.

8. Third Party Rights. To the extent permitted by law, no person or entity who is not a party to this Agreement shall be entitled to enforce or benefit from any of this Agreement's terms, including but not limited to doing so under the Contracts (Rights of Third Parties) Act of 1999.

9. Export Restrictions and Controls.

9.1 **Applicability.** Resellers hereby acknowledge that the products and technology or direct products thereof ("Products and Technology"), supplied by NComputing under this Agreement are subject to export controls under the laws and regulations of the United States (U.S.) and any other applicable countries' laws and regulations. Resellers shall comply with such laws and regulations governing export, re-export, transfer and use of NComputing Products and Technology and will obtain all required U.S. and local authorizations, permits, or licenses. NComputing and Resellers each agrees to provide the other information, support documents, and

assistance as may reasonably be required by the other in connection with securing export authorizations and/or producing government required reports. Resellers agree not to use any export and/or re-export licenses or authorizations that NComputing or its affiliate's holds for securing their own activities unless specifically authorized by NComputing in writing where legally compliant.

9.2 Government/Military Sales. Resellers hereby certify that none of the products, services, or technical data supplied by NComputing under this Agreement will be knowingly sold or otherwise transferred to, or made available for use by or for, any government or military end-users or in any government or military end-use located in or operating under the authority of any country not identified in Supplement No. 1, Country Group A:1 to Part 740 of the EAR without US or other country's export authorizations.

9.3 Record Keeping. Resellers agree to maintain a record of sales, imports, exports and re-export of NComputing Products and Technology in accordance with the Reseller's records retention programs in the appropriate geographies but at least for two (2) years.

9.4 Obligation. Reseller's obligation under this Article shall survive the expiration or termination of this Agreement.

10. Obligation to Maintain Contacts.

10.1 Requirement to Maintain. Partners are required to have at least one valid contact associated to their company at all times in the NComputing Channel Partner Database.

10.2 Valid Contact Information. For Partner's contacts to be "valid," its contact profiles in NComputing's SFDC and NComputing Partner Locator must include a First Name, Last Name, Site Address, and Email Address. NComputing will remove the Partner from SFDC and the Partner Locator if no valid contact associated with the company is available to NComputing. To regain Partner status, a user from the company must complete Partner registration as a new prospective Partner.

10.3 Reservation of Rights. NComputing reserves the right to remove any Partner without sufficient valid contacts at such time, and using such means, as NComputing may determine in its sole discretion. Whereas NComputing may choose, at its option, to provide certain forms of notification regarding the removal of a Partner's status as a result of insufficient or invalid contacts in SFDC or the Partner Locator, NComputing is not under any obligation to provide notification of any kind regarding any such removal.

10.4 Effect of Partner Removal. If NComputing removes the Partner from SFDC or the Partner Locator in accordance with the foregoing, or Partner's status as a Partner is changed to inactive or otherwise removed from the SFDC or the Partner Locator, this Agreement shall terminate concurrently.

11. **Entitlement.** Partner acknowledges that NComputing has the right to verify an End User's entitlement to receipt of Services, and that End User is entitled to receive support services only on Product for which NComputing has been paid the applicable license and support fees.

12. **Compliance with Laws, including Anti-Corruption Laws.** In connection with the Resale or distribution of NComputing Products or Services, or otherwise in carrying out its obligations under this Agreement, Partner represents and warrants the following:

12.1 Partner will comply with all country, federal, state and local laws, ordinances, codes, regulations, rules, policies, licensing requirements, regulations and procedures, including, without limitation, such laws and regulations related to recycling or take-back programs for packaging, Resale or use of Products, the use of Products under telecommunications laws/regulations, and all applicable anti-corruption laws, including the U.S. Foreign Corrupt Practices Act ("FCPA") (collectively, the "**Applicable Laws.**")

12.2 Partner shall not take any action or permit or authorize any action which may render NComputing liable for a violation of Applicable Laws;

12.3 Partner will not use money or other consideration paid by NComputing for any unlawful purposes, including any purposes violating the Applicable Laws, such as direct or indirect payments, for the purpose of assisting NComputing in obtaining or retaining business, to any of the following:

12.3.1 government officials (including any person holding an executive, legislative, judicial or administrative office, whether elected or appointed, or of any public international organization, such as the United Nations or World Bank, or any person acting in any official capacity for or on behalf of such government, public enterprise or state-owned business);

12.3.2 political parties or party officials;

12.3.3 candidates for political office; or

12.3.4 any person, while knowing that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to any of the above-identified persons or organizations.

12.4 Notwithstanding any other provision in this Agreement, NComputing may terminate this Agreement immediately upon written notice if Partner breaches any of the representations and warranties. Partner will indemnify and hold harmless NComputing for any violation by Partner of any Applicable Laws;

13. Miscellaneous.

13.1 Choice of Law. The validity, interpretation, and enforcement of this Agreement shall be governed as follows:

13.1.1 If the Partner's principal place of business is located in the United States, the validity, interpretation and enforcement of this Agreement shall be governed by the domestic laws of California without giving effect to principles of conflicts of laws. The State and Federal courts of California shall have exclusive jurisdiction over any claim arising hereunder, except as expressly provided below. Notwithstanding the foregoing, either party may seek interim injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such party's proprietary rights. The parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods to the interpretation or enforcement of this Agreement.

