

## INDEPENDENT RESELLER AGREEMENT

February 17, 2015

Page 1 of 4

This Independent Reseller Agreement ("Agreement") is made this \_\_\_\_\_, ("the Effective Date"), by and between CloudBerry Lab Ltd., ("Company") located at 207 Sandcastle, Aliso Viejo, CA 92656, ("Company") and \_\_\_\_\_ ("Reseller") with offices at \_\_\_\_\_.

Whereas Company desires to engage Reseller to market and sell the products of Company, namely the CloudBerry Backup Software, and Reseller desires to engage in such services, Reseller and Company (also referred to herein as "Party" in the singular and "Parties" in the plural) desire to define the terms and conditions applicable to Reseller's performance of such services. Company and Reseller hereby agree as follows:

1. **Length of Agreement.** The Parties agree that this Agreement will last for a term of one (1) year, unless otherwise terminated by either Party. This Agreement may be renewed for successive one (1) year terms at the sole discretion of Company.
2. **Appointment and Acceptance.** The Parties agree with regards to the appointment of Reseller under this Agreement as follows:
  - A. Company hereby appoints Reseller as one of Company's exclusive Resellers to solicit orders for those products (collectively, "Products") as marketed from time to time by Company.
  - B. Reseller shall identify specific sales prospects, where he/she has contacts likely to generate sales, within or outside of their designated territory or industry specialty due to long-term relationships or prior business contacts. Company shall have the right, from time to time, at its sole discretion, to change the scope of the Territory. In any such instance, Company shall issue a new Exhibit A to Reseller reflecting such change, which shall, as of the effective date stated thereon, supersede the prior Exhibit A. Reseller acknowledges and agrees that it neither has, nor will acquire, any vested or proprietary right or interest with respect to the Territory, any Company customers in the Territory, or any Company customer lists. Reseller further acknowledges and agrees that any goodwill accruing in the Territory during the term of this Agreement with respect to Company or Company Products shall be considered the property of Company rather than Reseller.
  - C. Reseller hereby accepts its appointment hereunder.
3. **Responsibilities of Reseller.** Reseller shall satisfy the following responsibilities at all times during the term of this Agreement:
  - A. Reseller shall use best efforts to provide services, in a manner consistent with the standards generally observed by a professional in the industry to which such services performed can be classified, in accordance with the terms and conditions set forth.
  - B. Reseller shall exhibit and conduct behavior in a manner consistent with the high image, reputation and credibility of Company and Company Products, and shall engage in no activities that reflect adversely on Company or Products.
  - C. Reseller will use best efforts to achieve any sales quotas as specified by Company.
  - D. Reseller will comply with all applicable laws in performance of Reseller's duties under this Agreement.
4. **Scope and Limitations of Reseller's Authority.** The Parties agree as follows with regards to the scope and limitations of Reseller's authority under this Agreement:
  - A. Reseller has authority to solicit and accept orders on behalf of Reseller only.
  - B. Reseller has no authority to bind Company to any agreements or sales orders.
  - C. Reseller shall adopt Company's price terms, credit terms, sales programs and other terms and conditions of sale governing transactions as specified on the website in the Pricing section. Reseller shall have no authority to modify any such prices, credit terms, sales programs or other terms or conditions of sale without prior authorization from Company. Company shall have the right, from time to time, at its sole discretion, to change the terms of

