
RESELLER TERMS & CONDITIONS

RESELLER AND UPLEVEL SYSTEMS intend and agree to be bound by the terms and conditions contained herewith. In consideration of the agreements, representations, and warranties contained in the Reseller Agreement executed by and between Uplevel Systems and the Reseller, the parties intending to be bound, agree as follows:

1. General Purpose. The parties are mutually interested in entering into a business relationship, whereby Reseller may purchase Services on a wholesale basis from Uplevel Systems Inc. to resell to Reseller's End Users. A Reseller Agreement governed by these Terms and Conditions shall apply to and govern all purchases of Services by Reseller.

2. Definitions. Any term defined in this section shall be assumed to have the meaning ascribed, regardless of whether the first letter is capitalized, unless context clearly calls for a different meaning. The singular shall include the plural, and the plural shall include the singular, unless context clearly calls for a different meaning.

(a) "**Actual In-Service Date**" means the earlier of (1) the date the Services are provisioned in the Uplevel Systems Dashboard, or (2) the date the Services are initially made available.

(b) "**Agreement**" means the terms and conditions set forth in this document, including any attachments, exhibits, and schedules attached hereto, which are all hereby incorporated by reference.

(a) "**Bona Fide Billing Dispute**" means a billing dispute that can be clearly substantiated through objective records, data and materials, or where a miscalculation or misstatement of fees is clearly evident on an invoice.

(c) "**End User**" means any individual or entity that purchases a Service from Reseller.

(d) "**Default**" means any of the following: (i) a party becomes or is declared insolvent or bankrupt (or files a petition related thereto), is the subject of any proceedings related to its liquidation, insolvency or the appointment of a receiver or similar officer for it, or makes an assignment for the benefit of all or substantially all of its creditors; (ii) Reseller fails to pay any undisputed fees or charges due under a Reseller Agreement; (iii) any material misrepresentation by Reseller on an application, report or Service Order; or (iv) a breach of any other material term or condition of a Reseller Agreement or these Terms and Conditions.

(e) "**Effective Date**" means the date the last party to sign a Reseller Agreement executes a copy thereof.

(f) "**Fees**" means all charges applicable to Services provided to Reseller including, but not limited to, monthly recurring charges ("MRCs"), one time charges, setup fees, pro-rated charges, annual contract charges, training fees, consulting fees, professional service fees, service restoration fees, feature fees, change fees and alteration fees for any Services, non-recurring charges ("NRCs"), and any other fees. In addition to the quoted recurring or one-time fees, Reseller will also be billed for taxes, fees, surcharges, assessments and any other charges that apply to Reseller's Services. We may also charge a fee to recover the costs associated with complying with federal, state or local governmental, regulations, laws, or judicial orders.

(g) "**Uplevel Systems Dashboard**" means the user interface or other means provided by Uplevel Systems that allows Reseller to add, delete, remove and otherwise modify Reseller's Services.

(h) "**Parties**" means both Reseller and Uplevel Systems, jointly.

(i) "**Party**" means either Reseller or Uplevel Systems, as context requires.

(j) "**Regulatory Requirement**" means a rule, regulation, law, or other order issued by the FCC, a state regulatory body, a court of competent jurisdiction, any legislature, or any other governmental or quasi-governmental body having jurisdiction over the Services, which has the effect of canceling, changing, or superseding any material term or provision of these Terms and Conditions.

(k) "**Service Order**" refers to a standard form that details the rates, terms, Services ordered, and any other information reasonably requested by Uplevel Systems to process and provision an order. Each Service Order shall constitute an agreement separate and distinct from the Reseller Agreement, and from any other Service Order. NOTWITHSTANDING the foregoing, every Service provided to an End User, whether provisioned through the Control Panel or a written or electronic Service Order, shall remain

subject to and governed by the terms of the Reseller Agreement and these Terms and Conditions. A Service Order is not valid until accepted by Uplevel Systems in writing or electronically.

(l) **"Services"** means one or more of the services offered by Uplevel Systems.

(m) **"Term"** means the period specified in the Reseller Agreement executed between Reseller and Uplevel Systems.

(n) **"Reseller"** or **"Reseller's"** means the person or entity that is entering into the Reseller Agreement with Uplevel Systems, and bound by these Terms and Conditions.

(o) **"We", "us", "our", "Uplevel", and "Uplevel Systems"** all refer to both Uplevel Systems Corporation and/or any of its affiliated entities.

