

Cykic Software Corporation

3665 Ruffin Road
San Diego, CA 92123
USA

Tel: (858) 569-2900

Fax: (858) 569-2909

MERLIN Reseller Agreement

Partner Company Name:
Street Address:
City:
State:
Zip:

Primary Contact:
Primary Contact Title:

Telephone: (_____) _____ Fax: (_____) _____
E-mail:

<i>To be completed by Cykic Software Corporation only:</i>
Contract number: _____
Effective Date: _____

Terms and Conditions

This Service Agreement ("Agreement") is made this ____ day of _____, year _____ ("Effective Date") by and between Cykic Software Corporation ("Cykic Software") and _____ ("Partner"). Subject to the terms and conditions of this Agreement, Cykic Software shall provide the Services to Partner's end customer (Customer) for those Products and at those locations set forth in the Customer Information Document attached by reference.

1. TERM AND TERMINATION

1.1 The term of this Agreement shall be one (1) year from the effective date. This Agreement will be automatically renewed for an additional one (1) year terms unless either party provides thirty (30) days advance written notice of cancellation. Such notice can be given at any time.

1.2 Either party may terminate this Agreement if the other party: (a) fails to perform any material term or condition of this Agreement, and (b) does not remedy the failure within thirty (30) days after receipt of written notice of such failure.

1.3 The termination or expiration of this Agreement shall in no way relieve either party from its obligations to pay the other party any sums accrued hereunder prior to such termination or expiration or affect any other provisions hereunder.

2.0 ELIGIBILITY FOR SUPPORT

2.1 This Agreement only covers the Cykic Software software ("Products") identified at the time of Cykic Software's acceptance of an Order, any additional Products amended to the Order, and any replacement Product, part, or software provided hereunder.

2.2 Cykic Software requires that each unit of the same Product located at Customer's site be covered by the same level of Service and must include the chassis and all associated cards.

2.3 The Product must contain the most current, or immediately preceding version of Cykic Software software and be installed and maintained in accordance with the specifications set forth in the manual furnished with the Product.

2.4 All Orders are subject to Cykic Software acceptance and shall not be effective until Cykic Software provides Partner with written confirmation.

3.0 RIGHTS AND OBLIGATIONS

3.1 Partner shall provide assistance in obtaining access to all Customer documentation, diagnostics programs, operating systems, utilities, application programs as deemed necessary by Cykic Software.

3.2 Cykic Software may, at its option, designate a sub-contractor to provide Services on behalf of Cykic Software.

3.3 Partner shall not make any representations concerning Cykic Software or the Services hereunder that are different from those set out in this Agreement.

3.4 Communication notices will be mailed or delivered to Partner contacts to the address(es) provided by Partner.

4.0 SERVICE EXCLUSIONS

4.1 Any services outside the scope of this Agreement, including, but not limited to customization or installation of Products. Such additional services may be furnished on a time and materials basis at Cykic Software's then-current rates, subject to availability of Cykic Software's service personnel.

4.2 Any misuse or negligent use of a Product or part, including replacement of parts or repair of damage, any use other than its intended use, or use outside the environmental range specified by Cykic Software.

4.3 Any services to the Product resulting from unusual external causes such as, but not limited to, power failure, power surges, air conditioning failure, humidity, improper input/output signals to Cykic Software's connections or Customer's other software not previously approved by Cykic Software, accident, fire, explosion or Act of God.

4.4 All service options may not be available in all locations and may be restricted in some countries due to export or other regulations. Where export restrictions occur, software will not be supplied. Cykic Software may suspend Services under this Agreement if Customer or Partner delivers technical data or Product in violation of the applicable export regulations.

5.0 PAYMENT TERMS

5.1 Service fees are the amount specified in the current Cykic Software published price list. Cykic Software reserves the right to change the Service fees upon thirty (30) days written notice however; any such change shall not affect any Order hereunder until the end of the then current term of such Order.

5.2 All service fees are due and payable in advance. Payment is due within thirty (30) days from the date of invoice and will be in U.S. dollars, free of any withholdings or restrictions.

5.3 Partner is responsible for all sales, use, value-added, or other taxes (except taxes on Cykic Software's net income), and all customs, duties, and tariffs now or hereafter claimed or imposed by any governmental authority upon the sale of the Service to Partner under this Agreement. Partner agrees to pay any penalties, interest and collection or withholding costs associated therewith. All such amounts are in addition to other amounts payable hereunder.

5.4 If any payment of any undisputed invoice from Cykic Software is delinquent for more than thirty (30) days, Cykic Software may suspend Services or terminate this Agreement, without limiting any other rights it may have. Cykic Software reserves the right to charge interest on any delinquent balance which shall be computed on a daily basis for each day that the payment is delinquent at the lesser of eighteen percent (18%) per year or the maximum rate permitted by law.

