

# Apptix - Reseller Agreement

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## Effective Date: January 1, 2010

This Reseller Agreement ("Agreement") is by and between You (the "Reseller") and Apptix Inc. ("Apptix"). This Agreement explains the basis upon which Reseller will offer for resale Apptix products and services (the "Services") to itself and customers of Reseller (each, an "End User") who purchase one or more subscriptions to the Services (each, a "Subscription"). The Effective Date of this Agreement is the date that Reseller completes the Apptix reseller registration process. By entering into this Agreement, in addition to transactions entered into by Reseller on its own behalf, Reseller also agrees to be bound by the terms of this Agreement for transactions entered into by anyone who uses the account the Reseller hereby establishes with Apptix (the "Reseller Account"), whether or not the transactions were on Reseller's behalf. Reseller also agrees to be bound by all licenses, including end user license agreements, of products and/or services used in the Services (the "Licenses", and the owners of such Licenses, the "Licensors"), the Apptix Acceptable Use Policy, the Apptix Terms and Conditions of Use, the Apptix End User Agreement, the Apptix Privacy Policy, each as maintained on the Apptix Website ([www.apptix.com](http://www.apptix.com)), and any applicable agreements, policies, or procedures posted on the Apptix Website, (collectively the "Apptix Policies"), as well as any changes that may be made to the Licenses or Apptix Policies.

The Apptix Policies and the Licenses are incorporated herein and made part of this Agreement by reference, and together with this Agreement, constitute the complete and exclusive agreement between Reseller and Apptix concerning the Services, and supersede and govern all prior proposals, agreements, and other communications. The Apptix Policies and Licenses may be updated from time to time by Apptix, and Reseller is responsible for monitoring additions or modifications to such items. These terms and conditions may contain additional restrictions, indemnities or other contractual rights or obligations. Reseller is responsible for having its End Users who purchase Subscriptions agree to the applicable Apptix Policies. Reseller is prohibited from modifying the End User Agreement, the Licenses or any of the other Apptix Policies;

**IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT PROCEED WITH REGISTRATION AS A RESELLER.**

## 1. APPTIX SERVICE

Apptix will maintain a web space on its server dedicated to Reseller which may contain a virtual storefront and shopping cart system equipped with certain e-commerce functionality that can be customized with Reseller's logo and certain other branding elements (the "Storefront"). In addition to the Storefront, Apptix will maintain a Reseller Control Panel for purposes of administration of the Reseller Account, to include, among other things, Reseller contact information profile ("Reseller Profile"), sales reporting features and Subscription price settings ("Reseller Control

Panel", together with the Storefront, customer support for the Subscriptions, and certain other services provided by Aptix under this Agreement, constitute the "Reseller Services"). Aptix reserves the right, in its sole discretion and without Notice, to suspend Reseller's access to any of the Reseller Services. Aptix may, from time to time, post communications and make changes to the appearance, functionality, and content of the Control Panel and Storefront.

## 2. RESELLER SERVICE

Subject to the terms and conditions of this Agreement, Aptix grants the Reseller a non-exclusive, non-transferable, worldwide license (subject, however, to Licensors' restrictions, and restrictions of applicable law) to resell designated Services offered from time to time by Aptix. Aptix reserves the right to make changes in and to the Services as well as eliminate Services. During the purchase of a Service, End Users will be directed through the Aptix order processing system and such sale will be credited to Reseller as described below.

## 3. PRICE

Reseller acknowledges that the terms and conditions, including the default retail prices, wholesale costs, price ceilings and transaction fees are subject to change by Aptix from time to time. Changes may be posted by Aptix to the Control Panel or the Aptix Website. Reseller will earn a commission ("Commission") for Services sold by Reseller to its End Users through Resellers Storefront, equal to the amount of revenue actually received by Aptix from such End Users, less the wholesale cost to the Reseller (the "Reseller Cost") of such Service. Aptix reserves the right, in its sole discretion, to modify the Reseller Cost of any of the Service, provided Reseller is given at least ten (10) days Notice of any such changes. ("Notice" is deemed given when delivered in the manner set forth in Section 15 below).