3. Agreement & Acceptance. Reseller agrees to be bound by the Reseller Agreement executed between Reseller and Uplevel Systems, as well as these Terms and Conditions, and the following documents, in this order of priority, including changes or amendments thereof:

- Any applicable product-specific terms and conditions;
- Any applicable Service Orders;
- Any relevant click-through agreement for the Services;
- The Acceptable Use Policy posted at www.uplevelsystems.com/policies; and
- The Privacy Policy posted at www.uplevelsystems.com/policies.

Reseller agrees to be bound by the Reseller Agreement and these Terms and Conditions when Reseller performs one of the following:

- Signs and returns the Reseller Agreement to Uplevel Systems with either a written or electronic signature; or
- Informs Uplevel Systems either orally or electronically that Reseller accepts the Reseller Agreement and these Terms and Conditions; or
- Submits an order to Uplevel Systems to provision a Service.

4. Billing/Fees. Reseller agrees to pay Uplevel all Fees owed, commencing on the Actual In-Service Date, when due and without setoff, notice or demand.

Reseller is required to hold a valid reseller's certificate in each State where services are delivered to Reseller's End Users. Reseller shall provide Uplevel Systems with, and shall maintain, valid properly executed reseller's certificate(s) of exemption for taxes, as applicable. If Reseller loses tax exempt status, Reseller shall immediately notify Uplevel Systems of that change. Uplevel reserves the right to either pay and bill applicable taxes or to terminate the Reseller Agreement. Uplevel Systems reserves the right to terminate or change the Services offered, or the Fees associated therewith, at any time upon thirty (30) days written notice.

Uplevel Systems charges Reseller for all monies owed under the terms of the Reseller Agreement. The initial charge shall include all non-recurring charges for installation and setup, and may include a prorated amount for any fractional month of service, and will be billed immediately upon Start of Service. Thereafter, all recurring charges will be on the first of the month for the current month's service. Unless special arrangements are made, charges will be made via credit card, and monthly statements will be sent to the email address provided for the Billing Contact specified by the Reseller.

Uplevel Systems reserves the right to back-bill Reseller for Services actually provided but not previously billed.

If special arrangements are agreed upon to bill via Invoice, payment in full is due no later than the due date indicated on invoice. Should Reseller fail to tender Reseller's payment in full by the due date specified, Uplevel may impose an interest charge of 18% (or the maximum amount permitted by law, if lower) on any unpaid sums owed. Should a payment tendered or authorized by Reseller be declined by Reseller's financial institution or credit card company, Reseller agrees to pay all costs and fees associated with that transaction, including but not limited to a service charge imposed by Uplevel Systems not to exceed the highest amount authorized by law, and any attorney fees and court costs Uplevel Systems incurs to collect any unpaid balance owed by Reseller.

Payments will be automatically billed to Reseller's credit card on file. Reseller accounts will be charged three (3) days following the submission of a bill, and no additional notice or consent is required before the account is debited for all amounts due to Uplevel Systems for any reason.

NOTWITHSTANDING anything herein to the contrary, Uplevel Systems may seek recourse for any unpaid monies owed in the Multnomah County District Court, Portland, Oregon (the "Court"). Reseller irrevocably submit to venue and jurisdiction, both personal and subject matter, in that Court, for that purpose.

5. Termination. Notwithstanding anything herein to the contrary, either party may terminate the Reseller Agreement: (i) with written notice tendered one (1) year prior to the end of the then current term; or (ii) pursuant to Section 15 of these Terms and Conditions.

6. Ordering Procedure. Reseller is solely responsible for ordering all Services required using the Uplevel Systems Dashboard or Order Form; or, if the Service contains requests for items or services that cannot be found within the Uplevel Systems Dashboard or Order Form, placing orders with the assistance of Uplevel Systems personnel.

Unless otherwise expressly agreed, all Services ordered shall be rendered on a month-to-month basis, and all such orders shall be strictly subject to the Terms and Conditions specified herein. Should Reseller have an order that cannot be placed through the Uplevel Systems Dashboard or Order Form, Reseller shall send an email to Uplevel Systems with reasonable detail of the assistance needed and Reseller's telephone number so that Uplevel's support personnel may contact Reseller. NOTWITHSTANDING anything herein to the contrary, Uplevel Systems reserves the right to require orders be submitted using our then current Service Order, in our sole discretion.

