

# FASTNEURON INC. RESELLER AGREEMENT

Reseller Name: \_\_\_\_\_

Address/City/State/Zip: \_\_\_\_\_

FastNeuron Reseller Authorization Number: \_\_\_\_\_

This Agreement is between FastNeuron, Inc., by and through ("FastNeuron") and the reseller named above ("Reseller") and establishes the terms and conditions for Reseller's participation in the FastNeuron BackupChain Reseller Program (the "Program"). Under the Program, FastNeuron will provide marketing and promotional support to Reseller as specified in this Agreement related to Reseller's purchase and license of FastNeuron BackupChain products for resale either.

## 1. Reseller Qualification

1.1 In order to ensure adequate technical and marketing support to end users, eligibility to resell FastNeuron BackupChain products may be subject to meeting certification requirements as described in the Program Materials. Reseller will not sell FastNeuron products without arranging for adequate post-sales support.

## 2. Relationships

2.1. Reseller is an independent contractor engaged in purchasing FastNeuron BackupChain products for resale to its customers. Reseller is not an agent or legal representative of FastNeuron for any purpose, and has no authority to act for, bind or commit FastNeuron.

2.2. Reseller has no authority to make any commitment on behalf of FastNeuron with respect to quantities, delivery, modifications, interfacing capability, suitability of software or suitability in specific applications. Reseller has no authority to modify the warranty offered with FastNeuron products. Reseller will indemnify FastNeuron from liability for any modified warranty or other commitment by Reseller not specifically authorized by FastNeuron.

2.3. Reseller will not represent itself in any way that implies Reseller is an agent or branch of FastNeuron. Reseller will immediately change or discontinue any representation or business practice found to be misleading or deceptive by FastNeuron immediately upon notice from FastNeuron.

## 3. Term, Limitations, Termination

3.1. The term of this Agreement is twelve (12) months from the date of acceptance by Reseller and FastNeuron. This Agreement shall automatically renew on each subsequent year for a one-year term, unless it is terminated earlier in accordance with this Agreement.

3.2. FastNeuron or Reseller may terminate this Agreement without cause at any time upon thirty (30) days written notice or with cause at any time upon fifteen (15) days written notice, except that neither the expiration nor earlier termination of this Agreement shall release either party from any obligation which has accrued as of the date of termination.

3.3. FastNeuron may, from time to time, give Reseller written notice of amendments to this Agreement. Any such amendment will automatically become a part of this Agreement thirty (30) days from the date of the notice, unless otherwise specified in the notice.

3.4. Upon expiration, non-renewal or termination of this Agreement, all interests in accrued marketing funds (if any) will automatically lapse.

## 4. Reseller Programs

4.1. FastNeuron's Reseller program will contain various participation levels. Each level may have a fee associated with that level. Reseller's participation level and obligation to pay the associated fee may be indicated in further written agreements. FastNeuron will invite Reseller from time to time to participate in the co-operative advertising, market development and promotional programs offered by FastNeuron as defined in the Program Materials. Reseller may, at its option, participate in such programs during the term of this Agreement. FastNeuron reserves the right to terminate or modify such programs at any time at its sole discretion.

4.2. Reseller shall exert best efforts to market FastNeuron BackupChain products, and shall use all promotional materials supplied by FastNeuron. It is the Reseller's responsibility to help its customers determine which system configuration would best serve their needs.

4.3. As defined in the Program Materials, Reseller shall have sufficient technical knowledge of the FastNeuron BackupChain products in general, and will have access to appropriate FastNeuron sales and technical training.

4.4. FastNeuron does not represent that it will continue to manufacture any particular item or model of product indefinitely or even for any specific period. FastNeuron specifically reserves the right to modify any of the specifications or characteristics of its products, to remove any product from the market, and/or to cease manufacturing or supporting it.

4.5. Reseller is expected and encouraged to advertise and promote the sales of FastNeuron products through all appropriate media including trade show exhibits, catalogs and direct mailings, space advertising, educational meetings, sales aids, etc. FastNeuron must approve all such materials that use FastNeuron's name or trademarks. FastNeuron will assist Reseller in advertising and promoting FastNeuron products in accordance with FastNeuron's policy.

## 5. Limitation of Liability

UNDER NO CIRCUMSTANCES, INCLUDING ANY INFRINGEMENT CLAIMS, SHALL FastNeuron BE LIABLE TO RESELLER OR ANY OTHER PARTY FOR ANY RE-PROCUREMENT COSTS, LOST REVENUE OR PROFITS OR FOR ANY OTHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF FastNeuron HAS BEEN INFORMED OF SUCH POTENTIAL LOSS OR DAMAGE.

## 6. Use of FastNeuron Trademarks

6.1. Reseller acknowledges the following:

6.1.a. FastNeuron owns all right, title and interest in the BackupChain and FastNeuron names and logotypes.