Confidential and Proprietary

## INDEPENDENT RESELLER AGREEMENT

February 17, 2015

Page 2 of 4

- the Pricing Schedule upon ninety (90) days written notice to Reseller. In any such instance, Company shall issue a new Exhibit B to Reseller reflecting such change, which shall, as of the effective date stated thereon, supersede the prior Exhibit B. Any Company Products ordered by Reseller prior to or during the ninety (90) day notification period will be invoiced in accordance with the then-current price.
- D. Reseller at no time shall engage in any unfair trade practices with respect to Company or Products, and shall make no false or misleading representations with respect to Company or Products. Reseller shall refrain from communicating any information with respect to guarantees or warranties regarding Products, except such as are expressly authorized by Company or are set forth in Company's literature or other promotional materials.
- E. Reseller shall not use Company's tradenames or trademarks or any names closely resembling same as Part of Reseller's corporate or business name, or in any manner which Company, in its sole discretion, may consider misleading or otherwise objectionable.
5. **Reseller Product Purchases.** The Parties agrees as follows with regards to the purchases of Company Products by Reseller under this Agreement:
- A. Reseller shall purchase Company Products at the wholesale pricing level as specified in the current Exhibit B.
- B. Company will invoice Reseller for Company Products purchased by Reseller. Reseller understands and agrees that Company will not deliver Company Products to Reseller until receipt of payment for such Company Products.
- C. Reseller understands and agrees that all risk of loss passes to Reseller with each purchase of Company Products by Reseller. Reseller understands and agrees that Company is not liable to Reseller for any loss of, damage to, or inability to sell Company Products.
6. **Re-branding of Company Products.** The Parties agrees as follows with regards to the re-branding of Company Products by Reseller under this Agreement:
- A. Reseller may re-brand Company Products by changing the name of the Company Products and/or changing logos in Company Products to match those of Reseller.
- B. However, Reseller shall not remove any copyright references to Company, nor shall Reseller remove the "Powered by CloudBerry Lab" references from the "About" and "Splash" screens of Company Products.
7. **Ownership of Intellectual Property.** The Parties hereto agree that all intellectual property rights to Company Products are solely vested in Company. Reseller shall make no claims to Company Products nor shall Reseller make any such claims in any ideas, modifications to products, and other deliverables ("Work Product") that result from Reseller's services pursuant to this Agreement. The Parties agree that such Work Product is considered to be a "work for hire" and shall be therefore exclusively vested in Company and/or automatically assigned to Company. Reseller agrees to promptly execute any documents necessary for Company to perfect its rights in such Work Product.
8. **Support of Company Products.** The Parties agrees as follows with regards to the support of Company Products under this Agreement:
- A. Company shall provide Reseller with internal product support for Reseller, its employees and contractors.
- B. Reseller shall provide end user support for all Company Products which Resellers sells.
9. **Employees and Contractors.** Reseller agrees that it will ensure that its employees and contractors performing services under this Agreement comply with this Agreement, including, but not limited to, having such employees sign documents assigning intellectual property rights to Company to the extent Reseller is required such rights to Company.