7. End User Relationship/Obligations. As it relates to the Services, Reseller shall completely own the End User relationship and be solely responsible for managing every aspect thereof, including without limitation all training, technical support, End User billing, and any ancillary responsibilities that arise related to the foregoing. Aside from providing the Services requested, Uplevel Systems shall have no responsibility for the End User under the terms herein. Should an End User contact our technical support needing assistance, Uplevel Systems will redirect them to Reseller's support personnel. Should Reseller's support personnel need assistance in resolving any issue, Reseller's technical personnel may contact Uplevel Systems support staff at the support telephone number provided by Uplevel Systems, or by e-mail via support@uplevelsystems.com, or via a reseller or partner portal set up by Uplevel Systems for this

purpose, or by other electronic means established by Uplevel Systems and provided to Reseller.

Reseller shall comply with all terms and conditions set forth herein, including but not limited to its payment obligations, and all other legal obligations, such as sales and use tax obligations, regardless of Reseller's ability to collect payments or fees from Reseller's End Users.

8. End User Data. Uplevel Systems acknowledges that all End User data is exclusively the property of the End User, and we make no claim of ownership therein. In the event of the expiration or proper termination of the Reseller Agreement, Reseller should copy the End User's data from Uplevel's system before the end of service. In the event Uplevel Systems becomes insolvent or bankrupt, an End User will be granted access to its data. Reseller is solely responsible for all hardware, software and IT support necessary for the return of Reseller's End User's data, setup of such data, and the continued maintenance thereof. Uplevel Systems shall not be liable for any lost data or interruption of service.

9. Uplevel Obligations. Uplevel will provide Reseller with the following as a part of the Reseller Agreement:

- Marketing and Sales collateral for Reseller's use in selling to End Users
- Provide eval/deployment equipment as described in Section 10.
- Ongoing technical support and training, at Uplevel's discretion, as described in section 7.

10. Eval/Deployment Equipment. The Eval/Deployment equipment program provides Reseller with the necessary Dashboard access and an initial set of hardware equipment to evaluate, demonstrate, and sell the Services. Reseller may order additional equipment for customer deployments from Uplevel. Uplevel may at its discretion issue additional hardware equipment to be used by Reseller as spares or for extended evaluations.

The Eval/Deployment equipment is intended to be used to evaluate the solution, make demos to sales prospects, and support deployment for service subscriptions. Uplevel may at its discretion request the return of the Eval/Deployment equipment if (a) the equipment is not deployed to support a service subscription within three (3) months after receipt by Reseller, (b) if Uplevel determines that it is not being

used for the above purposes, or (c) Uplevel determines that the Eval/Deployment equipment has been in an idle condition for an extended period of time. Reseller is responsible for returning the Eval/Deployment equipment within 14 calendar days of this request being made.

All Uplevel Systems owned equipment must be returned to Uplevel at the termination of the Reseller Agreement. Reseller is responsible for collecting equipment from End Users and returning all Uplevel Systems-owned equipment as soon as possible. If equipment is not returned within 30 calendar days upon termination of the Reseller Agreement, Reseller shall be liable for the value of the equipment, to be determined by Uplevel at the time of termination. Uplevel will bill Reseller for equipment not returned.

11. Litigation Hold. Reseller acknowledges that Uplevel Systems has no obligation to store or avoid the destruction of data pursuant to the Federal Rules of Civil Procedure, including but not limited to Rule 26 thereof, or any other similar state law, rule or regulation. Should Reseller or Reseller's End User feel data preservation is necessary, Reseller shall submit a request for such service pursuant to Section 22. If Uplevel deems Reseller's data preservation request to be too burdensome, Uplevel shall have the right to terminate the Reseller Agreement, or any individual End User's Services, immediately and without liability to Reseller or the End User in question.

12. Regulatory Changes. Subject to notice being provided pursuant to Section 25, we shall have the right to modify these Terms and Conditions as necessary to comply with any Regulatory Requirement imposed. Any such modification shall not constitute a basis for the termination of the Reseller Agreement unless said modification has a significant negative material impact on the value of the Reseller Agreement to Reseller.

13. Disputed Bills. Reseller must review bills in a timely manner. To dispute a bill, Reseller must comply with the dispute resolution provisions in Section 26 and submit Reseller's Bona Fide Billing Dispute, in writing with all supporting documentation, within 60 days after the date on the bill. Reseller shall not withhold payment of any undisputed amounts simply because Reseller has a Bona Fide Billing Dispute. Reseller accepts all charges on Reseller's bill not disputed within the period provided above, and irrevocably waives any right to dispute or otherwise disclaim Reseller's liability for those charges.

