

Application

REPRESENTATIVE				
Cymphonix or Agent Representative				

RESELLER PROFILE				
Company Name				
Phone		Fax		
Street Address				
City		State		Zip/Postal
Website	Country			
Number of Sales Staff		Number of Tech Staff		
Annual Revenue		D&B Number		

CONTACT INFORMATION			
Primary Contact		Title	
Phone		Email	
Alt. Contact		Title	
Phone		Email	

CLASSIFICATION & BILLING			
Business Orientation	<input type="checkbox"/> Data/IT	<input type="checkbox"/> Telecom	<input type="checkbox"/> Converged
Business Structure	<input type="checkbox"/> Sole Owner	<input type="checkbox"/> Partnership	<input type="checkbox"/> Corporation
Billing Address (if applicable)			
City		State	Zip/Postal

Agreement

BACKGROUND RECITALS

A. This Product Sales Agreement is entered into between Cymphonix Inc, a Delaware corporation having its principal office in Sandy, Utah (“Cymphonix”) and the individual, partnership or corporation or other entity identified in the Reseller Profile section (“Reseller/s”) attached hereto and made a part of this Agreement.

B. Cymphonix is engaged in the manufacture and sales of certain hardware/software products that monitor, analyze and regulate bandwidth usage (“Products”). Cymphonix sells the Products to Resellers, who in turn sell and otherwise distribute the Products to end user customers and provide installation, repair, maintenance, training, and related services within an authorized territory.

C. By entering into this Product Sales Agreement, the Reseller agrees to sell and distribute the Products on the terms and conditions set forth in this Agreement. Cymphonix reserves the right to amend these Terms and Conditions at anytime.

TERMS AND CONDITIONS**1. Terms of Sale**

- 1.1 Terms of Sale. Terms of Sale, including payment and charges, are NET 30 OAC, from the date on the face of each invoice.
- 1.2 Prior Approval Required. All orders are subject to approval by Cymphonix.

2. Pricing

- 2.1 Price List. All prices for Products are in U.S. dollars as set forth in the most current version of the Cymphonix Authorized Reseller Price List ("Price List") that shall accompany this agreement and is hereby incorporated into this Product Sales Agreement (See Exhibit A).
- 2.2 MSRP. Reseller may set the price of the Products it charges its customers but may not advertise in any medium a price lower than the MSRP stated in the Price List.
- 2.3 Change in Price Provision. Cymphonix reserves the right to amend the price of the Products with thirty (30) days written notice to Reseller. Such revisions shall apply to orders received by Cymphonix on or after the effective date of revision.

3. Return Policy

- 3.1 No Refunds. No refunds on returned items.
- 3.2 Credit Only. Returns will be credited to Reseller's account.
- 3.3 Restocking Fee. If a product is returned between 0-30 days from the Invoice date, no restocking fee will be charged. If a product is returned between 31-45 days from the Invoice date, Reseller will be charged a restocking fee of 15%.
- 3.4 Written Approval/RMA. All requests for a return must be made in writing and Cymphonix will issue an RMA number upon approval of the return. After Cymphonix receives the returned product, the corresponding invoice will be credited to Reseller's account.
- 3.5 All Returns must be "As New." Products MUST be returned in "as-new" condition. This means that the product is in pristine cosmetic condition, functioning perfectly, and includes ALL original packaging materials and collateral
- 3.6 Provision for Product Returned in less than "As New" Condition. If a product is returned within the 45-day return period, but is not in "as-new" condition, Cymphonix reserves the right to charge a 20% restocking fee plus any labor and materials required to return the product to "as-new" condition. Products that have been damaged by the Reseller (or any end user) which require more cost to repair than the wholesale value of the product will also be returned to the customer without a refund, regardless of when it was returned.
- 3.7 After 45 days from the Invoice date. Any and all products returned to Cymphonix after 45-days from Invoice date will not be accepted by Cymphonix under any circumstances and will be returned to the Reseller (at their expense) without a credit to the Reseller's account.

