RESELLER AGREEMENT

This reseller agreement ("Agreement") is entered into as of the date of the last signature below (“Effective Date”) between Elisity, Inc., with its principal place of business at 100 Century Center Ct, Suite 710 San Jose, CA 95112 USA ("Elisity'') and <Company Name> with its principal place of business at <address> ("Reseller"). This Agreement authorizes Reseller to resell Elisity Products under the terms and conditions contained herein.

1. DEFINITIONS

All capitalized terms used in this Agreement shall have the following meanings.

"Affiliate(s)" means any corporation or other entity that shall control, be controlled by, or be under common control with Elisity, directly or indirectly during the Term of this agreement. The term "control", including the term "controlled by" shall mean holding, directly or indirectly, more than fifty percent (50%) of the issued stock entitled to vote for the election of directors of such corporation.

“Approved Source” means a Elisity authorized distributor, where a distributor sells only to resellers and not Customers directly. Another reseller is not an Approved Source unless separately approved by Elisity in writing.

"Confidential Information" means any and all technical and non-technical information related to the current, future and proposed technology, business, products, or services of a party to this Agreement, and such party's suppliers and customers, and includes, without limitation, information concerning development, design details and specifications, engineering, customer lists, business forecasts, sales, and marketing plans and any other similar information or data that is disclosed by such party (the “Disclosing Party”) to the other party (“Recipient”) or to which Recipient otherwise gains access as a result of this Agreement. Notwithstanding the foregoing, Confidential Information shall not include, and the obligations provided hereunder shall not apply to, information that: (a) is now or subsequently becomes generally available to the public through no fault of the Recipient; (b) the Recipient can demonstrate was rightfully in its possession prior to disclosure by the Disclosing Party without any obligation of confidentiality; (c) is independently developed by the Recipient without use of or reference to any Confidential Information provided by the Disclosing Party; (d) the Recipient rightfully obtained or obtains from a third party who has the right, without obligation to the Disclosing Party, to transfer or disclose such information; or (e) is released or approved for release by the Disclosing Party without restriction.

"Customer" means the ultimate end-user who receives the Products for its own use and not for resale or distribution.

"Documentation" means the manuals, data sheets, and specifications, including in electronic form, that Elisity makes publicly available related to the Products.

“Global Partner Program” means programs that Elisity may make available to resellers that establish Product certification requirements, discount levels, and other features that establish Elisity reseller status.

“Intellectual Property” means all (a) rights associated with works of authorship throughout the world, including but not limited to copyrights and moral rights, (b) trademarks, service marks, trade name and logo rights, and similar rights, (c) trade secret rights and other rights in inventions, know-how and confidential or proprietary information, (d) patent rights, (e) domain names and Internet keywords, (f) other intellectual property or other proprietary rights, whether arising by operation of law, contract, license, or otherwise, and (g) registrations, initial applications, renewals, extensions, provisionals, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

"Products" is defined as the Elisity hardware, software license subscription services, license subscription support services, and any defined professional services as made generally available by Elisity, and as may be amended by Elisity from time to time, with or without notice.

“Territory” is defined as [insert country or countries] or as may be specified in an applicable Global Partner Program or as may be approved from by Elisity in writing.

2. APPOINTMENT

2.1 Non-exclusive appointment. Subject to the terms and conditions of this Agreement, Elisity appoints Reseller as a non-exclusive reseller with the right to market and resell the Products purchased by Reseller from Elisity and/or an Approved Source within the Territory. Reseller’s appointment may be further conditioned by its participation in the Global Partner Program.

2.2 Marketing Promotion. Reseller agrees to use best efforts to advertise and aggressively promote its resale of the Products. Reseller shall make the financial investments in its marketing efforts related to Elisity as defined in the applicable Global Partner Program. At all times, Reseller shall promote the good name of Elisity and the value of the Products in all of its sales and marketing efforts with Customers, and shall not disparage Elisity or the Products in any manner.