14. Relationship of Parties. Reseller shall be an independent contractor of Uplevel Systems for all purposes, and shall not be an employee or agent of Uplevel Systems for any purpose, including, without limitation, entitlement to employment benefits or the withholding, or payment of, taxes to be paid on income earned pursuant to the Reseller Agreement and these Terms and Conditions. Reseller has no authority to enter into contracts or agreements on Uplevel's behalf, and Reseller is not authorized to bind Uplevel in any way.

15. Conditions for Service. Uplevel Systems' obligation to provide Services to Reseller is expressly subject to the following conditions:

- (a) The order is accepted by Uplevel Systems;
- (b) Reseller provides to Uplevel all information or data reasonably requested;
- (c) All Services are subject to availability;
- (d) Reseller represents and warrants that the Services will only be used for lawful purposes;
- (e) That Reseller will comply with all applicable local, state, and federal laws; international and national export laws and cross border data transfer laws that apply to the Services, including without limitation the underlying components, including all U.S. Export Administration, as well as end-user, end-use and destination restrictions issued by U.S. and other governments.
- (f) Reseller agrees to, and agrees to bind all of Reseller's End Users to, the terms specified in Schedule A, or terms that provide equivalent protections to both Uplevel and Uplevel's vendors; and
- (g) In case of network emergency, unlawful usage by Reseller or Reseller's End Users, or for routine maintenance (in which case Uplevel Systems will provide reasonable advanced notice), Uplevel may suspend any affected Services without liability.

16. Representations & Warranties. Reseller represents and warrants the following to Uplevel Systems:

- (a) Reseller is 18 years of age, or older, and has the right and authority to enter into a Reseller Agreement on Reseller's own behalf, or if Reseller is entering into a Reseller Agreement on behalf of Reseller's company, organization or educational institution, and that Reseller has the right to legally bind said entity;
- (b) Reseller will comply with all federal, state, and local laws, ordinances, regulations and rules now or hereafter in effect, relating to Reseller's acts of

commission and omission, and that of Reseller's employees, agents, contractors, and associates;

(c) Reseller will not act in any manner which conflicts or interferes with any existing commitment or obligation Reseller may have, and no agreement previously entered into by Reseller will interfere with Reseller's performance of Reseller's obligations under the Reseller Agreement as governed by these Terms and Conditions;

(d) Reseller have had sufficient opportunity and access to any and all information Reseller deem necessary to ascertain whether entering into a Reseller Agreement governed by these Terms and Conditions is in Reseller's best interests;

(e) Reseller has not solicited, accepted or received any accounting, tax or legal advice from Uplevel or our affiliates, owners, directors, officers, employees, agents or otherwise.

(f) Reseller will not engage in any activity that would tend to induce any person or entity to not become or remain an employee, representative, consultant or End User of Uplevel Systems.

(g) Reseller will not engage in any fraudulent, deceptive, illegal and/or unethical activity that would tend to disparage or diminish Uplevel System's reputation or cause Uplevel to be in violation of any law.

Reseller acknowledges and agrees that the foregoing representations and warranties are all a material inducement for us to enter into a Reseller Agreement with Reseller.

17. Remedies for Default. Should there be a Default, the aggrieved party shall tender written notice, as specified in Section 25, to the defaulting party specifying the nature of the Default.

With the exception of any default for nonpayment of undisputed Fees, the defaulting party shall have thirty (30) days to cure, as reasonably determined in the aggrieved party's sole discretion, measured from the date the defaulting party receives the notice of Default. Should a Default be declared based on Reseller's failure to pay undisputed Fees, Reseller shall have ten (10) days to cure the Default. Should Reseller fail to cure Reseller's Default for nonpayment in a timely manner, Reseller will be deemed to have automatically assigned, with no further action required, Reseller's interest in Reseller's End User relationships to Uplevel Systems, and Uplevel Systems shall immediately take control of those relationships for purposes of continuing to provide Uplevel Services. Uplevel

Systems will thereafter assign those End Users a new reseller and continue to provide Services to those End Users. The new reseller will bill and collect all monies owed directly from them for those Services, and Reseller will no longer be entitled to bill or otherwise earn any fee or commission related to the End Users using Uplevel System's Services.