### **Pricing: Limitations**

Reseller may set the retail prices for Subscriptions offered by Reseller ("Retail Prices"); provided, however, the Retail Prices may not exceed 400% of the Reseller Cost for such Service, nor may the Retail Prices be set lower than the Reseller Cost. Violation of this pricing policy will be deemed a material breach of this Agreement and may result in its termination and/or a charge to the payment method used by Reseller to pay the annual licensing fee or a substitute method provided by Reseller (the "Payment Method") for any Subscriptions sold below Reseller Cost. Retail Resellers will set its Retail Prices in the Control Panel, and by so doing, authorizes Aptix to charge End Users the Retail Prices set by Reseller. Wholesale Resellers will be responsible for billing customers directly without any

involvement or compensation by Aptix. Any errors in the Retail Prices set by Reseller are the sole responsibility of the Reseller, and Aptix may process End User sales at such prices.

### **Annual Licensing Fee**

Reseller will pay a non-refundable, annual licensing fee, due on the Effective Date and on each anniversary thereof ("Annual Payment Date") until this Agreement is terminated in the manner set forth herein. Provided, however, that if Reseller delivers Notice of termination to Aptix less than 30 days prior to the Annual Payment Date, Reseller must pay the annual licensing fee for the next period.

### **Costs and Fees**

In addition to the Reseller Cost, Aptix may charge Reseller certain transaction and processing fees it incurs.

### **Administrative Charges**

If any act or omission of Reseller requires Aptix to perform tasks outside the scope of the Reseller Services, including but not limited to, End User customer service issues that, in Aptix's determination, cannot be reasonably resolved by standard support mechanisms, or disputes reasonably likely to require legal services Reseller agrees to pay Aptix an administrative fee for such additional services at the then current rate for support (collectively "Administrative Charges"). Such Administrative Charges will be charged to Reseller's Payment Method, deducted from payments due to Reseller, or any other method as determined by Aptix to recover charges incurred by Reseller.

## **4. PAYMENT**

Commissions will be paid to Retail Reseller approximately 45 days following the end of the month in which an End User payment is received by Aptix. Commissions will be paid by check, mailed monthly to the Reseller at the address listed in the Reseller Profile. If the amount of any month's Commission payment is less than \$100, Aptix may hold the payment until the Commissions due reaches \$100.

Wholesale resellers are not due and will not be paid any commissions.

Reseller hereby authorizes Aptix to charge to Reseller's Payment Method or to deduct from payments due to Reseller, erroneous Commission payments, adjustments for incorrect Commission payments, payments made for fraudulent transactions, and Commissions paid for any Subscriptions that are refunded ("Chargeback".)

In the event that the Chargeback experience is sufficiently high, as determined by Apptix in its sole discretion, Apptix reserves the right to hold back 25% of Reseller's monthly Commissions for a period of 90 days from the date the Commission was to be paid.

## 5. REFUND POLICY

Resellers are not entitled to any refunds for fees paid to Apptix.

## 6. TERM AND TERMINATION

Reseller may terminate this Agreement upon Notice if Apptix makes changes to the Agreement, or at any other time with 30 days Notice delivered to Apptix. If Reseller does not terminate upon Notice of any changes Apptix makes to this Agreement, Reseller agrees to be bound by such changes. Reseller may terminate this Agreement for a material breach by Apptix if such breach has not been cured within ten (10) days of receipt of such Notice. Apptix may terminate this Agreement at its convenience with Notice to Reseller. Upon termination for any reason, Apptix may transition all End Users to be direct customers of Apptix. Apptix may continue to host the Storefront (including use of any Reseller branding) following termination. Reseller will receive Commissions for any End User purchases processed or pending prior to termination, in accordance with the Reseller payment schedule described above, but Reseller will not receive payments for Subscription fees from to any End User thereafter, and will not receive a pro-rated refund of any annual fees paid.

## 7. RESTRICTION OF SERVICE

Apptix expressly reserves the right, in its sole discretion, to reject, refuse, deny or cancel any Subscription for any reason, whatsoever.

