

GRAVIC REMARK RESELLER AGREEMENT

Gravic, Inc., a Pennsylvania corporation located at 17 General Warren Blvd, Malvern, PA 19355 USA ("Gravic") authorizes Reseller Applicant identified on a Gravic-accepted reseller application ("Reseller") to resell certain Remark-branded products in accordance with the following legally binding terms and conditions.

1) DEFINITIONS.

- a) **Software** means the executable object code for the Gravic software identified by Gravic in writing to Reseller, including any subsequent versions thereof generally provided to Reseller pursuant to this Agreement.
- b) **Documentation** means all collateral materials normally provided from time to time by Gravic to End Users for use of the Software (such as instruction/user manuals, templates, overlays, quick reference guides, brochures, data sheets, and registration cards), and all subsequent versions thereof generally provided to Reseller pursuant to this Agreement.
- c) **End User Agreement** means the End User License Agreement (for a desktop product) or Terms of Service (for a hosted application) provided by Gravic with the Product (or as otherwise specified by Gravic) that governs the use of the Software by End Users.
- d) **Product** means a license to the Software, Documentation and End User Agreement, delivered in accordance with this Agreement.
- e) **End User** means a person or entity that licenses a Product for use rather than resale or distribution.
- f) **Gravic Trademarks** means the trademarks, trade names, and logos used by Gravic.
- g) **Territory** means the areas initially identified by Gravic in writing to Reseller, except the Territory shall exclude any countries within the Territory to the extent export or re-export to any of such countries within such Territory of any Product is prohibited by United States law and shall be subject to modification in accordance with this Agreement.

2) LICENSE.

- a) **Rights Granted to Reseller.** Gravic grants Reseller a non-exclusive, non-transferable license and right within the Territory to:
 - 1) resell the Products to End Users;
 - 2) utilize the Gravic Trademarks in connection with the resale of the Products, in the manner specified by Gravic;
 - 3) license the Products directly to End Users in the Territory, subject to the restrictions set forth in this Agreement;
- b) **Rights Reserved to Gravic.** Reseller acknowledges that the Products and Gravic Trademarks are the sole property of Gravic and that Reseller has no rights in the foregoing except those expressly granted by this Agreement. Nothing herein shall be construed as restricting Gravic's right to sell, lease, license, modify, publish or otherwise resell the Products or Gravic Trademarks, in whole or in part.

3) LICENSES.

- a) **End User Agreement.** Reseller agrees to deliver the Software only with a copy of the End User Agreement.

- b) **Gravic Trademarks and Legends**. Reseller shall include on all copies of the Software, Documentation, and Software disk labels, copies of the Gravic Trademarks, and copies of Gravic's copyright notices and other proprietary rights legends, in the manner as specified by Gravic.
 - c) **Purchase Orders**. Any purchase order placed by Reseller shall be deemed to incorporate the provisions of this Agreement, which shall supersede any inconsistent or additional provisions of such purchase orders.
- 4) **RESALE BY RESELLER**.
- a) **Inventory**. Reseller will order Products directly from Gravic and will not duplicate or reproduce copies of the Products.
 - b) **Packaging**. Reseller will resell the Products only in accordance with this Agreement, with all warranties, disclaimers and End User Agreements intact and unmodified.
 - c) **Cost of Resale**. All costs relating to resale of the Products shall be borne by Reseller including without limitation shipping costs for shipping appropriately ordered copies of the Products from Gravic to Reseller. Any services which Reseller requests from Gravic shall be provided by Gravic, subject to its availability, at Gravic's standard time and materials charges.
 - d) **Prices**. Reseller shall determine its own prices for the Products to its End Users.
 - e) **End User License Terms and Conditions**. The license terms and conditions set forth in the End User Agreement may not be modified by Reseller nor End User without the prior review and written approval of Gravic. The translation of the End User Agreement terms and conditions into any other language shall be subject to review and approval by Gravic prior to its first use.
 - f) **Compliance with U.S. Export Laws**. Reseller acknowledges that the export of the Products may be subject to compliance with the Export Administration Act Regulations of the Department of Commerce of the United States, as amended, and other export controls of the United States ("Export Laws"), which restrict the export and re-export of software media, technical data, and direct products of technical data. Reseller agrees and shall cause each of its employees, agents, or representatives to agree not to export or re-export any Products or direct products of the Products to any prohibited country in violation of the Export Laws. Reseller agrees to indemnify Gravic against any claim, demand, action, proceeding, investigation, loss, liability, cost and expense, including, without limitation attorney's fees, suffered or incurred by Gravic and arising out of or related to any violation (whether intentional or unintentional) by Reseller, its employees, agents, or representatives of any of the warranties or covenants of this Section.
 - g) **Compliance with Foreign Law**. Reseller will comply with all applicable international, national, state, regional and local laws and regulations in performing its duties hereunder and in any of its dealing with End Users with respect to the Products, and will take all actions reasonably necessary to protect Gravic's proprietary rights in the Products and Gravic Trademarks within the Territory.
 - h) **Foreign Government Approvals**. For the Territory, Reseller shall, at its own expense, obtain and arrange for all foreign government approvals, consents, licenses, authorizations, declarations, filings and registrations as may be necessary or advisable for the resale of Products in accordance with the terms and conditions of this Agreement, including but not limited to, foreign exchange approvals, import licenses, fair trade approvals, and customs clearance. Gravic shall have no obligation to ship Products into the Territory until Reseller has provided Gravic with satisfactory evidence that such approval or registration is not required or that it has been obtained.

