

This Zenith ARCA Value Added Reseller Agreement is entered into between Aserver N.V., a Belgium limited liability company having its principal office at Antwerpsesteenweg 19, 9080 Lochristi, Belgium ("Aserver") and the individual, partnership or corporation or other entity identified in the ARCA RESELLER section below ("Reseller").

WHEREAS

- A. Aserver is the distributor of an Advanced Recovery and Continuity Appliance, known as "Zenith ARCA" or "ARCA".
- B. Reseller desires to sell and provide support for ARCA to Reseller's customers.

NOW THEREFORE, in consideration of the mutual promises and covenants made in this Agreement, Aserver and Reseller agree as follows:

1) **Definitions.**

- a) "ARCA" shall mean that certain advanced recovery and continuity appliance distributed and sold by Aserver known commercially as "Zenith ARCA" or "ARCA", as that appliance may be modified or updated from time-to-time. "ARCA" shall also include all software and hardware used by the appliance to operate, as such hardware and/or software may be modified or updated from time-to-time.
- b) "Defect" or "Defective" shall mean Items that are not (i) in accordance with the Specifications that apply to ARCA, or (ii) free from material errors or omissions in workmanship or design which materially impair the functionality of ARCA.
- c) "Level One Technical Support" shall mean basic ARCA feature and functionality support. Such support generally includes frequently asked questions (or "FAQs"), "how to" questions, limited troubleshooting advice, and descriptions of ARCA's functions and features. Such support shall not include customer-specific advice, nor shall such support include advanced installation or advanced troubleshooting services.
- d) "Product(s)" shall mean the ARCA device(s) purchased from Aserver by Reseller through an Order Form.
- e) "Order Form" shall mean Aserver's online order form through which Reseller requests and purchases one or more ARCA appliances from Aserver.
- f) "Specifications" shall mean the ARCA specifications and associated functionality descriptions that accompany each ARCA device and/or that may be provided to Reseller by Aserver from time-time.
- g) "Third Party Products" shall have that definition described in Section 9(d), below.

2) **Term; Termination.**

- a) *Term.* This Agreement shall be effective as of the date of Aserver's written acceptance of this document, and will remain in effect and govern all ARCA-related transactions between Aserver and Reseller, until terminated as described below.
- b) *Termination.* Either party may terminate this Agreement at any time, for any reason, by providing written notice of termination to the other party. It is agreed that any Order Forms accepted in writing by Aserver (as evidenced by the provision of an invoice to Reseller by Aserver) as of the date of termination of this Agreement shall be fulfilled, and Reseller shall be responsible for payment of any ARCA devices ordered under same. Similarly, any warranty periods that are in effect as of the date of termination of this Agreement shall continue under such warranty's terms, and shall continue to be governed under the terms of this Agreement.
- c) *Liability.* Aserver shall not be liable to Reseller or any third party for any compensation, reimbursement, losses, expenses, costs or damages arising from or related to, directly or indirectly, the termination of this Agreement for any reason. This waiver of liability shall include, but shall not be limited to, the loss of actual or anticipated profits, anticipated or actual sales, and of expenditures, investments, or commitments in connection with Reseller's or any third party's goodwill or business.

3) **Order Forms.**

- a) *Approval.* All orders are subject to approval by Aserver. No order for any Product placed by Reseller hereunder shall be binding on Aserver unless, and until, accepted by Aserver.
- b) *Orders.* All Order Forms shall be subject to the provisions of this Agreement. By completing and submitting an Order Form for one or more of the Products, Reseller confirms and re-affirms its agreement with, and acceptance of, all terms and conditions hereunder.
- c) *Additional Terms.* No additional terms contained in any Order Form, order confirmation or other communication between the parties shall be binding unless such additional terms are expressly accepted in writing by Aserver by means of the signature of its managing-director.
- d) *Shipment.* Aserver shall endeavor to ship ARCA devices to Reseller in a timely manner. Should shortages occur, Aserver may allocate the available Products as it deems appropriate, delay or stop shipments, and/or send partial shipments with prior notice. Aserver shall not be liable to Reseller for any delay in shipping of the ARCA devices purchased by Reseller.
- e) *Modifications.* Aserver may, upon providing written notice to Reseller, make changes in or to ARCA (whether in design, materials, the addition of improvements, or otherwise), and/or may discontinue the distribution or provision of ARCA, all in its sole discretion, without incurring any obligation or liability of any kind as a result thereof.

