

# ActiveXperts Reseller Agreement

PLEASE READ THIS RESELLER AGREEMENT CAREFULLY BEFORE SELLING ACTIVEXPERTS SOFTWARE LICENSES. BY SELLING AN ACTIVEXPERTS SOFTWARE LICENSE, YOU ARE CONSENTING TO BE BOUND BY THIS AGREEMENT.

YOUR GENERAL TERMS OF BUSINESS DO NOT APPLY.

## 1. GENERAL

In this Reseller Agreement:

- (i) "ActiveXperts" means ActiveXperts Software B.V., Lansinkesweg 4, 7553AE Hengelo (OV), The Netherlands.
- (ii) "Reseller" means the entity that has been authorized by ActiveXperts to re-distribute ActiveXperts licenses and receive a fee for that.
- (iii) "End User" means the individual(s), organization or business entity buying a license from the Reseller for normal personal use or business end use and not for resale or distribution.
- (iv) "Software" means computer programs (and their storage medium) supplied by ActiveXperts in which ActiveXperts has property rights and any user manuals, example code, operating instructions, brochures and all other documentation relating to the said computer programs (the expression "Software" to include all or any part or any combination of Software).
- (v) "Confidential Information" means the confidential and/or proprietary information of Licensor (whether such information is or is not marked or identified as confidential or proprietary), including software (in object and source code form), inventions (whether or not patentable), trade secrets, ideas, know-how, techniques, processes, formulas, algorithms, schematics, research, development, software design and architecture, testing procedures, design and functional specifications, problem reports and performance information, marketing and financial plans and data. "Confidential Information" does not include information that Reseller can show through documentary evidence: (a) is or becomes publicly known through no fault, act or omission of Reseller; (b) is known by or in the possession of Reseller prior to its receipt from Licensor; or (c) is lawfully obtained from a third party who rightfully possesses the information (without confidentiality or proprietary restriction) and who did not receive it, directly or indirectly, from Licensor.
- (vi) "Products" means Software products developed by ActiveXperts Software B.V., Media and Hardware products bundled with the Software.

## 2. GRANT

- (a) ActiveXperts hereby grants to Reseller non-exclusive, non-transferable right and license to distribute, market and sell ActiveXperts Products to End User customers. The Reseller is also hereby granted the non-exclusive right to provide services, seminars and training using the Products, to End Users. Reseller will place its orders for the Products directly with ActiveXperts.
- (b) This grant does not include any right to reproduce the Products, nor any right to lend, rent, sublicense, lease, broadcast or disseminate the Products or portions thereof, nor any right to otherwise utilize the Products or information relating to them, except as specifically described herein. Sole ownership and other intellectual property rights in the Products shall remain in ActiveXperts.
- (c) Reseller shall receive a fee for each product sold. The fee on Software is a fixed percentage of the End User price.

(d) Reseller's right to resell the products in his country shall not be exclusive unless otherwise agreed in writing. ActiveXperts reserves the right, from time to time and in its sole discretion, inside or outside the Reseller's country to increase or decrease the number of authorized resellers of the Product and to distribute Product using its own personnel or independent sales representatives or via any other distribution channel.

(e) Not for Resale Software. If the Software is labeled "Not for Resale" or "NFR," then, notwithstanding other sections of this License, you may not resell, or otherwise transfer for value, the Software, nor distribute any Redistributables.

### 3. DUTIES OF RESELLER

(a) Reseller shall use its best efforts to market and sell the ActiveXperts Products. Retail prices shall be determined by the Reseller. The current recommended retail prices for the Products are the minimum prices for which the Products should be sold.

(b) Reseller will advertise and/or promote the Products in a commercially reasonable manner and will transmit product information and promotional materials to possible customers.

(c) Reseller will provide ActiveXperts with the names, addresses and phone numbers of its clients for the Products as well as feedback from its clients regarding the Products.

(d) Reseller shall be responsible for paying taxes of any nature which become due with the regard to the Products it resells.

(e) Reseller shall be responsible for paying for all licenses issued to the Reseller by ActiveXperts. Failure of Reseller's clients to pay in no way relieves the Reseller's obligations to make full payment.

### 4. LIMITATION ON REVERSE ENGINEERING, DECOMPILATION, AND DISASSEMBLY

End User nor Reseller may reverse engineer, decompile, or disassemble the Software, except and only to the extent that it is expressly permitted by applicable law notwithstanding this limitation.

### 5. EXPIRATION AND TERMINATION

(a) The term of this Agreement shall commence as of the day and year set forth below and shall continue in force for one (1) year. This Agreement shall be automatically renewed annually thereafter unless either party delivers to the other written notice of the termination not less than ninety (90) days prior to the expiration of the initial, or any, renewal period.

(b) ActiveXperts may terminate this Agreement immediately if Reseller enters into liquidation, whether compulsory or voluntary or has a receiver appointed for all or part of its assets or takes or suffers any similar action in consequence of debt or becomes unable to pay its debts as they fall due.