- i) **Right to Restrict Scope of Territory.** Gravic may, by written notice to Reseller, remove from the definition of Territory any area where Gravic has specific reasons to believe that local laws, regulations, treaties, or enforcement policies or practices will not adequately protect Gravic's copyright and/or other rights in and to the Products or Gravic's Trademarks.
- 5) **RESELLER MARKETING OBLIGATIONS.**
 - a) **Marketing Efforts.** Reseller agrees to use reasonable efforts to market, promote, license, and resell the most current version of the Product within the Territory. Reseller agrees to contact potential End Users using reasonable means, and to accurately advise potential End Users on the specifications, selection, use, and functionality of the Product.
 - 6) **GRAVIC'S DELIVERY OBLIGATIONS.**
 - a) **Deliverables.** Gravic will deliver the current version of the Products to Reseller within a reasonable period of time after receipt of Reseller's order.
 - b) **New Products.** Reseller understands and acknowledges that Gravic continues to review software products available on the market and to conduct its own research and development activities with respect to the internal development of such new products. Gravic makes no representations or warranties with respect to the continued availability of any of the Products covered by this Agreement, or the nature or availability of any future modifications, updates, or enhancements thereto. Gravic makes no representations with respect to any new product offerings it may make in the future, the compatibility of such products with the Products covered by this Agreement, or the availability of such new products to Reseller.
 - 7) **GRAVIC'S SUPPORT OBLIGATIONS.**
 - a) **Support For End Users.** Reseller will provide sales support and Gravic-specified first level and second level customer support to End Users.
 - b) **Support for Reseller.** Gravic will provide Reseller, without charge, such technical information, current maintenance documentation, and telephone assistance as is reasonably necessary to enable Reseller to effectively support the Product as specified by Gravic. Reseller is not entitled to the source code for the Product.
 - 8) **GRAVIC'S WARRANTIES.**
 - a) **Authority.** Gravic represents that it has the right and authority to enter into this Agreement and to grant to Reseller the resale rights granted in this Agreement.
 - b) **Media.** For a desktop Product, for a period of sixty (60) days of delivery, Gravic warrants to Reseller that the media on which the Software is delivered to Reseller is free from defects in material and workmanship. Gravic agrees to replace any media delivered to Reseller that proves defective.
 - c) **Non-infringement.** Gravic warrants to Reseller that the marketing and resale of the Software by Reseller, and the use of the Gravic Trademarks in connection therewith, will not infringe upon or misappropriate the United States copyright, patent, trademark or service mark of any third party.
 - d) **End User Warranties.** Gravic's sole warranty for the End Users of the Software is as set forth in the End User Agreement.
 - e) **DISCLAIMER. THE FOREGOING ARE THE ONLY WARRANTIES MADE BY GRAVIC. GRAVIC SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

9) **RESELLER WARRANTIES.**

- a) **Authority.** Reseller represents that it has the right and authority to enter into this Agreement and to perform its obligations set forth in this Agreement.
- b) **Representations.** Reseller represents that it will not make any representation or warranty concerning the Product which is not expressly authorized in writing by Gravic.

