

Symbio Technologies

Enterprise Thin Client Solutions

Basic Value Added Reseller Agreement



APRIL 2009

Confidential



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This Agreement is Between

This Agreement is made between Symbio Technologies, LLC (Symbio Technologies), a New Jersey Limited Liability Corporation located at 134 North Avenue, Suites E & F, New Rochelle, New York 10801 USA, AND _____ (VAR), a _____ (corporation, LLC, partnership, sole proprietorship, Pty, Ltd.) located in _____ (name of country).

Relationship of the Parties

The parties to this Agreement are independent contractors and the Agreement is a commercial agreement between businesses, not a consumer agreement. The relationship between Symbio Technologies and VAR is that of vendor and reseller. The relationship shall not be construed as being a partnership, joint venture, franchiser/franchisee, employer/employee, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

Reseller/VAR Pricing

Symbio Technologies will provide VARs with an exclusive VAR price list for our products. The VAR price list will state the effective beginning date for the products and services listed. All prices are quoted in United States Dollars.

The VAR price list will reflect prices for products and services for VARs based in the United States. VARs located in countries outside of the United States may pay higher prices on their orders to reflect increased costs of doing business in their respective countries.

Symbio Technologies reserves the right to adjust pricing to pass through increased costs without notice. Prices charged on existing, prepaid orders will be honored. Symbio Technologies also reserves the right to modify, change, alter, add or eliminate products without notice. Symbio Technologies provides VARs with price quotations when requested. For all other transactions, VARs should contact Symbio Technologies directly to verify availability and pricing of products prior to quoting a customer.

VARs are free to charge the MSRP (Manufacturer's Suggested Retail Price) for the products supplied by Symbio Technologies. Symbio Technologies places no restrictions on charges VARs may assign to their own value added services provided as part of a deployment of Symbiont products.

Shipping, Taxes and Tariffs

Prices quoted for Symbio Technologies products do not include shipping, taxes, tariffs, value added taxes, customs duties, or any duty imposed by a sovereign country or governmental taxing jurisdiction. VAR will pay all taxes, duties, tariffs, fees and assessments associated with purchases under this Agreement.

VAR is responsible for paying shipping, insurance, and any special packaging costs for products purchased from Symbio Technologies.

Terms of Payment

Symbio Technologies' pricing to VARs is based on payments received when orders are placed. Any other payment term must be approved by Symbio Technologies in advance of orders being placed. Payment terms may be extended to a VAR as a result of a satisfactory review of the requesting company's credit application.

Symbio Technologies accepts the following forms of payment:

- Approved business or cashier check (NOTE: Orders will not be placed until check clears.)
 - Checks should be made payable to **Symbio Technologies, LLC**
 - Checks may be mailed to the following address:
Symbio Technologies, LLC
134 North Avenue
Suites E & F
New Rochelle, New York 10801, USA

- Credit Card (VISA, MasterCard, American Express) up to \$5,000.00 USD
 - Credit card number
 - Expiration date
 - Name of company or individual printed on card
 - Billing address
 - CVV2 # (usually last 3 digits in signature line on back)

- Direct Account Wire Transfer
 - Symbio Technologies Wire Transfer information:
Account Name: Symbio Technologies, LLC
Name of Bank: Bank of America
Fed Wire Routing #: 021202162
Swift Code of Bank: FNBBUS33
Account Code: 94201-86084

Territories

Symbio Technologies does not assign territories according to vertical markets or physical geography. VARs are encouraged to promote Symbio Technologies branded products and services to customers wherever they are capable of providing service and support.

Non-Exclusivity

Symbio Technologies hereby grants to the VAR and the VAR hereby accepts a non-exclusive right to sell products branded by Symbio Technologies.

Symbio Technologies reserves the right to enter into exclusive agreements with VARs when it is in its best interest to do so.

Symbio Technologies has no intention of competing with its VARs. However, it reserves the right to service a customer directly when requested by the customer; when Symbio product has a subscription or maintenance attached to it, and/or when Symbio support tickets are utilized.

In an effort to protect relationships that VARs develop with their customers, Symbio Technologies will refrain from quoting any current or potential customer that a VAR is engaged with when the VAR provides Symbio Technologies with that customer has been registered with Symbio Technologies.