6.1.b. FastNeuron is the owner of certain other trademarks and tradenames used in connection with certain product lines and software.

6.1.c. Reseller will acquire no interest in any such trademarks or tradenames by virtue of this Agreement, its activities under it, or any relationship with FastNeuron.

6.2. During the term of this Agreement, Reseller may indicate to the trade and to the public that it is an Authorized Reseller of the FastNeuron BackupChain products. With FastNeuron's prior written approval, Reseller may also use the FastNeuron trademarks and trade names to promote and solicit sales or licensing of FastNeuron products if done so in strict accordance with FastNeuron's guidelines. Reseller will not adopt or use such trademarks or tradenames, or any confusingly word or symbol, as part of its company name or allow such marks or names to be used by others.

6.3. At the expiration or termination of this Agreement, Reseller shall immediately discontinue any use of the BackupChain and FastNeuron names or trademarks or any other combination of words, designs, trademarks or tradenames that would indicate that it is or was a reseller of the FastNeuron products.

**7. Product Warranty**

7.1. The warranty terms and conditions will be as specified in the BackupChain Standard Terms and Conditions of Sale.

7.2. FastNeuron's WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES WHETHER EXPRESS, IMPLIED OR STATUTORY INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**8. Software and Firmware**

8.1 The software license terms will be specified in BackupChain Standard Terms and Conditions of Sale and any Software Maintenance Agreement entered into by the parties.

8.2 One or more components of equipment Reseller purchases may contain firmware programs built into their circuitry. Reseller's purchase of that equipment includes a non-exclusive license to use and sub-license the firmware only as part of the equipment and only under the following conditions: (a) FastNeuron (or its supplier) retains all title and ownership to the programs; (b) the firmware may not be copied, disassembled, decompiled or reverse engineered under any circumstances; and (c) Reseller will only transfer possession of the programs in conjunction with a transfer of equipment.

**9. Proprietary Information**

9.1 FastNeuron and Reseller shall each exercise due diligence to maintain in confidence and not disclose to any third party any proprietary information furnished by the other to it on a confidential basis and identified as such when furnished. Except in accordance with this Agreement, neither party shall use such information without permission of the party that furnished it. As used in this paragraph, "due diligence" means the same precaution and standard of care which that party uses to safeguard its own proprietary data, but in no event less than reasonable care. The provisions of this Section shall survive for five (5) years beyond the expiration, non-renewal or termination of this Agreement.

9.2 This Agreement does not grant any license under any patents or other intellectual property rights owned or controlled by or licensed to FastNeuron. Reseller shall not have any right to manufacture FastNeuron products.

**10. Export Controls**

Regardless of any disclosure made by Reseller to FastNeuron or Distributor of an ultimate destination of FastNeuron products, Reseller shall not export, either directly or indirectly, any documentation, FastNeuron products, or system incorporating such FastNeuron products without first obtaining a license as required by the United States Government.

**11. Compliance with Laws**

Reseller agrees to comply with all laws and regulations that are applicable to the business that Reseller transacts. Reseller agrees to indemnify and hold FastNeuron harmless for all liability or damages caused by Reseller's failure to comply with the terms of this provision.

**12. Government Contract Conditions**

In the event that Reseller elects to sell FastNeuron products or services to the U.S. Government, Reseller does so solely at its own option and risk, and agrees not to obligate FastNeuron as a subcontractor or otherwise to the U.S. Government. Reseller remains solely and exclusively responsible for compliance with all statutes and regulations governing sales to the U.S. Government. FastNeuron makes no representations, certifications or warranties whatsoever with respect to the ability of its goods, services or prices to satisfy any such statutes and regulations.

**13. Miscellaneous**

Notices under this Agreement must be sent by telegram, teletype or registered or certified mail to the appropriate party at its address stated on the first page of this Agreement (or to a new address if the other has been properly notified of the change). A notice will not be effective until the addressee actually receives it. This Agreement and its schedules represent the entire agreement between the parties regarding this subject. This Agreement supersedes all previous oral or written communications between the parties regarding the subject, and it may not be modified or waived except in writing and signed by an officer or other authorized representative of each party. Neither party will be liable to the other for any delay or failure to perform if that delay or failure results from a cause beyond its reasonable control. If any provision is held invalid, all other provisions shall remain valid, unless such invalidity would frustrate the purpose of this Agreement. Maryland law governs this Agreement without consideration to that body of law referred to as "conflicts of laws". FastNeuron and Reseller will attempt to settle any claim or controversy arising out of it through consultation and negotiation in good faith and a spirit of mutual cooperation. Any dispute which cannot be resolved through negotiation or mediation may be submitted to the courts of appropriate jurisdiction.

**Reseller**

Company: \_\_\_\_\_

Signed: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**FastNeuron, Inc.**

Signed: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