2.3 Reserved Rights. Elisity reserves the right to (i) solicit orders directly from and sell directly to any Customer and (ii) appoint other sales representatives, resellers, and/or Approved Sources on a non-exclusive basis to resell or distribute the Products. Nothing in this Agreement shall be construed as limiting in any manner Elisity marketing or distribution activities or its appointment of other dealers, distributors, licensees, agents or representatives of any kind. Elisity reserves all rights not specifically expressly granted to Reseller. Elisity further reserves the right to require Reseller to purchase solely through Approved Sources in countries where Elisity does not have any direct fulfillment capability or choses to no longer sell direct, including the United States of America.

2.4 Independent Contractor/Indemnification. The parties expressly understand and agree that Reseller is an independent contractor in the performance of each and every part of this Agreement and is solely responsible for all of its employees and agents and its labor costs and expenses arising in connection and for any and all claims, liabilities, damages, taxes or debts of any type whatsoever that may arise on account of and will indemnify Elisity and its parents and subsidiaries, and each of their directors, officers and employees from any loss, damage, settlement, attorney fees and other expenses relating to any allegation concerning Reseller's activities, or those of its employees or agents, in connection with this Agreement.

3. TERMS AND CONDITIONS OF RESALE

3.1. Purchase Price. For each Product purchased by Reseller directly from Elisity, Reseller shall pay to Elisity the prices as set forth in the applicable Global Partner Program (Elisity list price less Global Partner Program discount(s)) or on the Elisity quote to Reseller. All prices are based upon Product delivery under FCA (Incoterms 2010) Elisity’s facility, San Jose, CA USA, provided that Elisity delivers software to Customers electronically. Title and risk of loss to the hardware Products shall pass in accordance with the Incoterms in this section.

3.2 Price Changes. Elisity shall have the right, upon sixty (60) days prior written notice to Reseller, to change the list price for any Product. All Reseller orders for Product received and accepted by Elisity prior to the effective date of a price change shall be invoiced based upon the accepted and acknowledged order.

3.3 Orders. Reseller's orders for the Products must be in writing, identify the Customer and reference this Agreement, and such orders shall be subject to acceptance by Elisity. Elisity shall accept or reject an order with an order acknowledgment no later than ten (10) business days after receiving Reseller’s order. The terms and conditions of this Agreement shall apply to all accepted and acknowledged Reseller orders and supersede any different or additional terms and conditions on any Reseller orders.

3.4 Changed or Cancelled Orders. Following the acceptance and acknowledgement of a Reseller order by Elisity, such order may only be changed or canceled with Elisity's written consent and may be subject to change or cancellation charges. Such change and cancellation charges shall be determined in Elisity’s sole discretion. Change orders may also change the delivery dates to new dates as deteremined by Elisity. Elisity reserves the right to cancel any accepted and acknowledged Reseller orders, or delay installation/provisioning, if Reseller (i) fails to make any payment as as required under the Agreement or otherwise agreed by Elisity and Reseller in writing, or (ii) Reseller otherwise fails to comply with the terms and conditions of this Agreement. No such cancellation, refusal or delay by Elisity will be deemed a breach of this Agreement.

3.5 Shipping and Payment Terms. Elisity shall invoice Reseller upon Product delivery as determined above in Section 3.1. Reseller shall pay all of the amounts set forth in Elisity's invoice within thirty (30) days from the date of Elisity's invoice. Elisity may issue one or more invoices for an order. Late payments shall bear interest compounded daily commencing on the date such payments become due, using an annual rate of 10% or the highest rate permitted by law. Payment shall be made in U.S. dollars and the parties may agree to enable electronic payment such as wire transfer. If Reseller is materially late to pay any Elisity invoice not under dispute, then Elisity has the following rights and remedies: (i) demand payment and suspend its performance until full payment is received; (ii) terminate Reseller’s license(s) and disable any software so that the Product is no longer usable; (iii) initiate arbitration under this Agreement; and/or (iv) take all other necessary actions under law and equity.