4. Advertising

Reseller may advertise in places of general publication, including but not limited to newspapers, trade journals and publications, and Reseller's website as subject to written approval from the Cymphonix marketing department.

5. Reseller Territory

- 5.1 Exclusivity. Reseller's rights to resell the Products within a specific territory shall **not** be exclusive unless otherwise agreed to in writing.
- 5.2 Limitation Regarding Sales Territory. Reseller is authorized to sell the Products within _____ miles of its place of business as identified at the beginning of this contract.

6. Duties of Reseller

- 6.1 Distribution. Reseller shall sell and distribute products to end users.
- 6.2 Reseller Obligations to End User. Reseller shall provide installation, repair, maintenance, training, and related services to the end user. Expectation on repair and service is first level technical support, trouble shooting, and if needs be, ensuring that the unit is shipped to Cymphonix to be replaced if it is determined to be a defective device that is still covered by the warranty. Reseller shall offer customer training regarding services and Product maintenance services for the Products sold or otherwise distributed by the Reseller to all of the Reseller's customers.
- 6.3 Prohibition on Alterations. Reseller shall not alter, modify or re-label any of the Products without Cymphonix's express written consent.

7. Duties of Cymphonix

- 7.1 Limited Training. Cymphonix shall provide limited training to the Reseller, including sales, marketing, user-based, and installation and technical training. Cymphonix does not guarantee any levels of sales or market share performance as a result of the training.
- 7.2 Promotional Materials. Cymphonix may from time to time, make available to the Reseller catalogs, brochures and such other promotional materials as it may prepare for advertising and promotional purposes.

8. Intellectual Property Rights

Reseller understands and agrees that the Reseller will not have or obtain any rights in or to any Trademarks, labels, symbols, logos, copyrights or other property rights in or with respect to the Products ("Intellectual Property Rights"). The Reseller shall not directly or indirectly obtain or attempt to obtain any right, title or interest in or to any Intellectual Property Rights and agrees not to contest ownership of the Intellectual Property Rights or goodwill associated therewith. The Reseller further agrees to take no action whatsoever which might jeopardize, limit or interfere with ownership or use of the Cymphonix name or the Intellectual Property Rights. The Reseller agrees to inform Cymphonix immediately of any act of unfair competition or infringement of any Intellectual Property Right of which the Reseller may become aware.

9. Warranties; Disclaimer

Cymphonix extends a limited warranty to all purchasers of the Products. Cymphonix reserves the right to modify or discontinue such limited warranty at any time, in its sole discretion, upon advance written notice to Reseller. Cymphonix undertakes and warrants that the Products it ships will meet the specifications and that it will convey good title to the Products free from any security interest, lien, or encumbrance. Cymphonix and Reseller agree that respect to the purchase of Products by the Reseller, there are no other warranties by Cymphonix. THE ABOVE WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED AND CYMPHONIX SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. Neither party shall be liable for any incidental or consequential damages. Cymphonix's sole liability for any Products supplied hereunder is expressly limited, at Cymphonix's discretion, to either: (a) replacement of all Products shown to be other than as warranted; or (b) credit for the purchase price of the Products.

10. Indemnification/Notice

- 10.1 Indemnification Reseller agrees to protect, defend, indemnify and hold Cymphonix harmless from all claims, damages, liabilities, cost, and fees arising from the Reseller's negligence, willful acts, omissions, and/or breach of this Agreement, whether the action be based on warranty, contract, or negligence.

10.2 Notice. The Reseller further agrees to notify Cymphonix promptly, in writing, of any claims relating to the Products or their resale and distribution by the Reseller.

11. Dispute Resolution

11.1 Mediation and Arbitration. Reseller and Cymphonix agree to resolve any dispute, controversy or claim arising out of and/or relating to this Product Sales Agreement by binding mediation and/or arbitration, in Salt Lake City, Utah, according to the rules set forth by the American Arbitration Association.