(c) ActiveXperts may terminate this Agreement upon thirty (30) days' written notice if Reseller shall fail to make any payment required hereunder when due unless such payment is made within such period.

(d) Termination or expiration of this Agreement shall not relieve Reseller of its then accrued payment obligations under this Agreement and shall not relieve either party of its obligations relating to confidentiality.

(e) Reseller shall not have any right to any indemnity or payment of compensation or damages in the event of termination of this Agreement.

## 6. LIMITED WARRANTY

ActiveXperts warrants that for a period of ninety (90) days from the date of shipment from ActiveXperts:

- (i) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use;
- (ii) the Software substantially conforms to its published specifications. Except for the foregoing, the Software is provided AS IS. This limited warranty extends only to Reseller or any of its End User's as the original licensee. Reseller or any of its End User's exclusive remedy and the entire liability of ActiveXperts and its suppliers under this limited warranty will be, at ActiveXperts or its service center's option, repair, replacement, or refund of the Software if reported (or, upon request, returned) to the party supplying the Software to End User. In no event does ActiveXperts warrant that the Software is error free or that End User will be able to operate the Software without problems or interruptions. The End User and Reseller will safeguard ActiveXperts against any claim relating to the use of the Software by the Reseller or End User. This warranty does not apply if the Software: (a) has been altered, except by ActiveXperts; (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by ActiveXperts; (c) has been subjected to abnormal physical or electrical stress misuse, negligence, or accident; (d) is used in high-risk activities, including the operation of nuclear facilities, aircraft navigation, air traffic control, weapons systems, life support or medical applications for use in any circumstance in which the failure of the Software could lead directly to death, personal injury or damage to properties or the environment.

## 7. LIMITATION OF LIABILITY AND REMEDIES

NOTWITHSTANDING ANY DAMAGES THAT YOU MIGHT INCUR FOR ANY REASON WHATSOEVER (INCLUDING, WITHOUT LIMITATION ALL INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR MULTIPLE DAMAGES SUCH AS BUT NOT LIMITED TO, LOST BUSINESS OR PROFITS, LOSS OF GOODWILL, WORK STOPPAGE AND DATA LOSS), THE ENTIRE LIABILITY OF ACTIVEXPERTS AND ANY OF ITS SUPPLIERS UNDER ANY PROVISION OF THE LICENSE AGREEMENT AND YOUR EXCLUSIVE REMEDY FOR ALL OF THE FOREGOING (EXCEPT FOR ANY REMEDY OF REPAIR OR REPLACEMENT ELECTED BY ACTIVEXPERTS WITH RESPECT TO ANY BREACH OF THE LIMITED WARRANTY) SHALL BE LIMITED TO THE GREATER OF THE AMOUNT ACTUALLY PAID BY YOU FOR THE SOFTWARE OR U.S.\$5.00. ACTIVEXPERTS IS RELIEVED OF ANY OBLIGATION TO PAY DAMAGES IF THE CUSTOMER HAS NOT UPGRADED THE SOFTWARE WHEN POSSIBLE. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS (INCLUDING SECTIONS 4, 5 AND 6 ABOVE) SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.

## 8. ENTIRE AGREEMENT

This Reseller Agreement (including any addendum or amendment to this Reseller Agreement which is included with the Software) is the entire agreement between the Reseller and ActiveXperts relating to the Software and the support services (if any) and they supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to the Software or any other subject matter covered by this Reseller Agreement. To the extent the terms of any ActiveXperts policies or programs for support services conflict with the terms of this Reseller Agreement, the terms of this Reseller Agreement shall control.

THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE NETHERLANDS AND THE DUTCH COURTS SHALL HAVE SOLE JURISDICTION IN ANY DISPUTE RELATING TO THESE CONDITIONS. ALL DISPUTES HEREUNDER SHALL BE RESOLVED EXCLUSIVELY IN THE APPROPRIATE COURT IN THE CITY OF ALMELO, THE NETHERLANDS. If any part of these conditions shall be or become invalid or unenforceable in any way and to any extent by any existing or future rule of law, order, statute or regulation applicable thereto, then the other conditions shall remain in full force and effect as all other provisions.

The conditions of this Reseller Agreement remain applicable after the termination of this Reseller Agreement if this results from the nature of the condition.

THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (THE "CONVENTION" OR "CISG") IS EXCLUDED AND DOES NOT APPLY.

## 9. Copyright

The Software is protected by copyright and other intellectual property laws and treaties. ActiveXperts or its suppliers own the title, copyright, and other intellectual property rights in the Software. The granting of a license does not constitute a transfer of any intellectual property right. The Software is licensed, not sold.

## 10. Confidentially

Reseller acknowledges that by reason of its relationship with ActiveXperts hereunder, it may have access to certain information and materials relating to ActiveXperts' business, suppliers, customers, personnel, technology, and marketing strategies that is confidential and of substantial value to ActiveXperts (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 ActiveXperts or destroy all copies of Confidential Information under its custody or control upon request by ActiveXperts 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, ActiveXperts shall be entitled to injunctive relief in addition to other remedies, which injunctive relief shall not be contested by Reseller.