## 8. INTELLECTUAL PROPERTY

Reseller agrees that Apptix and/or the Licensors own all proprietary rights, including but not limited to copyrights, patents and trade secrets, trademarks, and service marks, in and to the Services and the applications used in the Services, and that this Agreement does not transfer ownership of any of these rights. Apptix expressly reserves its rights in and to all such content and materials. No license or right under any copyright, patent, trademark, service mark or other proprietary right or license, except the limited license provided in this Agreement, is granted to Reseller by this Agreement or otherwise. Reseller will not use any of Apptix's or its Licensors' trademarks or other intellectual property unless specifically authorized to do so, nor will Reseller register any trademark, service mark, or domain name that is substantially similar to one owned by Apptix or a Licensor. Should Reseller violate this prohibition, Reseller will assign to Apptix such registration upon request. Reseller will not use any of Apptix or the Licensors' intellectual property in its advertising except as specifically authorized by this Agreement. Reseller agrees not to use Apptix or the Licensors' trademarks, including their website URLs (excluding the Reseller Storefront URL), as keyword terms in any online advertising efforts or agreements.

## 9. EXPORT RESTRICTIONS

Reseller agrees to comply with all applicable export regulations, including any applicable prohibition on exports to certain countries. Reseller agrees to comply with, and Reseller will be deemed to fully understand and be current on, the export and trade restrictions with certain foreign countries as regulated by the Office of Foreign Assets Control ("OFAC Restricted Countries"), and other applicable export laws.

**Compliance with Terms.** Power Reseller is responsible for ensuring that each Sub Reseller (i) registers as a reseller with Apptix, and enters into and complies with the Reseller Agreement, (ii) complies with all Apptix Policies, and (iii) requires all End Users who purchase Services through Sub Reseller to enter into the End User Agreement, and comply with all Apptix Policies. The Apptix End User Agreement may not be modified by Sub Resellers.

**Commissions and Payments.** Power Reseller will earn Commissions as set forth in Section 3 for Services sold to End Users by Power Reseller or by any of its Sub Resellers. Power Reseller acknowledges that until a Sub Reseller registers with Apptix and agrees to the Reseller Agreement, no Commission will be paid to or credited to Power Reseller for sales generated by such Sub Reseller.

**Sub Reseller Pricing and End User Obligations.** Services sold to End Users by Sub Resellers are subject to the pricing restrictions set forth in Section 3 of this Agreement. Except as set forth in this Agreement and in the Apptix End User Agreement, Apptix is not responsible for any training or technical support to the Sub Resellers, and neither Power Reseller nor Sub Reseller may bind Apptix to support or other obligations with respect to End Users.

**Liability.** In addition to the obligations set forth in this Agreement and in the Aptix Policies, Power Reseller will be responsible for the acts and omissions of its Sub Resellers and their End Users related to the Services. Power Reseller is liable for the payment obligations of its Sub Resellers, including without limitation, annual, transaction and other fees, chargebacks, pricing errors, administrative fees or other costs or expenses incurred by Sub Resellers (collectively "Sub Reseller Charges"), and, in the event of a breach of the Aptix Policies by Sub Reseller, Aptix may, at its discretion, seek recovery for such breach from the breaching Sub Reseller or Power Reseller. Power Reseller authorizes Aptix to charge to Power Reseller's Payment Method or to deduct from payments due to Power Reseller, all such Sub Reseller Charges.

**Indemnification.** In addition to its other indemnification obligations set forth elsewhere in this Agreement, Power Reseller will indemnify and hold harmless Aptix, its officers, directors, affiliates, employees, principals, shareholders and agents from and against any and all claims, causes of action, demands, losses, damages, costs and expenses of any type (including attorneys fees) arising out of or in connection with any breach of these terms by Power Reseller, any breach of the Reseller Agreement by a Sub Reseller and for any wrongful or negligent act or omission by a Sub Reseller or any End User of a Sub Reseller. Termination. In the event a Sub Reseller's account to resell Services is terminated, Aptix may transition all End Users of such Sub Reseller to be direct customers of Aptix. Upon termination of this Agreement with Power Reseller for any reason, Aptix may transition all Sub Resellers of such Power Reseller to be direct Resellers of Aptix.

## 10. UNAUTHORIZED USE

Reseller will immediately notify Aptix upon the discovery of any unauthorized use of the Services or any components thereof. If Reseller is responsible or otherwise at fault for such unauthorized use, Reseller will be deemed to have materially breached this Agreement, and may be held liable for any and all resulting damages (including, without limitation, attorney's fees), and for payment for any resulting fraudulent purchases.