Return Policy

All Symbio Technologies branded products may be returned at any point during the period from the date the product was shipped until thirty (30) days after the date the product was shipped. Pre-approval from Symbio Technologies is required. Contact support@symbio-technologies.com for RMA authorizations.

- Items may only be returned by a VAR directly and not by any client, customer, or end user of that VAR.
- Returned products must be wholly complete, new and unused, with any factory seals unbroken, and must include original packaging materials, manuals, unmarked warranty cards and any accessories and other materials originally provided. Original boxes and packaging materials must be free of markings.
- Returned products should be properly insured and shipped via a reliable and traceable carrier. Symbio Technologies is not responsible for any products for which it has not acknowledged receipt. CODs will not be accepted. Symbio Technologies is not responsible for shipping and handling charges on returns.
- To expedite the assignment of the RMA number, please be prepared to furnish the following information when calling: Customer name; Invoice number; Serial number(s); Part number(s); Product description; Brief explanation of the problem; Verification of Product condition. Upon assignment of the RMA number, the product(s) must be promptly returned to Symbio Technologies no later than fourteen (14) days after assignment of the RMA number. The RMA number must be included with, and displayed prominently on the shipping label of the return. Do not write the RMA number on the outside of the boxes. Product must be returned to:

Product Returns
Symbio Technologies
134 North Avenue
Suites E & F
New Rochelle, NY 10801

- All non warranty returned items will incur a 20% restocking fee.
- Symbio Technologies will base refunds on the price paid at the time of purchase.

Exceptions to Return Policy

- Licenses installed on a Symbiont Boot Appliance may not be uninstalled for credit. Licenses must be returned with the appliance and will be subject to the restocking fee.
- Sales of special order items are final. No refunds are provided on these items. (Special order items are items not shown on the The Symbiont web site (<http://www.TheSymbiont.com>) and are ordered by special request of the VAR.
- Sales of products developed by Symbio Technologies to meet the specific needs of a VAR's customer are final.

Warranties

Symbio Technologies warrants, for a period from the date the product was shipped until one (1) year after the date the product was shipped, that the products sold under The Symbiont brand will substantially conform to the applicable product documentation provided by Symbio Technologies. The foregoing warranty does not apply to any product that has been modified, combined with other products (including VAR's products), used improperly, defaced with physical blemishes, scratches, or imperfections, or damaged or caused to malfunction due to the misuse by VAR or VAR's clients,

or where the case has been opened or the Void sticker has been broken. Symbio Technologies reserves the right to decide whether or not a product meets the criteria stated above for redemption under the warranty.

VAR must return any item under warranty to be eligible to receive a refund or replacement. Any item that is replaced, will be covered under a new warranty.

Symbio Technologies offers extended warranties for certain of its products. Extended warranties are optional and are not reflected in the base pricing of the product.

All items sold by Symbio Technologies that are not sold under “The Symbiont” brand or for whom Symbio Technologies is not the manufacturer will retain their respective manufacturers' warranty.

When Symbio Technologies is contracted to perform the installation, then Symbio Technologies warrants the products from the date of installation.

Liability

Symbio Technologies makes absolutely no warranties whatsoever, express or implied, including warranty of merchantability or fitness for a particular purpose. Symbio Technologies shall not be liable to VAR or any of its customers for any claims or damages which may be suffered by VAR or its customers, including, but not limited to, losses or damages of any and every nature, resulting from the loss of data, inability to access the software, or inability to transmit or receive information, caused by, or resulting from, delays, no deliveries, or service interruptions whether or not caused by the fault or negligence of Symbio Technologies.

Support

Symbio Technologies will provide email support to the VAR for thirty (30) days on all products purchased by the VAR from Symbio Technologies. While prior training of the VAR by Symbio Technologies is not required to obtain email support, Symbio Technologies will provide both email and phone support to those VARs that have personnel who have undergone certification in Symbiont Branded Products.

In those cases whereby the VAR seeks additional support, such support may be negotiated under a Service and Support Agreement between Symbio Technologies and the VAR.

VAR will be responsible for providing the following support to its end users:

- Installing the products as needed;
- Training end user on usage of the products; and
- Providing all direct first level technical support to end users, including but not limited to diagnosing problems and using its reasonable efforts to provide solutions.