NOTWITHSTANDING anything herein to the contrary, in addition to any other remedies available under the Reseller Agreement as governed by these Terms and Conditions, Uplevel Systems at its sole option, may do any of the following if a Default persists past the specified cure period: (i) cease accepting or processing all new or pending orders; (ii) suspend any or all Services without liability; (iii) terminate any or all Services; (iv) cease all electronically and manually generated information, records and reports; (v) terminate the Reseller Agreement or any Service; or (vi) pursue such other legal or equitable remedy or relief as may be appropriate.

18. Intellectual Property. Except as otherwise set forth in the Reseller Agreement and these Terms and Conditions, neither party may use the name, logo, trade name, service marks, trademarks, or printed materials of the other party, for any reason, without the other party's express prior written consent, which may be withheld without reason.

Reseller also acknowledges that all title and intellectual property rights in and to Uplevel Services (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text, and "applets" incorporated into the Service) are owned by Uplevel Systems or Uplevel's vendors. Therefore, unless otherwise authorized by applicable law, Reseller is not permitted to: (1) attempt to decompile, disassemble, reverse engineer, or otherwise attempt to discern the source code incorporated into the Services, or their individual components; (ii) sell, resell, rent, lease, or distribute the individual components of the Services; (iii) remove, obscure, or obfuscate any copyright, trademark or other proprietary notice, label or marking on the Services or its individual components; or (iv) modify, translate, or sublicense the individual components of the Services.

19. Publicity. Notwithstanding anything herein to the contrary, subject to Reseller's prior review and

approval, Uplevel Systems may use Reseller's name and the existence of a Reseller Agreement between Reseller and Uplevel Systems, including without limitation the nature of the business relationship, for marketing and public relations purposes. All other details of the relationship with Reseller shall remain subject to the confidentiality obligations set forth herein.

20. Acknowledgement. Reseller acknowledges that the Reseller Agreement is not an exclusive arrangement and shall not limit or restrict Uplevel Systems in any manner, including without limitation limiting Uplevel in marketing, hosting, recommending, referring or selling products that are competitive to Reseller's products, or entering into similar agreements with third parties.

21. Privacy. Reseller authorizes Uplevel Systems to monitor and record any communication with Uplevel regarding Reseller's Services or account, regardless of who initiated the communication, for purposes of quality assurance or otherwise.

22. Special Requests. Reseller may request any additional services Reseller desires. If, in Uplevel's sole discretion, we elect to provide the specific services requested, we will do so on the terms and rates communicated to Reseller at that time. Uplevel are under no obligation to perform or honor any additional service requests tendered by Reseller.

23. Changes. We may change the Reseller Agreement as well as these Terms and Conditions, including any change in any charge or fee, or the imposition of a new charge or fee, at any time if Uplevel gives Reseller notice of the change. If Uplevel Systems wishes to change any term of the Reseller Agreement or these Terms and Conditions, Uplevel Systems will provide thirty (30) days' prior notice of such change or such other notice as set forth herein. If Uplevel makes a change to these terms that is material and Reseller does not wish to accept such material change, Reseller may terminate the affected Service by giving Uplevel thirty (30) days' prior notice, measured from the date Reseller first receive notice of the proposed change. Reseller will, however, still be responsible for all charges for Services provided before Reseller terminated the Reseller Agreement, or the specific services in question. A material change is ONLY a change that (a) terminates or substantially reduces the availability of a Service for Reseller or Reseller's End User, or (b) results in the increase of any charge by more than 10% of the monthly recurring charges for

that Service. Material changes in Reseller's Service DOES NOT include an increase in, or imposition of: (1) any charge required to be collected by any governmental authority, such as taxes or surcharges, or (2) any charge not prohibited by any governmental authority to recoup Uplevel's expenses incurred to comply with a governmental requirement.

24. LIMITATION OF LIABILITY. Reseller AGREES THAT THE PRICING OF UPLEVEL SERVICES REFLECTS THE INTENT OF BOTH Reseller AND UPLEVEL TO LIMIT UPLEVEL'S LIABILITY AS PROVIDED HEREIN. THEREFORE, Reseller AGREE THAT IN NO EVENT, REGARDLESS OF WHETHER THE CLAIM IS ASSERTED BY Reseller OR Reseller's END USER, SHALL UPLEVEL SYSTEMS, ITS AFFILIATES, ITS SUBSIDIARIES, ITS OWNERS, ITS DIRECTORS, ITS OFFICERS, ITS EMPLOYEES, ITS CONTRACTORS, ITS AGENTS, ITS VENDORS, OR ITS PARTNERS BE LIABLE FOR ANY DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH THE RESELLER AGREEMENT OR THESE TERMS AND CONDITIONS, OR OUR SERVICES, INCLUDING BUT NOT LIMITED TO ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, TREBLE, OR PUNITIVE DAMAGES, OR LOST PROFITS OR REVENUE RESULTING FROM LOST DATA, DELAY, OR INTERRUPTION IN SERVICES OR DAMAGES RESULTING FROM PERSONAL INJURY OR PROPERTY DAMAGE, WHETHER OR NOT UPLEVEL SYSTEMS HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES.