## 11. TERMS OF CONFIDENTIALITY

Reseller agrees that Reseller will exercise a heightened level of care and discretion to prevent and restrain the use, disclosure, or reproduction of Aptix's Confidential Information. "Confidential Information" means nonpublic information that Aptix designates as being confidential or which, under the circumstances surrounding disclosure, ought to be treated as confidential by Reseller. Confidential Information includes, but is not limited to, Reseller Cost and terms and conditions under this Agreement, information in tangible or intangible form relating to or including

released or unreleased products, the marketing or promotion of any of the Services, Apptix's business policies or practices, and information received from others that Apptix is obligated to treat as confidential. Confidential Information does not include any information, however designated, that Reseller can demonstrate; (i) is or subsequently becomes publicly available without Reseller's breach of any obligation under this Agreement; (ii) became known to Reseller prior to disclosure under this Agreement; (iii) became known to Reseller from a source other than Apptix and other than by the breach of an obligation of confidentiality owed by Reseller; or (iv) is independently developed by Reseller. This obligation will last three (3) years after the termination of Reseller Account with Apptix.

## 12. INDEMNIFICATION

Reseller agrees to indemnify and hold harmless Apptix, its officers, directors, affiliates, employees, principals, shareholders and agents from and against any and all claims, causes of action, demands, losses, damages, costs and expenses of any type (including attorneys fees) arising out of or in connection with any breach of this Agreement, or any wrongful or negligent act or omission by Reseller or any End User.

## 13. BRANDING

Apptix authorizes Reseller to customize the Reseller's Storefront with Reseller's name and logo in accordance with the Apptix guidelines. However, Reseller may not (i) remove any Apptix or Licensor branding required to be displayed, (ii) re-brand manuals, product "slicks" or other branded Subscription materials except as authorized by Apptix in writing, (iii) use Apptix trademarks, copyrights and product names in any manner except as authorized by Apptix in writing, including, but not limited to, making changes to the appearance of any Apptix or Subscription logos, image or product description (iv) issue any press releases regarding the subject matter of this Agreement without the prior written approval of Apptix, or (v) make changes to the footers on the Services, Storefront or Control Panels. Apptix may provide Reseller with co-branded materials, such as certain Subscription materials, or automatic notifications, which may only be modified in accordance with the Apptix guidelines. Apptix may use Reseller's name, marks and logos in identifying Reseller's participation under this Agreement, and may identify Reseller as a participant in the Apptix Reseller program for marketing, informational or other purposes, both during and after termination of this Agreement. Reseller agrees to participate in case studies, surveys and other marketing and data collection efforts conducted by or on behalf of Apptix during the term of this Agreement.

## 14. NOTICES

Reseller agrees that all notices from Aptix to Reseller may be sent, at the election of Aptix, via email to the email address provided by Reseller in the Reseller Profile (the "Reseller Email") or posted to the administrator space on the Reseller Control Panel or posted on the Aptix Website. Reseller is responsible for ensuring that the Reseller Email contained in the Reseller Profile is accurate and complete. Notices concerning breach of this Agreement will be sent either to the Reseller Email or mailed first class postage to the postal address listed in the Reseller Profile. In all above cases, delivery will be deemed to have been made five (5) days after the date sent, if mailed, and on the same day if sent by Aptix via Reseller Email or posted on the Aptix Website by Aptix. Notices from Reseller to Aptix must be made either by email, sent to the administrative contact address provided on the Aptix Website, or by first class mail to:

Aptix Inc.

13461 Sunrise Valley Drive

Suite 300

Herndon, Virginia 20171

Attn: Legal Department

## 15. NO SOLICITATION

Reseller agrees that it will NOT approach any Aptix employees with proposals to hire them as its own employees or contractors. If Reseller does hire any Aptix employees, Reseller agrees to pay Aptix for each employee hired the greater amount of three years salary for that employee at the annual rate offered by Reseller, or \$200,000.

## 16. REPRESENTATION AND WARRANTIES; DISCLAIMERS

Reseller warrants that (i) all information provided by Reseller as part of the registration process is complete and accurate, and (ii) that Reseller is not a citizen of, nor does Reseller actively engage in business with any of the OFAC Restricted Countries.