3.6 Taxes. All pricing and fees under this Agreement are exclusive of taxes. As required by applicable law, Reseller shall pay any federal, state, county, local or other governmental taxes, fees or duties imposed on the sale, export, import, use or possession of the Products purchased by Reseller under this Agreement, as well as any penalties or interest for failure to pay such taxes in a timely manner. Elisity will gross up the invoice to the extent there are any taxes Reseller is obligated to pay on behalf of Elisity to the relevant tax authority. In the event Reseller is required to pay on behalf of Elisity any withholding tax imposed or levied by a tax authority, Elisity shall provide Reseller all documents sufficient to assist Reseller in applying for a reduction of or an exemption from government withholding taxes in accordance with applicable laws.

4. RESELLER'S OBLIGATIONS

4.1 Limitations on Resale. Reseller shall resell the Products only to Customers, and not to other resellers or distributors unless approved by Elisity in writing. Reseller shall ensure that any and all Products that are resold to Customers are subject to the terms of the Customer License Agreement (“CLA”) located at Elisity.com/customer-license-agreement/ without any modification. Reseller shall provide a Customer acknowledged CLA to Elisity with the Reseller Order. Reseller shall coordinate Customer requests for Product evaluation orders with Elisity and shall ensure in writing that any such evaluation orders are subject to the CLA. Reseller shall not without the express prior written consent of Elisity, market and/or resell, either directly or indirectly, the Products to any government entity.

4.2 No Further Representations. Reseller shall make only representations and give instructions for the use of the Products which are: (a) contained on the Product label or container, (b) set out in the Documentation, or (c) authorized in writing by Elisity. Neither Reseller nor any of its employees or agents shall have any right to make any warranties or promises for the use of the Products or on behalf of Elisity that are not contained in the CLA or in the Agreement.

4.3 No Alterations. Reseller shall not alter the Products or Product packaging acquired under this Agreement, and shall have no authority to make copies of the Products except as otherwise specifically authorized by this Agreement.

4.4 Feedback. Reseller shall promptly inform Elisity as to any problems encountered with the Products and shall seek Elisity approval for any potential resolutions. Reseller further agrees that Elisity shall have and is hereby assigned any and all right title and interest in and to any such suggested modifications, design changes or improvements of the Products, without the payment of any additional consideration either to Reseller, its employees or agents, or to any Customer. Reseller agrees to take all action reasonably requested by Elisity to perfect Elisity's rights in such modifications and or improvements of the Products, at Elisity's expense.

4.5 Records. During the Term of this Agreement and for five (5) years from its termination or expiration, Reseller agrees to keep all usual and proper records and books of account and all usual and proper entries relating to each Product resold under this Agreement. In order to verify reports issued by Reseller and Reseller’s compliance with the terms of this Agreement, Elisity may cause (i) an audit to be made of Reseller’s books and records and/or (ii) an inspection to be made of Reseller’s facilities and procedures. Any audit or inspection shall be conducted during regular business hours at Reseller’s facilities, upon reasonable notice to Reseller. Any audit shall be conducted by an independent certified public accountant selected by Elisity. Reseller agrees to provide Elisity’s designated audit or inspection team access to the Reseller records relating to the sale and distribution of the Products under this Agreement and facilities to make copies of such records. Prompt financial adjustment shall be made to compensate for any errors or omissions disclosed by such audit and/or inspection. Any such audit or inspection shall be paid for by Elisity unless material discrepancies are disclosed through such audit or inspection. "material discrepencies" shall mean the lesser of Five Thousand Dollars (U.S. $5,000.00) or five percent (5%) of the amount that was reported. If material discrepancies are disclosed, Reseller agrees to pay Elisity for the costs associated with the audit and/or inspection. In no event shall audits or inspections be made more frequently than semi-annually unless the immediately preceding audit or inspections disclosed a material discrepancy.

