Eclipse Scientific Software

Reseller Agreement

This Reseller Agreement (the “**Agreement**”) is entered into by and between Eclipse Scientific (“**Eclipse Scientific**”) and Martin Maass (“**Reseller**”) on February 20, 2014 (the “**Effective Date**”). Eclipse Scientific may amend the terms and conditions of this Agreement at any time upon notice to Reseller.

By signing this contract, Reseller agrees to the terms and conditions of the Eclipse Scientific Software Reseller Agreement.

Agreed and affirmed by the undersigned:

|  |  |
| --- | --- |
| Signature |  |
| Print Name |  |
| Date |  |

## 1. License Grant

1.1. Subject to the terms and conditions of this Agreement, Eclipse Scientific grants Reseller a non-transferable, non-assignable license, without right to sublicense to market, promote, and resell software products developed by Eclipse Scientific as listed (the “**Product**”) attached hereto, and use Eclipse Scientific trademark, service mark and logo solely for its performance under this Agreement. Reseller will place its orders for the Product directly with Eclipse Scientific. Reseller shall not make any representation or warranty regarding the Product to any third party other than that authorized in writing by Eclipse Scientific. All intellectual property rights, other than those expressly granted under this Agreement, that relate to the Product shall remain with Eclipse Scientific.

1.2. Reseller may advertise in publications of general circulation that it is an authorized reseller of the Product, subject to Eclipse Scientific’s prior written approval for each such publication.

1.3. Reseller's rights to resell the Product shall not be exclusive unless otherwise agreed in writing.

## 2. Prices

2.1. All prices for the Product provided by Eclipse Scientific to Reseller are in US dollars. Eclipse Scientific has the right to revise the prices for the Product to Reseller upon thirty (30) days written notice. Such revisions shall apply to orders received by Eclipse Scientific on or after the effective date of the revision.

2.2. Reseller may set the prices for the Product for resale.

2.3. Reseller shall be responsible for paying all taxes of any nature which become due with regard to the Product it purchases and/or resells, except for taxes on Eclipse Scientific’s income, irrespective of which party may be responsible for reporting or collecting such taxes.

2.4. Reseller shall receive a **20** percent discount off published retail prices of the Product. The minimum order size for Product purchased for resale is **1** copy.

## 3. Payment and Terms

3.1. Payments are due upon presentation of Product serial number(s). If due to bank charges, transfer fees, or the like, Eclipse Scientific should receive less than its invoice amount, Eclipse Scientific will re-invoice Reseller for the shortfall. Should payment in full of any invoice (aside from such shortfalls) not be received by Eclipse Scientific within thirty (30) days after presentation, Eclipse Scientific will impose a debt service charge amounting to two percent (2%) of the overdue balance for each month or fraction thereof the overdue amount remains unpaid. In the event that any amount remains unpaid thirty (30) days after presentation of invoice, Eclipse Scientific may discontinue, withhold, or suspend supply of Product to Reseller.

3.2. Failure of Reseller's clients to pay in no way relieves the Partner’s obligations to make full payment.

3.4. Reseller hereby agrees to pay any and all attorney fees, court costs, and related expenses incurred by Eclipse Scientific in the collection of any amount due it.

## 4. Duties of Reseller

4.1. Technical Support: Reseller will support end users by providing technical support in the means of email and phone if needed. Eclipse Scientific will provide second level support to the Reseller or the customer upon the request by the Reseller.

4.3. General: In carrying out this Agreement, Reseller will conduct itself in an ethical, professional and lawful manner, will exercise its best efforts to achieve a high level of customer satisfaction, and will refrain from doing anything to impair the reputation of Eclipse Scientific.

## 5. Limitation of Eclipse Scientific's Obligation & Liability

5.1. Eclipse Scientific shall not be liable to Reseller or any of its customers for any special indirect, consequential, incidental or exemplary damages, including, but not limited to, loss of business, loss of profit, loss or damage resulting from the loss of data, inability to access Internet, or inability to transmit or receive information, caused by, or resulting from, delays, non-deliveries, or service interruptions caused by Eclipse Scientific or the Product, even if Eclipse Scientific has been advised of the possibility of such damages.