- 4) **Delivery.**
- a) *Charges.* Aserver will ship the Products as indicated in a relevant Order Form. Unless otherwise agreed upon by Aserver, all transportation, insurance and handling charges for Products shipped to Reseller shall be borne by Reseller.
 - b) *Risk of Loss.* Risk of loss for the Products shall pass to Reseller upon the delivery of the Products to the delivery location specified by Reseller.
- 5) **Reseller's Obligations.**
- a) *Technical Support.* Level One Technical Support shall be provided by Aserver directly to Reseller's customers via a support portal and real-time chat, and shall be available at times designated by Aserver. Aserver reserves the right to modify the hours and scope of Level One Technical Support at any time without prior notice. Reseller shall be responsible for the provision of all customer or technical support for the Products beyond Aserver's Level One Technical Support.
 - b) *Parameters.* The Products may be subject to certain technological limitations and/or have limited availability or functionalities as described in the Specifications. Reseller shall refrain from offering Reseller's end user customers ("End Users") features or functionalities relating to the Products that fall outside of the Specifications.
 - c) *Updates.* From time-to-time, Aserver may issue updates or upgrades for ARCA. Generally, such upgrades or updates will be made available to Reseller online, and Reseller shall promptly notify Reseller's End Users of the existence of such upgrades or updates.
- 6) **Pricing; Payment.**
- a) *Prices.* The initial prices for the Products are as set forth in the most current version of the Aserver Reseller ARCA Price List ("Price List"). Aserver reserves the right to amend the Price List upon written notice to Reseller. Such revisions shall apply to all orders received by Aserver on or after the effective date of revision.
 - b) *Payment.* All purchases must be prepaid by wire transfer.
 - c) *Remedies.* Late or untimely payments shall be subject to interest at the lesser of 1% per month or the highest interest rate permitted by law (in each case, calculated as of the date when such payment is due).
 - d) *Taxes.* Reseller shall be responsible for the payment of all taxes levied on Aserver for the sale of the Products (except for taxes on Aserver's net income), unless Reseller provides Aserver with a tax exemption certificate.
- 7) **Return Policy.**
- a) *No exchange.* ARCA appliances cannot be exchanged, traded in or upgraded. Once such appliances are purchased and full payment is received by Aserver, Reseller owns them. The only warranties relevant to any purchased ARCA appliance are as stated in Section 8, below.
 - b) *No Modification.* Reseller is hereby instructed that the ARCA appliances cannot be physically modified in any manner, and any such modifications may void the warranty for such appliances. Reseller must refrain from adding software applications to the appliances, adding memory or hard drives as such activity voids the warranty for such modified appliances.
- 8) **Warranties; Limitations.**
- a) *Warranty.* Purchased ARCA appliances are warranted against material Defects for three (3) years from date of delivery of the appliances to Reseller, as evidenced by third party shipping company records or any signed and dated delivery document. Any onsite repair needed as part of the Warranty service shall be provided by the Reseller.
 - b) *Repairs.* Aserver undertakes and warrants that the Products it ships will be of good quality and free from material Defects. If, however, an ARCA appliance requires repair under warranty, Reseller shall contact Aserver to obtain a RMA number for such defective part(s) of the ARCA appliance. Replacement parts will be shipped via next day business air and prepaid by Aserver. Faulty parts must be returned to Aserver in the time allotted by Aserver and communicated to Reseller. Reseller's failure to adhere to such time table may result in Reseller being charged for replacement parts. If, in Aserver's discretion, it is determined the ARCA appliance has been tampered with or no fault is found, Reseller will be charged for the replacement parts, including the freight and shipping costs for the replacement part, as well as for the return of the original part to Aserver.
 - c) *Infringement.* Aserver warrants that the Products do not and will not violate the intellectual property rights of any third party.
 - d) *Modifications.* Aserver reserves the right to modify or discontinue the warranties described herein at any time, in Aserver's sole discretion, upon advance written notice to Reseller. Such modifications and/or discontinuations shall not apply to Products already purchased by Reseller.
 - e) *Sole Remedy.* The warranties described in this Section 8 are the only warranties provided to Reseller under this Agreement, and are in lieu of all other warranties, including but not limited to implied warranties of merchantability and fitness for a particular purpose. Except as stated in this Section 8, all Products are provided on an "as is" basis, and Aserver does not warrant or represent that any particular Product or, specifically, any ARCA appliance, will be suitable for Reseller's needs. The parties acknowledge and