4.6 Export Compliance. Reseller will comply fully with applicable United States government and any other country’s export and re-export laws, regulations, and requirements.  Reseller may not export or re-export any Product that may be subject to such laws, regulations, and requirements, to any location, to any Customer, or for any Customer use, without first obtaining any export license, permit or other approval that may be required.  Without limiting the foregoing, (i) Reseller shall ensure that it shall not export or re-export any Product subject to export control laws to any person who is listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a “terrorist supporting” country, (ii) Reseller shall not resell, access, or use the Products in violation of any U.S. export embargo, prohibition or restriction or for any end-use related to the development, production or use of nuclear, chemical or biological weapons or missiles.  Elisity’s obligations hereunder shall at all times be subject to the export control laws and regulations of the United States government and any amendments thereof.

4.7 Insurance. Reseller shall at all times during the term of this Agreement maintain: (a) product liability insurance (which may include self-insurance) covering the Products with minimum annual limits of not less than two million dollars (USD $2,000,000) per occurrence and four million dollars (USD $4,000,000) in the aggregate, (b) commercial general liability insurance with minimum annual limits of not less than two million dollars (USD $2,000,000) bodily injury and property damage combined per occurrence and four million dollars (USD $4,000,000) in the aggregate (such commercial liability insurance shall include a broad form comprehensive liability endorsement which shall specifically include contractual liability coverage insuring Reseller’s obligations under this Agreement) and (c) umbrella or excess liability insurance with a combined minimum annual limit of no less than five million dollars (USD $5,000,000) to apply over the commercial general liability insurance. Such insurance shall name Elisity and its directors, officers, employees and agents as an additional insured thereunder and any and all policies implementing such insurance shall provide that the coverage supplied under such policy shall not be diminished or cancelled except after thirty (30) days prior written notice to Elisity. Reseller shall maintain such product liability insurance for a minimum of five (5) years subsequent to the sale by Reseller of the last Product purchased under this Agreement. Within thirty (30) days of the Effective Date, Reseller shall deliver to Elisity a certificate of insurance confirming Reseller has obtained insurance as described in this Section.

5. WARRANTIES AND INDEMNIFICATION

5.1 Product warranty is specified in the CLA. No Product warranty is offered to Reseller.

5.2 NO OTHER WARRANTIES. EXCEPT AS PROVIDED IN THIS SECTION 5, ELISITY DOES NOT MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE PRODUCT, THE OPERATION OR USE THEREOF, THE DATA GENERATED BY THE OPERATION OR USE THEREOF, OR ANY SUPPORT SERVICES RENDERED WITH RESPECT THERETO. ELISITY HEREBY EXCLUDES ALL OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITHOUT LIMITATION, WARRANTIES FOR NON-INFRINGEMENT, IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABLE QUALITY AND FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE.

5.3 Limited Warranty by Reseller. Reseller represents and warrants that: (i) Reseller is and will be in compliance with all applicable domestic and international laws and regulations relating to the Products and its performance under this Agreement (including without limitation the Foreign Corrupt Practices Act and U.K. Bribery Act 2010), it will obtain and keep in effect all licenses, permits, approvals and authorizations required for the performance of its obligations under this Agreement, and the Products are not the subject of, nor will they be materially or adversely affected by, any existing law, regulations, action, proceeding, claim, demand, order or judgement to which Reseller is a party or of which it is aware; and (ii) Reseller shall use professional skill and commercially reasonable care in performing its obligations under this Agreement.

5.4 Indemnity by Reseller. Reseller agrees to and shall defend, indemnify and hold Elisity and its directors, officers, employees, and agents harmless from and against any and all claims arising out of or related in any way to: (a) Reseller’s marketing, licensing and resale of the Products, or (b) any breach by Reseller of its obligations under this Agreement.

6. LIMITATION OF LIABILITY

6.1 Limitation of Liability. Elisity’s total liability to Reseller under this Agreement shall be limited to the amount paid by Reseller to Elisity for the twelve (12) months prior to the date the claim is filed in a court or tribunal of competent jurisdiction, less any returns and discounts. Reseller releases Elisity from all obligations, liability, claims or demands in excess of the limitation of liability.