TO THE EXTENT UPLEVEL SYSTEMS IS FOUND LIABLE FOR MONETARY DAMAGES, THE PARTIES AGREE THAT UPLEVEL SYTEMS' LIABILITY SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY Reseller TO UPLEVEL SYSTEMS IN THE THREE MONTHS IMMEDIATELY PRECEDING THE DATE THE CLAIM AROSE, REGARDLESS OF WHETHER THE CLAIM IS BASED IN TORT, CONTRACT, STRICT LIABILITY, OR SOME OTHER LEGAL THEORY.

25. Indemnification. Reseller shall indemnify, defend and hold Uplevel, and our affiliates, subsidiaries, owners, directors, officers, employees, contractors, agents, vendors, and partners (collectively "Indemnitees") harmless from and against any and all claims, losses, liabilities, damages, costs and expenses, including without limitation, attorney's fees, to which such Indemnitees may be subject to that arise out of: (i) any misrepresentation or breach of the Reseller Agreement or these Terms and Conditions by Reseller;

or (ii) Reseller's End User's use of, inability to use, a Service.

Uplevel Systems shall indemnify, defend and hold Reseller, and Reseller's affiliates, subsidiaries, owners, directors, officers, and employees harmless from and against any and all claims, losses, liabilities, damages, costs and expenses, which they may be subject to that arise out of any third party claim that our standard Services violate any patent or other intellectual property right.

26. DISCLAIMER OF WARRANTIES. UPLEVEL SYSTEMS' SERVICES ARE PROVIDED ON AN "AS-IS" AND "AS-AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR NON-INFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTY ARISING BY COURSE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE, ANY WARRANTY THAT THE SERVICES WILL MEET Reseller's REQUIREMENTS OR ANY WARRANTY REGARDING THE QUALITY, CONTENT, ACCURACY OR VALIDITY OF THE INFORMATION OR DATA RESIDING ON OR PASSING THROUGH OR OVER OUR NETWORK. ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. NO ORAL OR WRITTEN ADVICE OR INFORMATION BY OUR EMPLOYEES, AGENTS OR CONTRACTORS SHALL CREATE A WARRANTY, AND Reseller MAY NOT RELY ON ANY SUCH INFORMATION.

27. Notices. All notices shall be in writing and shall be considered given upon receipt when sent by certified mail, return receipt requested, postage prepaid, or sent via a major domestic overnight carrier with verification of such delivery to Reseller at the address provided above, or to Uplevel Systems at: 6950 SW Hampton Street, Suite 308, Tigard, OR 97223.

28. Dispute Resolution. Reseller agrees to the following dispute resolution procedures. Both parties, Reseller and us, agree to waive any right to a trial by jury in a court of general jurisdiction and any right to participate in a class action or consolidated action regarding a dispute as defined below. Specifically, both parties, Reseller and us, agree to waive any right to pursue a dispute by joining a disputed claim with the disputed claim of any other person or entity or to assert a disputed claim in a representative capacity on behalf

of anyone else in any lawsuit, arbitration or other proceeding.

Instead, if the parties have a dispute, both parties agree to use due diligence and use best efforts to work together to implement the Reseller Agreement and these Terms and Conditions, and amicably resolve any differences. However, both parties understand that issues and conflicts may arise where there is an impasse. Both parties acknowledge a desire to reach a working solution by using good faith attempts to resolve such issues and conflicts. Any claim or controversy related to or arising out of the Reseller Agreement or these Terms and Conditions, whether in contract or in tort ("Dispute"), will be resolved on a confidential basis, according to the following process, which either party may start by delivering to the other a written notice describing the Dispute and the amount involved ("Demand").