agree that Aserver's sole liability for any breach of any warranty described herein is expressly limited to a credit of the fee paid to Aserver for the appliance under warranty.

9) **LIMITATION OF LIABILITY.**

- a) Subject to clause 9.c. neither Party shall be liable to the other for any indirect or consequential damages of any kind, such as (but not limited to) loss of goodwill, loss of actual or anticipated business or contracts, work stoppage, loss as a result of third party claims, data loss or corruption of data, computer failure or lost profit, whether based in contract, for tort, or otherwise.
- b) Subject to clause 9.c., in the event that Aserver shall be liable to the Reseller in connection with this Agreement, Aserver's maximum contractual and extra-contractual liability shall in no event exceed an aggregate total liability per calendar year of the fees paid by Reseller to Aserver under this Agreement during the previous calendar year (or in the first calendar year, the total revenue paid to Aserver in that calendar year).
- c) Nothing in this Agreement shall (or shall be deemed to, or construed to) exclude or restrict any liability either Party may incur as a result of fraud or willful misconduct or for any death or personal injury resulting from its negligence or that of its employees, agents or subcontractors.
- d) Any risk associated with the use or acquisition of hardware or software in conjunction with ARCA from sources other than Aserver ("Third Party Products"), even if Aserver aided Reseller in the acquisition of, or suggested, such hardware or software to Reseller, shall be borne by Reseller. Aserver is not responsible for, and specifically disclaims any liability for the performance or quality of Third Party Products.

10) **Indemnification/Notice**

- a) Reseller agrees to protect, defend, indemnify and hold Aserver harmless against any and all claims, damages, losses, liabilities, cost, and fees arising from the Reseller's or its customers', subcontractors', consultants', agents', officers', directors' or employees' negligence, acts, omissions, and/or breach of this Agreement, whether the action be based on warranty, contract, negligence or otherwise.
- b) Reseller agrees to protect, defend, indemnify and hold Aserver harmless against any and all claims, damages, losses, liabilities, cost, and fees arising from the Aserver's or its subcontractors', consultants', agents', officers', directors' or employees' negligence, acts, omissions, and/or breach of this Agreement, whether the action be based on warranty, contract, negligence or otherwise. This indemnity shall not extend to any claims, damages, losses, liabilities, cost, and fees which are due to the sole gross negligence of Aserver.
- c) The Reseller further agrees to notify Aserver promptly, in writing, of any claims relating to the Products or their resale by the Reseller.

11) **Ownership; Intellectual Property.**

- a) *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 not to take any action, directly or indirectly, whatsoever which might jeopardize, limit or interfere with ownership or use of the Intellectual Property Rights of Aserver or its suppliers. The Reseller agrees to inform Aserver immediately of any act of unfair competition or infringement of any Intellectual Property Right of which the Reseller may become aware.
- b) *License.* Aserver hereby grants to Reseller a transferable, non-exclusive right to use any software that is installed in, or that comprises, ARCA, provided that, at all times (i) such software is used in accordance with the Specifications and for such quantities as licensed, solely with ARCA and not for any other purpose, (ii) such software remains unmodified, (iii) Reseller refrains from uninstalling, re-installing, reverse engineering or copying the software, and (iv) Reseller refrains from engaging in any activity that circumvents any protective devices employed by the software.