10) **PAYMENTS.**

- a) **Amount.** Unless otherwise agreed by Reseller and Gravic, Reseller will pay Gravic a payment (“Payment”) in accordance with the Payment Schedule identified by Gravic in writing to Reseller for each copy of the Product delivered to Reseller. Payment shall be due as set forth on the Payment Schedule.
- b) **Currency.** Payment shall be made to Gravic in United States dollars, free of any withholding tax, and of any currency control or other restrictions, at the address designated by Gravic.
- c) **Taxes.** Reseller will pay, or require its End Users to pay, all federal, state and local taxes designated, levied, or based upon the sale of the Products by Reseller required by the governmental authorities in the Territory. In addition, Payment due to Gravic does not include any national, state or local sales, use, value added or other taxes, customs duties, or similar tariffs and fees which Reseller shall be required to pay or collect upon the delivery of Products or upon collection of fees therefore. In the event any Payment payable by Reseller is subject to any tax withholding, Reseller shall pay to Gravic an additional amount such that following such payment, Gravic receives the amount it would have received had no such withholding been made.
- d) **Books and Records.** Reseller agrees to maintain adequate books and records relating to the resale of Products to End Users. Such books and records shall be available at their place of keeping for inspection by Gravic or its representative, for the purpose of determining whether the correct Payment has been paid to Gravic in accordance with the terms of this Agreement, and whether Reseller has otherwise complied with the terms of this Agreement. Gravic shall have the right to conduct such an audit upon ten (10) days advance notice twice each year. In the event such an audit discloses an underpayment of more than five percent (5%), then Reseller shall pay the costs of such audit.
- e) **Failure to Pay.** Any Payment or part of a Payment that is not paid when due shall bear interest at the rate of 1.5% per month, or at the highest contract rate allowed by law, whichever is less, from its due date until paid. Failure of Reseller to pay any Payment or other charges when due shall constitute sufficient cause for Gravic to immediately suspend its performance hereunder and/or to terminate this Agreement.

10) **CONFIDENTIALITY.**

Reseller acknowledges that it may be exposed to certain information concerning the Software and proposed new versions of the Software which is Gravic's confidential and proprietary information and not generally known to the public ("Confidential Information"). Reseller agrees that it will take appropriate steps to protect such Confidential Information from unauthorized disclosure, that it will not disclose such Confidential Information to any third party, and that it will not use any Confidential Information (other than as authorized by this Agreement) without the prior written consent of Gravic. Reseller's obligations with respect to Confidential Information shall continue after the date of termination of this Agreement, until such information becomes publicly known other than by breach of this Agreement by Reseller or any other agreement between Gravic and Reseller.

12) **GRAVIC TRADEMARKS.**

- a) **Use.** Reseller acknowledges that the Gravic Trademarks are trademarks owned solely and exclusively by Gravic, and agrees to use the Gravic Trademarks only in the form and manner and with appropriate legends as prescribed by Gravic. Reseller agrees not to use any other trademark or service mark in connection with any of the Gravic Trademarks without prior written approval of Gravic. Reseller agrees to mark all advertising and other uses of the Gravic Trademarks with a legend indicating the Gravic Trademarks are the property of Gravic and that they are being used under license from Gravic, together with any other legends or markings which may be required by law. All use of the Gravic Trademarks shall inure to the benefit of Gravic.
- b) **Gravic Review.** From time to time as Gravic shall reasonably request, Reseller shall furnish to Gravic for examination a copy of all advertising, brochures, and other materials used in connection with the marketing of the Product.
- c) **Notices.** Reseller shall not remove, alter, cover or obfuscate any copyright notice or other proprietary rights notice placed in or on the Product by Gravic, whether in machine language or human readable form.
- d) **Failure to Obtain Protection.** In the event Gravic is unable to secure trademark or copyright registration in any area of the Territory, the Territory shall be amended to exclude such area, and this Agreement shall otherwise continue in full force and effect and Reseller shall make no claim whatsoever against Gravic.

13) **INDEMNIFICATION.**

- a) **By Gravic.** Gravic will defend, indemnify and hold Reseller harmless from and against any and all liabilities, losses, damages, costs and expenses (including legal fees and expenses) associated with any claim or action brought against Reseller for actual or alleged infringement of any U.S. patent, copyright, trademark, or service mark based upon the license or use of the Software in accordance with this Agreement, provided that Reseller promptly notifies Gravic in writing of the claim and allows Gravic to control, and fully cooperates with Gravic in, the defense and all related settlement negotiations. Gravic shall have no liability for any settlement or compromise made without its consent. Upon notice of an alleged infringement, or if in the Gravic's opinion such a claim is likely, Gravic shall have the right, at its option, to obtain the right for Reseller to continue to exercise the rights granted under this Agreement, substitute other computer software with similar operating capabilities, modify the Software so that it is no longer infringing, or terminate this Agreement.
- b) **By Reseller.** Reseller shall indemnify and hold Gravic harmless from and against any and all liabilities, losses, damages, costs and expenses (including legal fees and expenses) associated with any claim or action brought against Gravic that may arise from Reseller's operation of its business, improper or unauthorized replication, packaging, marketing, resale, installation, or support of the Software, including claims based on representations, warranties, or misrepresentations made by Reseller, inadequate installation, support or assistance by Reseller, Reseller's failure to comply with the terms and conditions of this Agreement, or any other improper or unauthorized act or failure to act on the part of Reseller.