11.2 Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah without regard to its conflicts of laws rules. The parties stipulate and agree that Utah is the forum state.

11.3 Jurisdiction. Jurisdiction is only vested in a Utah Court of competent jurisdiction.

12. Force Majeure

Cymphonix shall not be held liable or responsible for delay or failure to comply with this Agreement occasioned by any cause beyond its reasonable control, including but not limited to transportation delays, acts of God, earth quake, fire, flood, accident, strike, lockout, war, riot, civil unrest, martial law, embargo, excessive demand for the Products over the available supply, government regulation or any other cause or circumstance within or without the United States which prevents or hinders Cymphonix's performance.

13. No Waiver

The failure of either party to enforce at any time any of the provisions of this Agreement shall not be construed to be a waiver of any such provision or of the right of such party to enforce such provision thereafter.

14. Authority

Each individual executing this Agreement on behalf of a corporation which is a party to this Agreement represents and warrants that he or she is an officer of such corporation and is duly authorized to execute and deliver this Agreement on behalf of such corporation and that this Agreement is binding upon such corporation in accordance with its terms.

15. No Agency

The parties acknowledge and agree that the Reseller is an independent contractor, and not an employee or an agent of, or joint venturer with, Cymphonix, and shall not take any action on behalf of Cymphonix or waive any right or incur, assume or create any debt, obligation, contract warranty or release of any kind whatsoever in the name of or on behalf of Cymphonix.

16. Post-Termination/Expiration Provision

Termination or expiration of this Agreement shall not act as a waiver of any breach of this Agreement and shall not act as a release of either party for any liability or obligation under this Agreement. Furthermore, Cymphonix shall not, by reason of its termination of, or the expiration of, this Agreement, be liable to the Reseller for any compensation, reimbursement, or damages on account of the loss of prospective profits on anticipated sales, or on account of expenditures, investments, leases or other commitments in connection with the business or goodwill of such other party. Termination of this Agreement shall not cancel any unfilled orders for the Product previously accepted by Cymphonix; provided, termination shall not be deemed waived by virtue of filling such orders. Upon the expiration or termination of this Agreement, the Reseller shall immediately discontinue any and all use of the Trademarks and Intellectual Property Rights, and shall remove all signs and displays relating to the Products.

16. Patents

If any suit is brought against Reseller for infringement of any Patents alleging that the Products or Cymphonix's methods of manufacturing infringe any Patents, Cymphonix shall, at its own expense, defend and control the



suit against these allegations only, and shall pay any award of damages assessed against Reseller in the suit only to the extent that the damages are awarded specifically in connection with the alleged infringement, provided that Reseller gives Cymphonix immediate notice in writing of the institution of the suit.

17. Late Fees

- 17.1 Late Fee. There shall be a late payment penalty of \$50.00 for each payment received after the terms stated on each invoice.
- 17.2 Interest. Interest on the entire balance shall accumulate at 18% annually. Interest shall be calculated daily.
- 17.3 Collection Costs. The parties stipulate and agree that should this matter proceed to collections, the delinquent party agrees to pay all costs to collect the debt including not limited to: (1) reasonable attorneys’ fees, before, during, and after any judicial proceeding; (2) court costs; and (3) other reasonable collection expenses.

18. Attorneys’ Fees

In the event that any legal action (including mediation or arbitration) is initiated after the date of this contract (including pre-litigation activities) in relation to this Agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all of the sums that either party may be called upon to pay, a reasonable sum for the successful party’s attorneys’ fees and reimbursement for the costs of said action. The parties further acknowledge that any breach of this Agreement would represent an immediate risk of real irreparable harm which would entitle the non-breaching party to seek and obtain a preliminary injunction, temporary restraining order, and other equitable relief against the breaching party.

For Reseller

For Cymphonix

Printed Name

Printed Name

Title

Title

Date

Date