After receipt of a Demand, authorized representatives of both parties will meet at a mutually agreed upon time and place to try to resolve the Dispute by negotiation. If the Dispute remains unresolved 30 days after receipt of the Demand, either party may start binding arbitration in Portland, Oregon. Both parties will use their best efforts to conclude the arbitration as expediently as possible but in no event later than 60 days following commencement of any proceeding, provided there is no interim relief or court action sought that would delay the parties from resolving the Dispute within such 60 day period. If such interim relief or court action is sought, then both parties will use their best efforts to conclude the arbitration within 60 days following the final decision of the court in such action. The arbitration will be before a three-arbitrator panel. Each party will select one partial arbitrator, in its sole discretion, to represent its interest at its sole expense. The partial arbitrator may be an employee, director, officer or principal of the party. The final arbitrator, who shall be impartial, will be selected by the two partial arbitrators. In the event the two partial arbitrators fail to select an impartial arbitrator, either party may apply to a court of law to have a judge select an impartial arbitrator. The three arbitrators by majority ruling may adopt such procedures as they deem efficient and appropriate for making the determinations submitted to them for adjudication, and the parties agree that no court shall have the power to interfere with the proceedings and judgments of the

arbitrators. No statements by, or communications between, the parties during negotiation or mediation, or both, will be admissible for any purpose in the arbitration or any other hearing. Each party shall bear its internal expenses and its attorney's fees and expenses, and jointly share the cost of the impartial arbitrator. No interest shall be applied to any arbitration award. It is the intent of the parties to first allow the arbitrators an opportunity to meet and negotiate a decision. However, if an agreement cannot be reached through negotiation, then the decision(s) of a majority of the arbitrators shall be final and binding on the parties.

Notwithstanding the foregoing, either party may resort to a court by applying for interim relief, with the requirement to post a bond or security, if such party reasonably determines that such relief is necessary because claims for money are not adequate to prevent irreparable injury to it or to a third party.

In the event any of the provisions herein are deemed unenforceable or void as a matter of law, both parties IRREVOCABLY waive to the fullest extent permitted by applicable law, any right to a trial by jury with respect to any litigation directly or indirectly arising out of, under or in connection with a Reseller Agreement, or the Services provided by Uplevel Systems.

29. Confidentiality. Each party agrees that all information furnished to it by the other party, or to which it has access under a Reseller Agreement, specifically including the Reseller Agreement and any pricing, shall be deemed the confidential and proprietary information or trade secrets of the party disclosing the information ("Proprietary Information") and shall remain the sole and exclusive property of the party disclosing the Proprietary Information ("Disclosing Party" and the other party referred to as the "Receiving Party"). Each party shall treat the Proprietary Information in a confidential manner and, except to the extent necessary in connection with the performance of its obligations under the Reseller Agreement and governed by these Terms and Conditions, neither party may directly or indirectly disclose the same to anyone other than its employees on a need to know basis and who agree to be bound by the terms of this Section, without the written consent of the Disclosing Party.

The confidentiality obligations of this Section do not apply to any portion of the Proprietary Information

which is (i) or becomes public knowledge through no fault of the Receiving Party; (ii) in the lawful possession of Receiving Party prior to disclosure to it by the Disclosing Party (as confirmed by the Receiving Party's records); (iii) disclosed to the Receiving Party without restriction on disclosure by a person who has the lawful right to disclose the information; or (iv) disclosed pursuant to the lawful requirements or formal request of a governmental agency. If the Receiving Party is requested or legally compelled by a governmental agency to disclose any of the Proprietary Information of the Disclosing Party, unless prohibited by law, the Receiving Party agrees that it will provide the Disclosing Party with prompt written notice of such requests so that the Disclosing Party has the opportunity to pursue its legal and equitable remedies regarding potential disclosure.

Each Party acknowledges that the breach or threatened breach of this Section 27 may cause the Disclosing Party irreparable harm which would not be adequately compensated by monetary damages. Accordingly, in the event of any such breach or threatened breach, the Receiving Party agrees that equitable relief, including temporary or permanent injunctions, is an available remedy in addition to any legal remedies to which the Disclosing Party may be entitled. No bond is required in the event of an action seeking injunction pursuant to this Section 27.

30. Choice of Law. The Reseller Agreement as governed by these Terms and Conditions, and Uplevel's provision of Services to Reseller, shall be subject to and governed by (a) the laws of the State of Oregon, without regard to any conflicts of law provisions therein, and (b) any applicable federal laws including, but not limited to the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* In the event of an inconsistency between any governmental requirement and these terms regarding the provision of a Service that is subject to the governmental requirement, the governmental requirement will apply to the extent necessary to avoid the inconsistency.

