



Checklist of Provisions for Software Reseller Agreement

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Parties and purposes

- Identification of the Publisher (the software owner) and indication of its legal or corporate status
- Identification of the Reseller and indication of its legal or corporate status
- Purpose of the agreement

Appointment and definition of the relationship

- Appointment of Reseller
- Indication of exclusivity (if any), and definition of the scope of exclusivity
- If exclusive, provide any production requirements needed to maintain exclusivity
- Definition of products and services covered by the agreement (can be detailed in an attached schedule)
- Relationship of Reseller (as independent contractor, not employee or partner)
- Requirement that Reseller clarify to third-parties its relationship to Publisher as independent distributor

Reseller's Cost and Payment

- Cost of Reseller for products
- Publisher's ability to adjust pricing
- Form and timing of payment
- Reseller's rights to return/refunds, if any
- Reseller responsible for its own taxes

Resale Pricing, Terms, and conditions of sale

- General basis for informing potential licensees of pricing, commercial, and payment terms
- Requirement that licensees accept Publisher Terms of Service/EULA
- Reserving ultimate control over prices and terms to Publisher
- Prohibition on Reseller accepting orders on behalf of Publisher

Duties of Reseller

- Use reasonable efforts to promote demand for products and promote sales
- Details on level of advertising and promotion Reseller will undertake
- Cover Reseller's own costs and maintain adequate capitalization and working capital
- Cover designated costs of advertising and promotion of products
- Maintain adequate physical facilities and staff to carry out functions
- Engage and train any specialists required for sales or support duties record keeping and reporting requirements regarding operations, customers, competitive conditions, etc.
- Conduct of service or other support duties
- Limitation on Reseller in promoting or selling competing products
- Assist Publisher in securing permits and visas, and in arranging for transportation and other administrative matters

Duties of Publisher

- Warranties and limitations regarding product performance
- Services to be provided by Publisher to Reseller or licensees

Cancellation and termination

- Intellectual property (IP) rights reserved to Publisher
- Limited license of certain IP rights to Reseller
- Approval of Reseller's marketing/promotional materials required by Publisher
- Intellectual property protection control to remain with Publisher
- Reseller will not attempt to challenge or register Publisher's IP rights
- Reseller to cooperate in policing and enforcement Publisher's IP rights
- All goodwill related to IP to inure to Publisher, not Reseller.
- All improvements to IP owned by Publisher, even if made or suggested by Reseller

Cancellation and termination

- Duration of the agreement
- Grounds for termination
- Definition of "just cause"—references to material breach, insolvency
- Specification of notice period and form(s) of effective notice
- Rights after termination (no-compete clause, no disparagement or interference, etc.)

Other provisions

- Warranty service/claims - responsibilities of Publisher v. Reseller for defects, etc.
- Limitation of damages
- Indemnity obligations of each party
- Confidentiality
- Compliance with pertinent laws of Publisher, including anti-corruption (FCPA), US sanctions and trade laws, etc.
- Reseller must comply with laws of Reseller's jurisdiction
- Specification of governing law of the agreement
- Opt-out of CISG, if Reseller is international
- Dispute resolution—choice of forum, procedure, language, etc.