6.2 No Consequential Damages. ELISITY SHALL BE NOT LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES INCURRED BY RESELLER, INCLUDING WITHOUT LIMITATION ANY LOSS OF PROFIT, REVENUE OR INCOME, LOSS OR USE OF DATA, OR INTERRUPTION OF BUSINESS, HOWEVER ARISING AND WHETHER IN AN ACTION IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY AND NEGLIGENCE) OR BASED ON BREACH OF ANY WARRANTY, EVEN IF ELISITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7. INTELLECTUAL PROPERTY

7.1 Product Ownership. As between the parties, Elisity and its licensors retain all title and rights to all Intellectual Property throughout the world with respect to the Products. Reseller may not use Elisity's or licensor's names or any such mark or designation, even in advertising or marketing the Products, without the express written consent of Elisity or as authorized under this Agreement.

7.2 Demonstration License. If demonstration Product is purchased by Reseller, the license terms as between Elisity and Reseller shall be as specified in the CLA for an evaluation license. Reseller shall not a) use demonstration Product for its internal production use; b) resell demonstration Product to any third party; or c) use demonstration Product to provide managed services as a Managed Services Provider (as defined in the CLA).

7.3 Trademark License. Elisity hereby grants Reseller a royalty-free, nontransferable, nonexclusive, revocable license under Elisity’s trademarks during the term of this Agreement solely for the purpose of fulfilling Reseller’s obligations hereunder. Except as set forth in this Section, nothing in this Agreement shall grant or shall be deemed to grant to Reseller any right, title or interest in or to Elisity’s trademarks. All uses of Elisity’s trademarks shall inure to the benefit of Elisity. At no time during the term of this Agreement shall Reseller challenge or assist others to challenge the trademarks of Elisity (except to the extent such restriction is prohibited by applicable law) or the registration of the trademarks or attempt to register any trademarks, marks or trade names confusingly similar to those of Elisity. Reseller will not remove, obscure, or alter Elisity’s copyright notice, trademarks, or other proprietary rights notices affixed to or contained within any Products.

7.4 Inventions. Subject to any limitations associated with the pertinent Intellectual Property of any third parties, any inventions or discoveries including processes, machines, articles of manufacture, or compositions of matter, or any improvements, whether patentable or not, made by Elisity as a result of its performance under this Agreement, including all Intellectual Property, shall be solely owned by Elisity, which shall have the exclusive right to exploit any relevant Intellectual Property right and grant licenses without obligation or accounting to Reseller.

7.5 Reservations; Restrictions. Elisity reserves all right, title and interest in and to the Product not expressly granted to Reseller under this Agreement. Notwithstanding the use of the terms “purchase” and “sale” or “resale” in this Agreement, both parties expressly agree that title to the software in the Products (“Software”) does not pass to Reseller or its Customers. Reseller acknowledges and agrees that Elisity is and shall remain the sole owner of the Software, and any and all improvements, updates, enhancements, corrections, or other changes thereto (individually and collectively referred to as the “Updates”) and that Reseller has no rights with respect to the Software and Updates other than those rights expressly granted in this Agreement. Unless otherwise prohibited by law, Reseller shall not, at any time, challenge the validity of Elisity’s rights in and to any and all of the Software and Updates and/or Elisity’s title to any and all of the Software and Updates. Notwithstanding any other provisions of this Agreement, Reseller shall not have the right, nor shall it have the right to authorize or assist others to: (a) reverse engineer, decompile, disassemble, translate, adapt or otherwise reduce any and all portions of the Software in object code form to human-perceivable form without the prior written consent of Elisity; (b) develop or attempt to develop any software that has the “look and feel” of all or any portion of the Software or has similar functionality to the Software; (c) resell the Software license by rental or lease; (d) sell or otherwise transfer title to any of the Software or accompanying documentation thereto; (e) copy or reproduce the Software, accompanying documentation thereto, or both, other than for backup or demonstration purposes, as expressly permitted in this Agreement, without the prior written consent of Elisity; and (f) directly or indirectly solicit sales of licenses for the Software outside the Territory without the prior written consent of Elisity.

7.6 Further Assurances. Each party agrees to take such further action and execute, or cause its employees, agents, and contractors to execute, such further instruments as may be necessary to give effect to the Intellectual Property provisions of this Agreement.