Except as provided in a separate Service and Support Agreement with the VAR, Symbio Technologies shall not be responsible for providing support to end users directly. Symbio Technologies will provide VAR with:

- Error corrections for Symbio Technologies' products as reported by end users to VAR, in accordance with Symbio Technologies' error correction policies.
- Updates and enhancements for Symbio Technologies products to the extent that Symbio Technologies generally provides such updates and enhancements to Symbio Technologies' end users without separately charging for such updates.

Trademark Usage

During the term of this Agreement, the VAR is licensed by Symbio Technologies to use Symbio

Technologies trademarks and logos on a non-exclusive basis and only as is reasonably necessary or useful in connection with the commercialization and distributions of the Symbio Technologies' products in accordance with this Agreement. On all marketing materials and documents of the VAR in which any Symbio Technologies trademark or logo appears, VAR shall insert a statement acknowledging Symbio Technologies' ownership of the trademark. Nothing contained herein shall give VAR any right, title or interest whatsoever in any Symbio Technologies trade name or trademark.

VAR will not resell any product offered by Symbio Technologies under any trademark other than Symbio Technologies' trademarks during the term of this Agreement, or any renewals thereof. Symbio Technologies' trademarks may only be used with the express written permission of Symbio Technologies.

Non-Disclosure

VAR will not disclose the intellectual property of Symbio Technologies to anyone. VAR will honor and protect the intellectual property of Symbio Technologies by taking steps to safeguard such IP while Symbiont Product is under VAR's control. The VAR agrees to make no attempt to open the case of the Symbiont Boot Appliance; to make no attempt to reverse engineer, decompile, copy, or retrieve any part of the system; to not permit any third party any kind of remote access to the firmware contained therein; and to not make any recordings of any system output in any form.

Term and Termination

This Agreement will enter into force on the effective date indicated by the VAR in the signature section of this Agreement and shall continue in effect from year to year thereafter until or unless terminated by either party, giving the other not less than 30 days prior written notice, or unless it is modified by revisions to this VAR Agreement.

Symbio Technologies may modify the terms of this VAR Agreement by posting a new VAR Agreement on its corporate website. The modifications will become effective for all existing VARs, regardless of the original effective date, 30 days from the date of the modified VAR Agreement unless Symbio Technologies is contacted in writing by the VAR within that 30 day period with a statement that the VAR refuses the modified VAR Agreement. In that case, the Agreement signed by the VAR will remain in effect no longer than one year from the effective date indicated by the VAR in the signature section of the signed VAR Agreement. The VAR Agreement in effect at the end of that year will become the Agreement in force for that VAR.

On occasion, when modifications are extensive, Symbio Technologies will post the a new Basic VAR Agreement on its corporate website and email a copy to each VAR for execution. VARs will have 30 days from the date of the email to return a fully executed copy of the Agreement to Symbio Technologies in order to be recognized as a Basic VAR.

In the special case where the terms of this agreement have been violated, the offending party will be notified and given seven (7) days to correct the issue; if not corrected within 7 days, this Agreement may be terminated without prior notice.

Symbio Technologies places no requirements on the VAR to maintain inventories or to place orders of a certain amount within a specified time frame. If, however, there is no activity on behalf of the VAR for twelve (12) months, Symbio Technologies reserves the right to remove the VAR's information from its website, to deactivate linkages to the VARs website, and to terminate the relationship.

Neither party will be liable to the other for damages of any kind, including incidental or consequential damages, on account of the termination, non-renewal, modification or expiration of this Agreement in accordance with its terms. VAR waives any right it may have to receive compensation or reparations on termination, non renewal, or expiration of this agreement under the law of the territory or otherwise, other than as expressly provided in this agreement. Neither party

will be liable to the other on account of termination or expiration of this Agreement for reimbursement or damages for the loss of goodwill, prospective profits, or anticipated income, or on account of any expenditures, investments, leases or commitments made by either party or for any other reason whatsoever based upon or growing out of such termination, non-renewal or expiration.

Non-Assignability

This Agreement shall not be assigned by the VAR in whole or in part to any party without prior written consent of Symbio Technologies.

Applicable Law

In case of any discrepancy and/or conflicts arising from the interpretation and/or accomplishment of this document, the parties shall settle the problem through an alternative solution procedure selected in common.

Otherwise, this Agreement will be governed by and construed in accordance with the laws of the State of New York, United States, applicable to agreements entered into, and to be performed entirely, within New York between New York residents. Application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. Any suit hereunder will be brought solely in the federal or state courts in the State of New York, USA and VAR hereby submits to the personal jurisdiction thereof.