31. Force Majeure. Except for a failure to remit all Fees owed when due, neither party shall be liable for any delay or failure in performance of any part of the Reseller Agreement or these Terms and Conditions, resulting from acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes,

nuclear accidents, floods, power blackouts, or unusually severe weather. In the event of any such excused delay in the performance of a party's obligations under the Reseller Agreement, the due date for the performance of the original obligation(s) shall be extended by a term equal to the time lost by reason of the delay or by an extended time period mutually agreed to by the parties if more time is needed to complete the work.

32. Assignment: Uplevel Systems may assign a Reseller Agreement to another entity without any advance consent from or notice to Reseller. Reseller may not assign a Reseller Agreement without Uplevel's prior written consent.

33. No Waiver, Severability: If Uplevel Systems does not enforce any right or remedy available under a Reseller Agreement governed by these Terms and Conditions, that failure is not a waiver. If any part of the Reseller Agreement or these Terms and Conditions is held invalid or unenforceable, the remainder of the Agreement and these Terms and Conditions will remain in force.

34. Entire Agreement. The Reseller Agreement as governed by these Terms and Conditions, including attached Schedules and such agreements and terms as may be specifically incorporated by reference into these documents, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all other prior and contemporary agreements, understandings, and

commitments between the parties regarding the subject matter hereof, whether oral or in writing. Neither the Reseller Agreement nor these Terms and Conditions may be modified or amended except by a written instrument executed by the parties.

35. Agreement Drafted by Both Parties. The Reseller Agreement, as governed by these Terms and Conditions, is the result of arm's length negotiations between the parties and shall be construed to have been drafted by the parties such that any ambiguities in the Reseller Agreement or these Terms and Conditions shall not be construed against either party.

36. Counterparts. The Reseller Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties at such time as both parties have accepted a counterpart hereof.

37. Survivability. The following paragraphs shall survive the termination of the Reseller Agreement: 3, 4, 7, 11 - 16, 19, 22 - 29, 31 - 34 and 37.

38. Headings. Headings used in the Reseller Agreement and these Terms and Conditions are provided for convenience only and shall not be used to construe meaning or intent.

39. Electronic Signatures. A scanned, facsimile, .pdf version or electronic signature shall be acceptable, and a fully enforceable method of executing the Reseller Agreement as governed by these Terms and Conditions.

Schedule A

MISCELLANEOUS VENDOR REQUIREMENTS

Reseller must agree to be bound by, and Reseller must bind all of Reseller's End Users, to the following, at a minimum:

1. Prohibit all users and resellers from removing, modifying, or obscuring any copyright, trademark, or other proprietary rights notices that are contained in or on the software, unless the proposed change has been approved by the software developer in writing.
2. Prohibit all users and resellers from reverse engineering, decompiling, or disassembling any software related to the Service, except and only to the extent that such activity is expressly permitted by applicable law.
3. Disclaim, to the extent permitted by applicable law, all warranties by Uplevel Systems, the underlying software vendors, and all third party suppliers, whether express or implied, and liability by Uplevel, the vendors, and all affiliates or suppliers for any damages, whether direct, indirect, or special, consequential, or incidental arising from the use of the Services.
4. Prohibit the exportation, re-exportation or other distribution of any software related to the Services, to any prohibited destination country under U.S. regulations or in contravention of any applicable export controls.
5. Restrict access to products to only users that are bound by the applicable End-User License Agreement governing the individual products in question.

Schedule B

INTELLECTUAL PROPERTY RIGHTS

1. Reseller may, subject to Uplevel Systems' prior approval, display the Uplevel Systems name, trademarks, service marks, logos, and other identifying information on Reseller's website.
2. Uplevel Systems may, subject to Reseller's prior approval, display Reseller's name, trademarks, service marks, logos, and other identifying information on its website
3. Uplevel Systems will provide Reseller sample collateral that Reseller may repurpose and use as templates. Reseller acknowledges that, except for any of Reseller's trademarks, service marks, logos, and other identifying information included in the repurposed collateral, Uplevel Systems will retain and own all rights related to the collateral and Uplevel Systems is merely granting Reseller a nontransferable and revocable license to use and distribute the documentation for Reseller's own purposes.
4. The parties shall exchange relevant intellectual property in a format to be agreed upon by the parties.
5. Both parties agree to stop distributing, publicly referencing, and displaying the intellectual property of the other party at any time, upon the other party's written request.