7.7 Exclusive Statement. This Section 8 provides the exclusive statement of the parties’ respective rights and obligations under this Agreement with respect to Intellectual Property. Except as expressly stated in this Section 7, nothing in this Agreement or any course of dealing between the parties will be deemed to create a license from either party to the other of any Intellectual Property, whether by estoppel, implication, or otherwise.

8. CONFIDENTIALITY, NON-DISCLOSURE AGREEMENT

8.1 Recipient agrees to use the Confidential Information of the Disclosing Party solely to the extent necessary to fulfill Recipient's obligations or exercise its rights hereunder, and not for any other purpose. Recipient agrees to hold the Disclosing Party's Confidential Information in confidence, not to disclose such Confidential Information to third parties not authorized by the Disclosing Party, and to disclose such Confidential Information only to Recipient's employees and contractors on a “need to know” basis and provided that such employees and contractors are subject to a written agreement with Recipient that is consistent with and no less protective of the Disclosing Party's Confidential Information than the terms of this Section. Recipient agrees to take reasonable steps, using at least the same degree of care that it uses to protect its own Confidential Information, but no less than reasonable care, to protect the Disclosing Party's Confidential Information to ensure that such Confidential Information is not disclosed, distributed or used in violation of the provisions of this Agreement.

8.2 Disclosure by Request or Order from Authority. The foregoing prohibitions on disclosure of Confidential Information shall not apply to the extent certain Confidential Information is required to be disclosed by Recipient as a matter of law or by order of a court of competent jurisdiction, provided that Recipient uses reasonable efforts to provide the Disclosing Party with prior notice of such obligation in order to afford the Disclosing Party an opportunity to legally prevent or limit the scope of such disclosure.

8.3 Ownership and Return of Confidential Information. The parties recognize and agree that nothing contained in this Agreement will be construed as granting any property rights, by license or otherwise, to any Confidential Information of the Disclosing Party. All Confidential Information and materials furnished to the Receiving Party by the Disclosing Party will remain the property of the Disclosing Party.

8.4 Non-disclosure. Reseller shall not disclose the terms and conditions of this Agreement, unless approved in writing by Elisity or required by law or regulation.

8.5 Injunctive Relief. Recipient acknowledges that unauthorized disclosure or use of the Disclosing Party's Confidential Information may cause irreparable harm for which recovery of money damages would be inadequate, and the Disclosing Party shall be entitled to obtain timely injunctive relief to protect its rights under this Agreement, in addition to any and all remedies available at law.

9. TERM; TERMINATION

9.1 Term. This Agreement shall commence on the Effective Date and continue for one (1) year from such Effective Date ("Term"). This Agreement shall renew automatically for successive one-year terms unless terminated earlier in accordance with Section 9.2.

9.2 Early Termination. Elisity may terminate this Agreement for its convenience with thirty (30) days written notice to Reseller. A party may otherwise terminate this Agreement by: (i) after the expiration of the initial term, upon sixty (60) days prior written notice by one party to the other party; (ii) upon the material default by one party in the performance of any provision of this Agreement, and the defaulting party’s failure to cure such default within thirty (30) days from its receipt of a notice of default from the non-defaulting party (or 15 days in case of non-payment); or (iii) upon the filing of a petition in bankruptcy court by Reseller or upon the adjudication of bankruptcy by Reseller or upon the filing of a petition in bankruptcy against Reseller and such petition is not discharged within sixty (60) days of such filing.

9.3 Termination Effect.

 (a) Immediately upon termination of this agreement (the "Termination Date"), Reseller shall immediately cease resale of the Products and all of the Reseller’s licensed rights under this Agreement shall terminate. All payments owed to Elisity by Reseller shall become immediately due and payable without further demand.

 (b) If Elisity is terminating this Agreement due to Reseller's breach, Elisity shall have no further obligations to Reseller with respect to any pending orders issued by Reseller. In all other cases, Elisity will honor the orders accepted by Elisity before and on the termination date and shall use commercially reasonable efforts to satisfy these orders.