6.0 CONFIDENTIAL INFORMATION

Certain information, which is confidential in nature, may be exchanged in connection with the provision of Services under this Agreement. Confidential information may not be divulged to any third party without the prior written consent of the disclosing party for a period of three (3) years. This obligation does not apply to information which: (i) is now, or becomes, generally known or available; (ii) is lawfully known to the recipient without an obligation of confidentiality; (iii) is lawfully furnished to the recipient by a third party without restriction on disclosure; (iv) is furnished to others by the disclosing party without restriction; (v) is independently developed by the recipient without use of the disclosing party's confidential information; or (vi) is required to be disclosed by a governmental agency or law, provided the recipient gives prompt notice to the other party prior to any disclosure.

7.0 LIMITED WARRANTY

7.1 Cykic Software warrants that the repaired or replacement Product or part will be free from defects in material and workmanship for the later of a period of ninety (90) days from the date of shipment or the remainder of the original warranty period. Cykic Software's sole obligation under this limited warranty shall be, at Cykic Software's option, to repair or replace any defective Product or part.

7.2 Cykic Software's technical engineers will provide quality technical support in accordance with generally recognized business practices and standards.

7.3 TO THE FULL EXTENT ALLOWED BY LAW, THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND SATISFACTORY QUALITY. THIS WARRANTY RUNS ONLY TO PARTNER. Cykic Software NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SERVICES PROVIDED UNDER THIS AGREEMENT. Cykic Software SHALL NOT BE LIABLE UNDER THIS WARRANTY IF ITS TESTING AND EXAMINATION DISCLOSE THAT THE ALLEGED DEFECT IN THE EQUIPMENT OR SOFTWARE DOES NOT EXIST OR WAS CAUSED BY MISUSE, NEGLIGENCE, IMPROPER INSTALLATION OR TESTING, UNAUTHORIZED ATTEMPTS TO REPAIR OR MODIFY, OR ANY OTHER CAUSE BEYOND THE RANGE OF THE INTENDED USE, OR BY ACCIDENT, FIRE, LIGHTNING OR OTHER HAZARD.

8.0 LIMITATION OF LIABILITY

8.1 Cykic Software shall not be liable for any damages arising from performance or non-performance of the Product during a testing period or for any damages caused by the failure of Partner or Customer to perform its responsibilities.

8.2 Cykic Software shall not be responsible for any software, information or memory data of Customer contained in, stored on, or integrated with any Product returned to Cykic Software under this Agreement.

8.3 Cykic Software's liabilities under this Agreement are expressly limited to the provision of Services and in no event shall exceed an amount equal to the service fees for the impacted order giving rise to the claim.

8.4 TO THE FULL EXTENT ALLOWED BY LAW THE PARTIES EXCLUDE ANY LIABILITY, WHETHER BASED IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, OR FOR LOSS OF REVENUE OR PROFITS, LOSS OF BUSINESS, LOSS OF INFORMATION OR DATA, OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF SERVICES UNDER THIS AGREEMENT EVEN IF ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. THE DISCLAIMER OF LIABILITY FOR DAMAGES WILL NOT BE AFFECTED IF ANY REMEDY PROVIDED HEREIN SHALL FAIL OF ITS ESSENTIAL PURPOSE.

9.0 GENERAL

9.1 Each party is an independent contractor, and not an agent or employee of the other party.

9.2 Partner shall indemnify and defend Cykic Software against all claims, suits, losses, expenses, and liabilities for personal injury, death, and tangible property damage made against Cykic Software as a result of the negligence, intentional wrongful acts or omissions, or misrepresentations of Partner or any person for whose actions Partner is legally liable.

9.3 This Agreement is intended as the complete statement of the terms of the agreement between the parties relating to Services.

9.4 If either party is prevented from carrying out any of its obligations under this Agreement due to any circumstance beyond its reasonable control including, without limitation, act of government or God, interruption of power supplies, interference by a third party, industrial disputes, earthquake or other natural disaster, the party affected shall be excused from performance of such obligation for the duration and to the extent of such preventing circumstance.

9.5 A waiver of any default hereunder or of any of the terms and conditions of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other default or of any other term or condition. In the event any provision of this Agreement is found to be invalid, illegal or unenforceable, the validity, legality and enforceability of any of the remaining provisions shall not be affected thereby.

9.6 Neither this Agreement nor any of the rights or obligations can be assigned or transferred without the prior written consent of the both parties. However, Cykic Software has the right (i) to assign all of its rights and obligations in the case of a merger, consolidation or sale of substantially all its assets or substantially all the assets of a particular product line or business line which is included within the terms of this Agreement and (ii) to assign the right to receive payment.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the Effective Date stated at the beginning of this Agreement.

Cykic Software Corporation

Signature: _____

Printed: _____

Title: _____

Date: _____

Partner: _____

Signature: _____

Printed: _____

Title: _____

Date: _____