5.2. Eclipse Scientific's liability to Reseller and any customer of Reseller is limited to the purchase price received by Eclipse Scientific for the relevant Product.

5.3. Reseller will take all necessary measures to preclude Eclipse Scientific from being made a party to any lawsuit or claim regarding the Product provided to customers of Reseller. Reseller hereby agrees to defend, indemnify and hold harmless Eclipse Scientific from any and all claims of whatever nature brought by any of Reseller's customers against Eclipse Scientific arising from Reseller’s breach of this Agreement or any misconduct or wrongful omission of the Reseller.

## 6. Confidentiality

Reseller acknowledges that by reason of its relationship with Eclipse Scientific hereunder, it may have access to certain information and materials relating to Eclipse Scientific's business, suppliers, customers, personnel, technology, and marketing strategies that is confidential and of substantial value to Eclipse Scientific (collectively, “Confidential Information”). Reseller agrees that it will not use in any way for its own benefit (other than to perform under this Agreement) or for the benefit of any third party, nor will Reseller disclose to any third party any Confidential Information. Reseller further agrees that it will return to Eclipse Scientific or destroy all copies of Confidential Information under its custody or control upon request by Eclipse Scientific or termination of this Agreement. The provisions of this section shall survive the termination of the Agreement for any reason. Upon any breach or threatened breach of this section, Eclipse Scientific shall be entitled to injunctive relief in addition to other remedies, which injunctive relief shall not be contested by Reseller.

## 7. Disputes

If the parties are not successful in resolving the Dispute informally, they shall submit the matter to a single arbitration to be selected by the parties. In the event that the parties cannot select an arbitrator within seven (7) business days, either party may make application to the Superior Court of Ontario in order to have a judge appoint the arbitrator in accordance with the provisions of the *Arbitration Act*, 1991 (Ontario), as amended from time to time. Arbitration hereunder shall be held in Waterloo, Ontario or such other place in Ontario as the parties may agree. The substantive and procedural law of the Province of Ontario shall apply to the proceedings. Equitable remedies shall be available in any arbitration. Neither punitive damages nor trebled or otherwise escalated damages shall be awarded at an arbitration hereunder. Judgment upon the award rendered in any arbitration may be entered in any court having jurisdiction thereof, or application may be to such court for a judicial acceptance of the award and enforcement thereof, as the law of such jurisdiction may require or allow. Nothing contained herein shall prejudice the right of any party to apply to any court of appropriate jurisdiction for temporary or preliminary injunctive or other equitable relief. The costs of the arbitration will be determined by the arbitrator in his sole discretion.

## 8. Terms & Termination

The initial term of this Agreement is one year starting from the Effective Date. This Agreement shall automatically renew for one year term thereafter, until terminated by either party with 30 days prior notice unless otherwise terminated as follows:

8.1. By Eclipse Scientific, upon thirty (30) days written notice;

8.2 By Eclipse Scientific immediately upon notice if Reseller breaches any provision of this Agreement; 9.3. There is an instituted bankruptcy or insolvency proceeding against Reseller, which is not vacated within sixty (60) days from the date of filing;

8.4. Reseller institutes a voluntary bankruptcy or insolvency proceeding, or otherwise is insolvency;

8.5. Reseller makes an assignment of all or part of its assets for the benefit of creditors;

## 9. Non-assignability

Reseller's rights and obligations under this agreement may not be transferred or assigned directly or indirectly without the prior written consent of Eclipse Scientific.

## 10. Partial Invalidity

If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, then the remaining provisions shall nevertheless remain in full force and effect.

## 11. Notices

All notices may be sent by email, fax, or express mail to the email address, fax number, or address most recently provided and will be effective upon transmission.

## 12. Entire Agreement, Modifications

This Agreement sets forth the entire agreement and understanding between the parties with regard to the subject matter hereof and supersedes any and all prior agreements between them. Eclipse Scientific may make changes to this agreement upon thirty (30) days written notice to Reseller.