14) **LIMITATION OF LIABILITY.**

GRAVIC'S LIABILITY TO RESELLER AND ITS END USERS SHALL BE LIMITED TO DIRECT DAMAGES AND SHALL NOT EXCEED THE AMOUNT OF THE PAYMENTS PAID BY RESELLER OR SUCH END USER TO GRAVIC HEREUNDER FOR THE PRODUCT RELATED TO THE CLAIM. IN NO EVENT WILL GRAVIC BE LIABLE FOR INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, OR CONSEQUENTIAL

DAMAGES (INCLUDING LOST PROFITS) SUFFERED BY RESELLER OR ITS END USERS, EVEN IF GRAVIC HAS PREVIOUSLY BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

15) **TERM AND TERMINATION.**

- a) **Term.** This Agreement will continue from the date hereof until terminated by either party with thirty days prior written notice (the "Term").
- b) **Automatic Termination.** This Agreement will automatically terminate without notice if Reseller fails to resell Product during any twelve (12) month period of time.
- c) **Termination for Breach.** Either party may terminate this Agreement prior to the expiration of the Term in the event of a material breach of the terms or conditions of this Agreement by the other party which breach is not cured within ten (10) days of written notice from the party not in breach, or in the event the other party becomes insolvent, bankrupt or liquidates or suspends its business. In addition to these rights of termination, Gravic will have the right in the event of an uncured breach by Reseller, to avail itself of all remedies or causes of action, in law or equity, for damages as a result of such breach.
- d) **Effect of Termination.** Upon termination of this Agreement for any reason, Reseller will immediately cease resale of the Products, and will return to Gravic, at Reseller's expense, all copies of the Products and Confidential Information of Gravic. Reseller shall remit Payment and other fees due to Gravic within thirty (30) days of such termination.
- e) **Effect on End Users.** Termination by either party will not affect the rights of any End User under the terms of the End User Agreement. Gravic is expressly authorized to notify all End Users of such termination, and Gravic or its agents and representatives may deal directly with such End Users.

16) **GENERAL PROVISIONS.**

- a) **Assignment.** This Agreement may not be assigned by Reseller or by operation of law to any other person, persons, firms, or corporation without the express written approval of Gravic. Gravic may assign this Agreement or any of its rights or obligations, upon notice to Reseller to (i) a related company or (ii) an unrelated company pursuant to a sale, merger or other consolidation of Gravic or any of its operating divisions.
- b) **Notices.** All notices and demands hereunder shall be in writing and shall be served by personal service, mail, or facsimile at the most recent address provided in writing by the receiving party to the sending party. All notices or demands by mail shall be by certified or registered mail, return receipt requested, or by nationally-recognized private express courier, and shall be deemed complete upon receipt.
- c) **Governing Law.** This Agreement shall be governed by and construed in accordance with the substantive laws of the Commonwealth of Pennsylvania, USA and the parties consent to the exclusive jurisdiction of the federal and state courts located in the Commonwealth of Pennsylvania, USA.
- d) **Relationship of the Parties.** Each party is acting as an independent contractor and not as an agent, partner, or joint venturer with the other party for any purpose. Except as expressly provided in this Agreement, neither party shall have any right, power, or authority to act or to create any obligation, express or implied, on behalf of the other.
- e) **Force Majeure.** Neither party shall be responsible for delays or failure of performance resulting from acts beyond the reasonable control of such party. Such acts shall include, but not be limited to, acts of God, strikes, walkouts, riots, acts of war, epidemics, failure of suppliers to perform, governmental regulations, power failure, earthquakes, or other disasters.

- f) **Survival of Certain Provisions.** The proprietary rights, indemnification and confidentiality obligations set forth in the Agreement shall survive without time limitation the termination of the Agreement by either party for any reason. If any provision of this Agreement is held unenforceable or unlawful, the remaining provisions shall continue to be valid and enforceable.
- g) **Headings.** The titles and headings of the various sections and paragraphs in this Agreement are intended solely for convenience of reference and are not intended for any other purpose whatsoever, or to explain, modify or place any construction upon or on any of the provisions of this Agreement.
- h) **Amendments.** No provisions in either party's purchase orders or in any other business forms employed by either party will supersede or supplement the terms and conditions of this Agreement. Gravic may supplement, modify, or amend this Agreement from time to time in its sole discretion, and such change shall be binding upon Reseller upon written notification from Gravic.
- i) **Entire Agreement.** The parties agree that this Agreement and the terms and conditions of Gravic's acceptance of Reseller's Application constitute the complete and entire agreement of the parties and supersedes all previous communications, oral or written, and all other communications between them relating to the subject matter hereof. No representations or statements of any kind made by either party, which are not expressly stated herein, shall be binding on such party.

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2022