13.1.2 If the Partner's principal place of business is located outside the United States, the validity, interpretation and enforcement of this Agreement shall be governed by the domestic laws of England without giving effect to principles of conflicts of laws. The English courts shall have exclusive jurisdiction over any claim arising hereunder, except as expressly provided below. Notwithstanding the foregoing, either party may seek interim injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such party's proprietary rights. The parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods to the interpretation or enforcement of this Agreement.

13.2 Assignment. Neither this Agreement, nor any rights under this Agreement, may be assigned or delegated by Partner without the express prior written consent of NComputing. Any attempted assignment in violation of the preceding sentence shall immediately terminate the Agreement and be without legal effect. NComputing shall have the right to assign all or part of this Agreement to another NComputing or NComputing affiliated entity without Partner's approval.

13.3 Relationship of the Parties; No Partnership. Each party to this Agreement is an independent contractor. This Agreement does not create any agency, partnership, joint venture, employment or franchise relationship. Furthermore, no labor relationship between NComputing and Partner employees is created hereby. Partner shall indemnify and hold NComputing harmless of any claim or judicial action whatsoever from any Partner employee. Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever. Notwithstanding the use of the term "Partner" in this Agreement, the parties do not intend to create any legal relationship of partnership between them, and neither will assert to any third party or otherwise claim that such a legal relationship exists between them.

13.4 Survival. Part A and Sections B.3, B.4, B.6.2, B.6.3, C.2, C.3.2, C.3.3 and C.4 through C.13 shall survive the expiration or termination of this Agreement.



13.5 Notices. All notices required to be provided under this Agreement shall be provided (a) by Partner to NComputing at One Lagoon Drive, Suite 110, Redwood City, CA 94065, attn. Contracts Administration (b) by NComputing, to the electronic mail address provided by Partner with its Partner Registration application. Notices shall be deemed received one business day after being sent by e-mail.

13.6 Enforceability. Partner agrees that the electronic mail address it has provided corresponds to a person that has the capacity and authority to execute this Agreement and any amendments on behalf of Partner. If this Agreement is entered electronically by the click-acceptance of the Partner. Partner and NComputing each waive any defense to the validity or enforceability of this Agreement arising from the electronic submission and electronic acceptance of this Agreement by Partner. If Partner needs a physical document evidencing the Agreement, Partner may (i) print the accepted Agreement or (ii) request from NComputing a signed version, in which case Reseller shall print and return to NComputing two (2) printed, executed originals of the Agreement. Such printed originals shall not be deemed accepted by NComputing unless NComputing returns one (1) counter-signed original to Partner.

13.7 Audit. Partner shall keep full, true, and accurate records and accounts, in accordance with generally-accepted accounting principles, of each NComputing Service and Product purchased and Resold, including information regarding compliance with NComputing marketing and sales programs, Software usage and transfer, End User names and locations, and NComputing Product exportation. Partner shall make these records available for audit by NComputing upon fifteen (15) days prior written notice, during regular business hours, at those locations where Partner may maintain relevant records. Partner shall bear all costs incurred by NComputing in the performance of any audit which discloses any material breach of this Agreement.

13.8 URLs. Partner hereby confirms that it has the ability to access, has accessed, has read and agrees to, the information made available by NComputing at all of the world wide web sites/URLs/addresses/pages referred to anywhere throughout this Agreement. Partner acknowledges that NComputing may modify any URL address or terminate the availability of any information at any address without notice to Reseller.

13.9 Other Remedies. All NComputing remedies specified in this Agreement shall be in addition to, and shall in no way limit, any other rights and remedies that might be available to NComputing, all of which NComputing hereby expressly reserves.

13.10 Severability. In the event that any of the terms of this Agreement become or are declared to be illegal or otherwise unenforceable by any regulatory body or court of competent jurisdiction, such term(s) shall be null and void and shall be deemed deleted from this Agreement. All remaining terms of this Agreement shall remain in full force and effect. Notwithstanding the foregoing, if this paragraph becomes applicable and, as a result, the value of this Agreement is materially impaired for either party, as determined by such party in its sole discretion, then the affected party may terminate this Agreement by written notice to the other.

13.11 Partner agrees to notify NComputing of any use of NComputing's software, trademarks, logos, brand names, URLs etc. which Partner suspects to be illegal or improper.

IN WITNESS WHEREOF, authorized representatives of Partner and NComputing acknowledge having read the provisions set forth in this Agreement agree to be bound as of the Effective Date.

NComputing, Inc.

Reseller: _____

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____



Date: _____

Date: _____