APPTIX MAKES NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THIS AGREEMENT, THE SERVICES, THE RESELLER SERVICES, OR ANY OTHER APPTIX PRODUCTS OR SERVICES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF FITNESS, MERCHANTABILITY, NONINFRINGEMENT, OR ANY IMPLIED WARRANTIES ARISING OUT OF A COURSE OF PERFORMANCE, DEALING OR TRADE USAGE. APPTIX DOES NOT MAKE ANY REPRESENTATION THAT THE PURCHASE, DELIVERY, SALE OR SUPPORT OF THE SERVICES OR RESELLER SERVICES WILL OPERATE IN AN UNINTERRUPTED OR ERROR-FREE MANNER, AND APPTIX WILL NOT BE LIABLE FOR THE CONSEQUENCES OF ANY INTERRUPTIONS OR ERRORS IN CONNECTION WITH THE SERVICES OR THE RESELLER SERVICES.

## 17. LIMITATIONS

IN NO EVENT SHALL APPTIX BE LIABLE TO RESELLER OR ANY END USERS FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR USE, WHETHER IN AN ACTION IN CONTRACT, TORT OR OTHERWISE, ARISING FROM THIS AGREEMENT, THE SERVICES OR THE RESELLER SERVICES. APPTIX'S MAXIMUM LIABILITY FOR CLAIMS ARISING UNDER THIS AGREEMENT BE LIMITED TO THE AMOUNTS PAID TO RESELLER DURING THE THREE MONTH PERIOD PRIOR TO THE DATE THE CLAIM AROSE.

## 18. ASSIGNMENT

Reseller may not assign, sublet or transfer any of its rights or obligations under this Agreement without the prior written consent of Aptix. The merger of Reseller into another entity, the sale or transfer of a majority of the voting interests in Reseller to another entity or person, and the sale of substantially all of the assets of Reseller to another person or entity will each be deemed an assignment for purposes of this Section. Aptix may assign its rights and obligations under this Agreement without Notice. The Rights granted to Reseller are personal with Reseller and may

not be sublicensed. Unless approved as an authorized Power Reseller in writing by Aptix, Reseller may not use Sub Resellers to sell the Subscriptions.

## 19. APPLICABLE LAW AND CHOICE OF FORUM

This Agreement shall be construed in accordance with the laws of the Commonwealth of Virginia, excluding its choice of law provisions. Each of the parties irrevocably agrees that any legal action or proceeding arising out of or relating to this Agreement brought by the other party will be brought and determined in federal court located in the Eastern District of Virginia (or, if such federal court lacks jurisdiction thereover, in the Circuit Court for Fairfax County, Virginia), and all of the parties hereby irrevocably submit to the exclusive jurisdiction of the aforesaid courts, with regard to any such action or proceeding arising out of or relating to this Agreement. RESELLER HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. YOU AGREE THAT REGARDLESS OF ANY STATUTE OR LAW TO THE CONTRARY, ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT OR OF THE SERVICES MUST BE FILED WITHIN ONE (1) YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION AROSE OR SUCH CLAIM WILL BE FOREVER BARRED.

## 20. SURVIVAL

Provisions of this Agreement which by their nature are intended to survive termination of this Agreement will survive any termination of this Agreement, including but not limited to Sections 12, 13, 16, 17, 18, 20, 21 and 23.

## 21. INDEPENDENT CONTRACTORS

The parties to this Agreement are independent contractors. Neither party is an agent, representative, or partner of the other party. Reseller will have no right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind, Aptix. This Agreement will not be interpreted or construed to create an association, joint venture, partnership, franchise, sales representative or employment relationship between the parties or to impose any partnership obligation or liability.

## 22. INTERPRETATION OF THE AGREEMENT

The parties desire that this Agreement be construed according to its terms, in plain English, without constructive presumptions against the drafting party, and without reference to the section headings.

## 23. FORCE MAJEURE

Apptix shall not be liable for any delay or failure of performance, and no delay or failure of Apptix performance shall constitute a default or give rise to any liability for damages if such delay or failure is caused by causes beyond Apptix's control, including, without limitation, acts of God, war, terrorism, and civil disturbance.