12) **Miscellaneous.**

- a) *Force Majeure.* Neither party shall be liable for any delay or failure to perform hereunder due to floods, riots, strikes, freight embargoes, acts of God, acts of war or hostilities of any nature, laws or regulations of any government (whether foreign or domestic, federal, state, county or municipal) or any other similar cause beyond the reasonable control of the party affected. A party relying on such an event to excuse its performance hereunder shall, as soon as reasonably possible, notify the other party in writing of the nature of that event and the prospects for that party's future performance and shall thereafter, while that event continues, respond promptly and fully in writing to all reasonable requests for information from the other party relating to that event and those prospects.
- b) *Waivers; Amendments.* The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. No amendment or waiver of any provision of this Agreement shall be effective unless it is in writing, and it is signed by the party against which it is sought to be enforced.

- c) *Severability.* If any provision of this Agreement is held to be void, the remaining provisions shall remain valid and shall be construed in such a manner as to achieve to the maximum extent possible their original purposes in full compliance with the applicable laws and regulations.
- d) *Merger.* This Agreement is the sole and complete statement of the obligations and rights of the parties as to all matters covered by this Agreement, and supersedes all previous or contemporaneous understandings, agreements, negotiations and proposals relating thereto. The parties agree that no promises or inducements have been offered or made to Reseller (other than those expressly stated in this Agreement) to induce Reseller to enter into this Agreement and to be bound by the terms contained herein.
- e) *Assignment.* This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors. This Agreement shall not be assigned by Reseller without the prior written consent of Aserver, which Aserver may withhold until and unless Aserver is satisfied (and so notifies Reseller in writing) that (i) Reseller's assignee is qualified, from a financial and technological perspective, to be bound by the terms of this Agreement, and that (ii) such assignment does not cause Aserver to incur any conflict of interest.
- f) *Attorneys' Fees.* If Aserver commences any action or proceeding against Reseller to enforce the terms of this Agreement, Aserver shall be entitled to an award against Reseller for all reasonable attorneys' fees, costs and expenses incurred by Aserver in connection with such action or proceeding (including any mediation or arbitration, and at all levels of trial and appeal), and in connection with the enforcement of any judgment or order thereby obtained.
- g) *Governing Law.* This Agreement shall be governed by, and construed in accordance with, the laws of Belgium. The parties agree that the sole and exclusive venue for any and all issues, claims, causes of action or matters arising from or related to this Agreement shall be in the competent courts of Ghent, Belgium.
- h) *Usage in Trade.* It is understood and agreed that no usage of trade or other regular practice or method of dealing between the parties to this Agreement shall be used to modify, interpret, supplement, or alter in any manner the terms of this Agreement.
- i) *Independent Contractor Relationship.* The parties are independent contractors to one another, and neither party is an employee, servant, agent, partner or joint venturer of the other party. Reseller shall not take any action on behalf of Aserver 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 Aserver.
- j) *No Third Party Beneficiaries.* The parties are entering into this Agreement solely for themselves and no other party, and nothing contained in this Agreement, whether expressed or implied shall be deemed to confer any rights or remedies (including, without limitation, third party beneficiary rights) upon, or obligate either Aserver or Reseller to any third person or entity.

Zenith ARCA RESELLER					
Company Name					
Phone		Fax			
Street Address					
City		State		Zip	
Website				Country	
Technical Sales Count		Sales Staff Count			
CONTACT INFORMATION					
Primary Business Contact		Title			
Phone		Email			
Primary Technical Contact		Title			
Phone		Email			
BILLING INFORMATION					
Business Structure (Please Check One)	Sole Owner <input type="checkbox"/>	Partnership <input type="checkbox"/>	Corporation <input type="checkbox"/>		
VAT-Number					
Billing Contact		Title			
Phone		Email			

For Reseller

For Aserver

Printed Name

Printed Name

Title

Title

Date

Date

Please list Aserver Account Manager

Please fax this Signature Page to +32.9.355.34.17

A complete countersigned agreement will be returned to you.