Export Control Laws & Regulations

Reseller/VAR shall comply with all applicable international, national, state, regional, and local laws and regulations in connection with its activities under this Agreement. These laws, regulations, and Executive Orders include, but are not limited to, those found at the following websites: www.ustreas.gov/ofac; www.bis.doc.gov; and www.trade.gov/td/tic/.

Reseller/VAR shall not export or re-export (directly or indirectly) any products or documentation or other technical data without complying with the U.S. Export Administration Act of 1979, its amendments, and its regulations.

Reseller/VAR shall not export or re-export (directly or indirectly) any products or documentation or other technical data without complying with Executive Order 13382 Part 539 of Title 31, C.F.R. and Part 540 of Title 31, C.F.R.

Reseller/VAR shall review all pertinent lists prepared by the U.S. Government to ascertain that the buyer is not on one or more of the lists that prohibit or restrict sales. These lists include the following:

- **Denied Persons List**
A list of individuals and entities that have been denied export privileges. Any dealings with a party on this list that would violate the terms of its denial order is prohibited.
- **Unverified List**
A list of parties where BIS has been unable to verify the end use in prior transactions. The presence of a party on this list in a transaction is a “red flag” that should be resolved before proceeding with the transaction.
- **Entity List**
A list of parties whose presence in a transaction can trigger a license requirement under the Export Administration Regulations. The list specifies the license requirements that apply to each listed party. These license requirements are in addition to any license requirements imposed on the transaction by other provisions of the Export Administration Regulations.
- **Specially Designated Nationals List**
A list compiled by the Treasury Department, Office of Foreign Assets Control (OFAC). OFAC’s

regulations may prohibit a transaction if a party on this list is involved. In addition, the Export Administration Regulations require a license for exports or reexports to any party in any entry on this list that contains any of the suffixes "SDGT", "SDT", "FTO" or "IRAQ2".

- [Debarred List](#)
A list compiled by the State Department of parties who are barred by §127.7 of the International Traffic in Arms Regulations (ITAR) (22 CFR §127.7) from participating directly or indirectly in the export of defense articles, including technical data or in the furnishing of defense services for which a license or approval is required by the ITAR.
- [Nonproliferation Sanctions](#)
Several lists compiled by the State Department of parties that have been sanctioned under various statutes. The Federal Register notice imposing sanctions on a party states the sanctions that apply to that party. Some of these sanctioned parties are subject to BIS's license application denial policy described in §744.19 of the EAR (15 CFR §744.19).
- [General Order 3 to Part 736 \(page 9\)](#)
This general order imposes a license requirement for exports and reexports of all items subject to the EAR where the transaction involves a party named in the order. This order also prohibits the use of License Exceptions to export or reexport to these parties. These parties are currently located in: Dubai, United Arab Emirates; Germany; Syria; Lebanon; Malaysia; Iran; and Hong Kong.
- June 8, 2007 - BIS Publishes Federal Register Notice: Amendment to General Order No. 3: Expansion of the General Order and Addition of Certain Persons, [Federal Register Notice](#)

Entire Agreement

This Agreement is the complete and exclusive Agreement between Symbio Technologies and the VAR with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communications, and understandings (both written and oral) regarding such subject matter.

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Signatures and Contact Information

IN WITNESS WHEREOF, Symbio Technologies and the VAR have caused this Agreement to be executed by their duly authorized representatives and made effective this date by VAR.

	VAR	Symbio Technologies
(Please print legibly)		
Complete Company Name	_____	Symbio Technologies, LLC
Signature of Authorized Officer	_____	<i>Lewis Tischler</i>
Printed Name of Authorized Officer	_____	Lew Tischler
Title of Authorized Officer	_____	CFO and Director of VAR Activities
E-mail of Authorized Officer	_____	lew@symbio-technologies.com
Effective Date	_____	April 29, 2009
Mailing Address	_____	134 North Avenue
	_____	Suites E & F
	_____	New Rochelle, NY, USA 10801
Shipping Address (If different)	_____	Same

Telephone #	_____	+1 914 576-1205
Facsimile #	_____	+1 914 576-0944
Mobile #	_____	
General Contact E-mail	_____	support@symbio-technologies.com
Website URL	_____	www.symbio-technologies.com