Confidential and Proprietary

## INDEPENDENT RESELLER AGREEMENT

February 17, 2015

Page 3 of 4

10. **Indemnification.** Reseller hereby agrees to indemnify Company for any liability that Company may incur as a result of Reseller's breach of this Agreement. The terms of this Section shall survive the termination and/or expiration of this Agreement. Reseller's obligations pursuant to this section shall survive the termination/expiration of this Agreement.
11. **Taxes.** Reseller shall be responsible for payment of all sales, use, and excise taxes relating to Reseller's services under this Agreement.
12. **Limitation of Liability and Exclusion of Certain Remedies.** Under no circumstance, regardless of the basis of the claim, shall the total liability of Company to Reseller exceed the total amount of completed sales from Reseller within the last six (6) calendar months. In no event shall either Company be liable to Reseller for consequential, special, incidental, or punitive damages (including, but not limited to, legal costs and fees) from any claim asserted against Company or by any third Party through any Party to this Agreement. The terms and provisions of this section shall survive the termination and/or expiration of this Agreement.
13. **Confidentiality.** During the period in which Reseller is providing services for Company and indefinitely thereafter, Reseller shall keep secret and retain in strictest confidence, and shall not, without the prior consent of Company, furnish, make available or disclose to any third Party or use for the benefit of itself (except as necessary to fulfill the purposes of this Agreement and/or a Services Schedule(s) attached hereto) or any third Party, any Confidential Information of Company. As used herein, "Confidential Information" shall mean any information relating to business or affairs of Company, including but not limited to; Company, Product, Work Product, information relating to financial statements, business strategies and plans, customer identities, customer accounts, potential customers, employees, suppliers, servicing methods, equipment, programs, style and design strategies and information, analyses, profit margins, or other proprietary information used by Company in connection with its business. If Reseller is an entity, it will make sure that the Confidential Information is disclosed only to those of its employees whose functions require that they obtain access to the Confidential Information to carry out the purpose of this Agreement, that have been informed of the confidential nature and obligations of Reseller with respect to the Confidential Information and who are subject to a general written agreement committing such employees to conduct that would not violate Reseller's obligations listed in this Section with respect to such Confidential Information if such conduct was committed by Reseller. Reseller's obligations pursuant to this section shall survive the termination of this Agreement.
14. **Non-Competition.** Competitor, for purposes of this Section, shall mean any direct competitor of Company operating in a similar manner and venue. During the term of this Agreement, Reseller agrees not to provide nor assist anyone and/or any entity(ies) in providing, the same and/or substantially similar services and Work Product to a competitor of Company. For a period of 2 years after the termination of this Agreement, Reseller understands and agrees that Reseller shall not induce any customers of Company, whether directly or indirectly through use of third Parties such as employers and agents, to leave Company's business. Any such act by Reseller shall subject Reseller and any such third Parties to civil and possible criminal liability.
15. **Termination.** Notwithstanding anything to the contrary in this Agreement or any Exhibits, Company may terminate this Agreement and related Exhibits without any obligation, upon thirty (30) days notice via e-mail, facsimile or hand delivery. Upon such notice of termination, Reseller shall immediately surrender all Confidential Information ("Termination Obligations") and certify to Company, in writing, that it has performed its Termination Obligations. Reseller's obligations pursuant to this Section shall survive the termination/expiration of this Agreement and any/all Services Schedules.
16. **Solicitation.** During the term for this Agreement and for a period of two (2) years after termination of this Agreement, Reseller shall not hire, solicit, or induce or assist any third Party in

## INDEPENDENT RESELLER AGREEMENT

February 17, 2015

Page 4 of 4

soliciting or inducing any employee or Reseller of Company to leave his or her employ or cease providing services to Company, as applicable.

17. **No Other Relationship or Interest.** The Parties agree that this Agreement does not create any other relationship or legal interest between the Parties, including, but not limited to, employer/employee relationship, license, title, guarantee of work, or right to use any Confidential Information, except as specified by this Agreement.
18. **Disputes and Governing Law.** The laws of England without regard to any conflict of law principles, govern this Agreement. No action, arising out of the transactions under this Agreement may be brought by either Party more than one year after the cause of action has accrued.
19. **Limitations on Assignment.** Reseller may not assign, transfer or sell all or any of its rights under this Agreement or delegate all or any of its obligations hereunder, without the prior written consent of Company. Company may assign this Agreement to a parent, subsidiary or affiliated firm or to another entity in connection with the sale or other transfer of all or substantially all of its business assets. Subject to these restrictions, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties, their successors and permitted assigns.
20. **General.** This Agreement, including all Exhibit(s), constitutes the entire agreement between the Parties in connection with the subject matter hereof and supersedes all agreements, proposals, representations and other understandings, oral or written, of the Parties and any current or subsequent purchase order(s) provided by Reseller. No alteration or modification of this Agreement or any Exhibits shall be valid unless made in writing and signed by an authorized Reseller of each Party. The waiver by either Party of a breach of any provision of the Agreement shall not operate or be construed as a waiver of any subsequent breach and any waiver must be in writing and signed by an authorized representative of the Parties hereto. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall continue in full force and effect. Any notice or other communication required or permitted hereunder shall be given in writing to the other Party at the address stated above, or at such other address as shall be given by either Party to the other in writing. Any terms of this Agreement which by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and rightful assignees.

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the day and year first above written.

ACCEPTED BY RESELLER:	ACCEPTED BY COMPANY:
Signature	Signature
Name	Name
Title	Title
Date	Date

Confidential and Proprietary