 (c) Within seven (7) days from Termination Date, Reseller shall provide Elisity with a list of all Products in its inventory as of the Termination Date. Elisity, at its sole discretion, may repurchase unopened unsold Products at the net amount paid by Reseller to Elisity for such Products excluding any freight, taxes or duties paid by Reseller. If Elisity chooses not re purchase such Products, Reseller may sell these Products for up to ninety (90) days of Termination Date so long as the selling price is not less than the price paid for such Products to Elisity by Reseller.

 (d) Within seven (7) days after the termination of this Agreement, Reseller shall return all Elisity Confidential Information.

9.4 Survival. The obligations under the sections pertaining to definitions, payment terms, records, limited product warranty, limitations of liability, intellectual property (excluding the trademark license), termination effect, governing law and arbitration shall survive any termination or expiration of this Agreement.

10. GENERAL PROVISIONS

10.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regards to its conflicts of law principles. The application of the UN Convention on Contracts for the International Sale of Goods is specifically excluded from this Agreement.

10.2 Dispute Resolution. If a dispute between the parties arises under this Agreement, the parties agree to negotiate in good faith. If the parties are unable to settle the dispute within thirty (30) days from the date one party notifies the other of the dispute, then the matter shall be resolved by final and binding arbitration in San Francisco, California administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules. All arbitration proceedings shall be conducted in the English language. Judgment on an arbitral award may be entered by any court of competent jurisdiction, or application may be made to such a court for judicial acceptance of the award and any appropriate order including enforcement. Each party is required to continue to perform its undisputed obligations under this Agreement pending final resolution of any Dispute. Notwithstanding any of the foregoing, either party may request equitable relief (which may be in the form of an injunction or temporary restraining order) either from the arbitrators or from a court in order to protect the rights or property of the party, pending the resolution of the dispute by arbitration as provided hereunder.

10.3 Attorney's Fees. If legal action is necessary to enforce or interpret this Agreement or any of its provisions, the prevailing party shall receive its reasonable attorney’s fees and costs from the non-prevailing party.

10.4 Notices. Any notices issued under this Agreement shall be in writing, shall be effective when given, and shall in any event be deemed to be given upon receipt or: (a) upon delivery, if delivered by hand, (b) upon delivery, if transferred by facsimile (confirmed by first class mail), or (c) three (3) days following the day of deposit with an overnight courier, freight prepaid, to the party's address, or such other address as a party may designate by ten (10) days' advance notice to the other party.

10.5 General Provisions. Reseller may not assign or transfer, directly or indirectly, by operation of law or otherwise, this Agreement or its rights and obligations without the prior written consent of Elisity. Elisity may assign or transfer this Agreement without Reseller's consent. If either party is unable to perform its obligations hereunder by reason of fire, natural disaster, explosion, strike, industrial disruption, war, riot, governmental restraint or regulations, or any other similar condition beyond the reasonable control of such party, then such party shall give to the other party prompt written notice. Thereupon, except for the obligation to pay any fees or invoices as due, the obligations of such party giving such notice shall be suspended for so long as such condition exists, provided that such party shall act diligently to remedy the cause of such condition. If such condition lasts more than two (2) months, the party receiving such notice may, at its discretion, terminate this Agreement. The parties understand and agree that each party is an independent contractor in the performance of each and every part of this Agreement and is solely responsible for all of its employees and agents and its labor costs and expenses arising in connection with this Agreement. No delay or omission by either party to exercise any right, power or remedy occurring upon any noncompliance or default by the other party with respect to any of the terms of this Agreement shall impair any such right, power or remedy or be construed to be a waiver. Unless stated otherwise, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity, or otherwise. This Agreement and the exhibits constitute the entire and complete agreement between the parties regarding the subject matter. No change, modification, amendment, waiver or discharge of this Agreement shall be valid unless it is in writing and is executed by both parties.

IN WITNESS WHEREOF, the undersigned have executed this Reseller Agreement on and as of the date first shown above.

**Elisity, Inc.** **Reseller**

Signature: Signature:

Name: Name:

Title: Title:

Date: Date: