

## NETGEAR, Inc. PARTNER REGISTRATION AGREEMENT

**READ THIS PARTNER REGISTRATION AGREEMENT (“AGREEMENT”) BEFORE REGISTERING AS A PARTNER WITH NETGEAR, Inc. (“NETGEAR”).** BY REGISTERING WITH NETGEAR, YOU (AS PARTNER OR IF YOU ARE NOT THE PARTNER, AS A REPRESENTATIVE/AGENT AUTHORIZED TO BIND THE PARTNER) CONSENT TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT OR CANNOT AGREE TO THE TERMS CONTAINED HEREIN, THEN DO NOT ACCEPT THESE TERMS OR REGISTER AS A PARTNER WITH NETGEAR.

The parties to this Agreement are NETGEAR and Partner. The “Effective Date” of this Agreement shall be the date of Partner’s acceptance of this Agreement and the completion of the Partner registration process.

**1.0 Definitions.** Capitalized terms in this Agreement shall have the following meanings:

Distributor(s) means an entity authorized by NETGEAR to distribute and license Products and Services to resellers in the Territory.

Documentation means operating manuals, user instructions, technical literature and other written materials ordinarily provided by NETGEAR with Product or Services.

End User means a customer that purchases Product and Services from Partner to operate its own business and not for further distribution or sale.

Hardware means the physical components of NETGEAR equipment delivered to Partner as part of the Products by NETGEAR or the Distributor that Partner has ordered from.

Partner means the Company that is accepting this Agreement and registers with NETGEAR to purchase Products and/or Services from NETGEAR or an authorized Distributor for resale to an End User.

Added Value is the non-NETGEAR component or portion of the total solution which Partner provides to End Users. Examples of Added Value are pre- and post-sales network design, configuration, trouble-shooting, and support and the sale of complementary products and services that comprise a significant portion of the total revenues received by Partner from an End User of NETGEAR Products and Services. Partner acknowledges that telesales, catalog sales, and sales over the Internet do not include Added Value if inbound communications from the prospective End User purchaser were exclusively prompted by something other than a face-to-face interaction between Partner’s sales representative and such prospective End User. Notwithstanding the above, Partner further expressly acknowledges that providing financing options or sales over auction websites on the Internet are not considered Added Value.

Point of Sale Information means information provided by Partner at the time of order placement to Distributor containing information requested by NETGEAR and such Distributor, including but not limited to: (a) Partner’s name and the identification number assigned to Partner by NETGEAR upon acceptance of Partner’s enrollment process; (b) the End User’s name and address; (c) the ship-to name and address; (d) the serial numbers and Product code of Product shipped to each End User; and (e) quantity of the Product sold to each End User.

Product(s) means the Hardware, Software and Documentation, or any part thereof, authorized by NETGEAR for purchase and resale by Partner based on Partner’s certification and specialization levels under the Partner program and this Agreement, excluding any product that requires special authorization, as determined from time to time by NETGEAR.

Release means a new production version of the Software.

Services mean maintenance and support for Products.

Software means the machine-readable object code, whether incorporated in the Hardware or delivered separately, and includes Releases.

Territory means the geographic location assigned by NETGEAR in an email notification to Partner after completion of the Partner enrollment process.

Marks means any name, logo, trademarks, and other marks of NETGEAR, including the "NETGEAR PowerShift Partner Logo", which are made available by NETGEAR for use by Partners in connection with the NETGEAR PowerShift Partner Program.

Resale means, for portions of Products and Services which are not Software, the transfer of title to the Products and Services, and for portions of Products and Services that are Software, the distribution of the Products and Services and/or the licenses thereto. The verb "Resell" means to engage in Resale.

## **2.0 Appointment of Partner; Scope of Appointment; Federal & Public Sector Sales.**

**2.1 Appointment of Partner.** Subject to the terms of this Agreement, NETGEAR hereby authorizes Partner to purchase and license Product and Services resale to End Users located within the Territory. Partner may not resell Product or Services to another reseller, agent, broker or other intermediary in the chain of distribution. Unless otherwise authorized by NETGEAR in writing, Partner will not purchase Products or Services from any source other than NETGEAR or their authorized Distributors. Partner may distribute the Products only with all warranties, disclaimers and license agreements intact as shipped from NETGEAR. Partner will take all steps reasonably requested by NETGEAR or Distributor to inform End Users of any applicable restrictions and limitations regarding the use of the Products. Such appointment will be subject to any distribution channel and certification and specialization levels specified by NETGEAR in email notifications to Partner after completion of the partner enrollment process.

**2.2 Scope of Appointment.** In the exercise of Partner's rights under this Agreement, Partner will always market and resell the Products in combination with substantial Added Value in the form of Partner products or services and/or complementary Products and Services. Without limiting the foregoing, Partner will not make any commitments, warranties or representations with respect to NETGEAR, the Products or Services except as authorized in advance in writing by NETGEAR or derived from and consistent in all respects with materials provided to Partner by Distributor or NETGEAR.

**2.3 Public Sector Sales.** Partner may not sell Product to the United States Federal, state, or local government or education sector either directly or indirectly through a contractor or subcontractor, unless Partner has been approved by NETGEAR as a Public Sector Reseller under terms of NETGEAR' then-current Public Sector Reseller Program and in accordance with any additional terms set by NETGEAR. NETGEAR reserves the right to modify the terms of its Public Sector Reseller Program and related terms at any time.

## **3.0 License Grants; Restrictions.**

**3.1 Trademark License Grant.** During the term and subject to the terms of this Agreement, NETGEAR hereby grants to Partner, without charge, a nonexclusive, nontransferable right to use and display the trademarks, service marks, and logos claimed by NETGEAR ("Marks") solely in connection with and solely to the extent reasonably necessary for the resale of Products/Services to End Users. Partner will market and distribute Product only under the Marks. Partner will not remove or alter the copyright notices, trademarks or packaging found on Product and in Documentation. Partner will use the Marks in accordance with NETGEAR' trademark guidelines or style guide and if requested by NETGEAR, furnish to NETGEAR all promotional, advertising or other materials that refer to or display any Marks for NETGEAR' review and approval. Use of the Marks does not create in Partner's favor any right, title or interest in Marks or in continuing rights to market or distribute Product.

Partner agrees to cooperate with NETGEAR if NETGEAR seeks to proceed with any infringement action regarding such rights.

**3.2 License Grant.** To the extent the Products contain or consist of software or firmware, Partner's appointment only grants to Partner a license to distribute to End Users such software or firmware and does not transfer any right, title or interest in any such software or firmware to Partner or to any End User. Partner shall not sell, market or distribute any Products that contain or consist of software or firmware as unbundled units. The license of any such software or firmware will be and is made pursuant to the terms and conditions of the license agreement included with each Product. NETGEAR is selling the Products only to the extent that the Products contain or consist of non-software items. Use of terms such as "sell," "purchase," and "price" will be interpreted in accordance with this Section 3.2.

**3.3 Restrictions.** Partner may not modify, translate, reverse engineer, decompile, disassemble, otherwise attempt to derive source code or programming structure and function from or create derivative works based on the Software; make unauthorized copies of the Software; distribute or market the Software and Documentation except to an End User; remove any proprietary notices, labels or marks on or in any copy of the Software or Documentation; register or contest NETGEAR's ownership of any Marks; alter or remove any warranties, disclaimers and license agreements shipped with the Products; or use the Software other than as part of the Product in which the Software has been incorporated or for which it has been delivered.

**4.0 Reports.** Partner shall comply with any reasonable reporting requirements and report submission procedures established by NETGEAR or the applicable Distributor.

## **5.0 Pricing.**

**5.1 Partner Prices.** The prices Partner pays for Products and Services will be set by the Authorized Channel from which Partner purchases such Products and Services. Subject to NETGEAR ability to impose maximum resale price limitations, Partner is free to determine its resale prices unilaterally.

**5.2 Special Pricing.** NETGEAR may provide Partner's designated distribution channel with special pricing, rebates, discounts, offers, promotions, or other special incentive programs for such distribution channel to provide to Partner in whole or in part ("NETGEAR Programs"). Such NETGEAR Programs will be limited to Resale made to one or more End Users. Any such NETGEAR Programs must be in writing, which includes email notification from NETGEAR, and must specify a fixed time period during which such NETGEAR Program will be provided. If no time limit is specified in writing, the time period shall be ninety (90) days from the effective date of such NETGEAR Program. NETGEAR may condition any such NETGEAR Program on Partner's agreement not to resell the Products and Services subject to the NETGEAR Program at or above particular prices determined by NETGEAR. No such condition will prohibit Partner from selling at any price below the prices established by NETGEAR.

## **5.0 Warranty.**

**5.1 Hardware and Software Media Warranty.** NETGEAR' warranties to End Users are provided with the Product. In the event of any inconsistency between this Section 5 and the warranties and disclaimers shipped with the Products, the latter shall prevail.

**5.2 Limitations.** No warranty will apply if the Hardware or Software (i) has been altered in any way, including but not limited to the removal or alteration of the original identification marks, except when such alterations are made by NETGEAR; (ii) has not been installed, operated, repaired, or maintained in accordance with the Documentation; (iii) has been serviced by parties not trained by or on behalf of NETGEAR; or (iv) has been subjected to unreasonable physical, thermal or electrical stress, misuse, negligence, or accident. In addition, Hardware or Software is not designed or intended for use in (A) the design, construction, operation or maintenance of any nuclear facility, (B) navigating or operating aircraft; or (C) operating life-support or life-critical medical equipment, and NETGEAR disclaims any express or implied warranty of fitness for such uses.

NETGEAR is not responsible for backing up programs and data to protect against loss or corruption. NETGEAR warranty obligations do not include installation support.

**6.3 Disclaimer.** ALL MATERIALS PROVIDED ON NETGEAR WEBSITES ARE PROVIDED “AS IS.” EXCEPT AS SET FORTH IN SECTION -6.1 ABOVE, NETGEAR EXPRESSLY EXCLUDES AND DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE REGARDING PRODUCTS AND SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ABSENCE OF HIDDEN DEFECTS, OF NONINFRINGEMENT OR ANY WARRANTY THAT MAY ARISE BY REASON OF USAGE OR TRADE OR COURSE OF DEALING. NETGEAR DOES NOT WARRANT THAT THE ACCURACY OR COMPLETENESS OF ANY INFORMATION, LINKS OR OTHER MATERIALS INCLUDED IN ITS WEB SITES OR THAT IT’S SOFTWARE IS ERROR FREE OR WILL OPERATE WITHOUT PROBLEMS OR INTERRUPTION.

## **7.0 Partner Program Requirements**

**7.1 Qualifications.** Partner will at all times comply with the policies and criteria established by NETGEAR for the Partner Program, including but not limited to maintaining a sales organization, facilities and other resources sufficient to provide sales and technical service, support and assistance, and to otherwise carry out Partner's obligations under this Agreement. A majority of Partner's business shall be conducted through on-site, face-to-face, Added Value sales. NETGEAR reserves the right to audit or request additional information from Partner to ensure that Partner is complying with this Agreement and any promotional programs and/or continues to qualify for the Partner program. NETGEAR may disqualify Partner from the Partner program or change Partner's designated territory, distribution channel, or certification and specialization levels, if NETGEAR determines Partner does not meet the then-current qualifications for any such designation..

**7.2 Demonstration and Evaluation Equipment.** If Partner purchases demonstration and internal evaluation units of the Products, Partner shall use these Products solely for demonstration, internal evaluation and testing purposes. Partner shall not distribute, sell or sublicense to any third party any of these demonstration or evaluation Products without the prior written consent of NETGEAR. The software licensed under Demonstration and Evaluation Equipment Program is subject to the terms and conditions of the shrinkwrap/clickthrough agreement included with the software.

**7.3 Other Benefits.** Partner will have access to NETGEAR restricted-access website providing Partner with tools and resources to aid in Partner sales efforts.

**8.0 Export Sales and Export Controls.** Partner acknowledges that the Products, Services, and technology or direct products thereof ("Products, Services and Technology") it may purchase and Resell under this Agreement are subject to export controls under the laws and regulations of the Territory and the United States (U.S.). Partner shall comply with such laws and regulations governing use, export, re-export, and transfer of NETGEAR Products, Services and Technology and will obtain all required U.S. and local authorizations, permits, or licenses. NETGEAR and Partner each agree to provide the other such information and assistance as may reasonably be required by the other in connection with securing such authorizations and licenses, and to take timely action to obtain all required support documentation. Partner agrees to maintain full, true, and accurate records of exports, re-exports, and transfers of the Products, Services and Technology, purchased and deployed or distributed, according to U.S. and local laws for at least five (5) years following the date of any such export, re-export, or transfer. Partner's obligation under this clause shall survive the expiration or termination of this Agreement.

**9.0 General Terms and Conditions.** These terms and conditions are applicable to this Agreement and all attachments.

**9.1 Confidential Information.** Confidential Information means all information disclosed to the other in (i) tangible form and which is designated “Confidential” or “Proprietary”; (ii) disclosed orally, and summarized in

writing and delivered to the other party within 30 days of disclosure; or (iii) which by the nature of the information and the circumstances of the disclosure, the receiving party should reasonably infer to be confidential or proprietary. Confidential Information does not include information which: (a) is or becomes generally known through no fault of the receiving party, (b) is known to the receiving party at the time of disclosure, as evidenced by its records, (c) is hereafter furnished to the receiving party by a third party as a matter of right and without restriction on disclosure; (d) is independently developed by the receiving party without any breach of this Agreement; or (e) is disclosed in response to a valid order of a court or other governmental body or is otherwise required by law to be disclosed, provided the responding party gives sufficient notice to the other party to enable it to take protective measures. Notwithstanding the foregoing, the parties agree that NETGEAR price lists, Documentation and product roadmaps are all deemed to be Confidential Information under this Agreement.

Each party will use a reasonable degree of care to maintain all Confidential Information of the other in confidence and neither will disclose to any third party nor use Confidential Information of the other for any unauthorized purpose. Each party may only disclose Confidential Information to those of recipients, employees and representatives as may have a need to know to accomplish the purposes of this Agreement. No rights or licenses to intellectual property in Confidential Information is granted by either party under this Agreement, whether express, implied or otherwise. The obligations imposed on the receiving party shall survive until such time as the Confidential Information of the other party becomes publicly available and/or made generally known through no fault of the receiving party. All Confidential Information will be returned immediately to the disclosing party after the receiving party's need for it has expired or upon request of the disclosing party or termination of this Agreement. Each party agrees that the violation of the confidentiality provisions will cause irreparable injury to the other entitling the other party to injunctive relief. The disclosure of Confidential Information will be governed by this Agreement, which supersedes any previous confidentiality or nondisclosure agreement executed by or on behalf of the parties. Any such Confidential Information will be treated as if it were disclosed under this Agreement (and this Agreement were in effect) as of the date of such exchange.

**9.3 Compliance with Laws and Partner's Indemnity Obligations.** Partner will comply fully with all statutes, laws, regulations, ordinances, executive orders and the like (collectively, "Laws") of any country, state, municipality, or the like applicable to the Products and/or Services, NETGEAR, or Partner's business activities, including but not limited to Canadian and US export Laws and any environmental Laws. Partner will not make, authorize, offer or promise to make or give any money or anything of value to any official of a public international organization, government official, political party, political official, candidate for political office ("Foreign Official"), or to any other person, while knowing or having reason to know that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to any Foreign Official. Partner will not export, either directly or indirectly, any Product or technical information relating to such Product without first obtaining any and all necessary approvals from all applicable Canadian and U.S. departments or agencies. Partner will indemnify, defend and hold harmless NETGEAR and its directors, officers, agents and employees from and against (i) any and all claims, demands, actions, litigation, investigations and proceedings arising out of or related to any non-compliance by Partner of this section ("Noncompliance Claims"), and (ii) any and all liens, liabilities, costs and expenses (including reasonable attorneys' fees) arising out of or related to any Noncompliance Claims.

#### **9.4 Term; Termination.**

**9.4.1 Term.** This Agreement is effective for one year from the Effective Date, unless terminated earlier in accordance with this Agreement. After the initial term of this Agreement, the Agreement shall automatically renew for additional one-year periods unless notice of non-renewal is provided by one party to the other within thirty (30) days prior to such renewal...

**9.4.2 Termination without Cause.** Either party may terminate this Agreement without cause upon at least 30 days' prior written notice to the other party; provided, however, that NETGEAR may terminate this Agreement immediately upon notice to Partner within the first 30 days of the Effective Date.

**9.4.3 Termination with Cause.** Either party may terminate this Agreement for material breach which is not cured within 30 days after written notice by the other party or immediately upon notice of termination in the event of a material breach that by its nature cannot be remedied within 30 days, including but not limited to non-compliance to key elements of the Partner program applicable to Partner. NETGEAR may terminate this

Agreement immediately if Partner terminates its business operations; becomes insolvent; suffers the appointment of a receiver or makes an assignment for the benefit of creditor; enters into voluntary or involuntary bankruptcy; there is a material change in ownership of Partner or a sale or transfer of substantially all of Partner's assets; or if NETGEAR discovers any misrepresentation or omission made by Partner in connection with Partner's participation in the Partner program.

**9.4.4 Obligations upon Termination.** Upon termination of this Agreement:

(a) All authorizations and licenses granted by NETGEAR will terminate and all rights shall revert to NETGEAR. Licenses granted in this Agreement will extend to all Product and Services for which purchase orders have been accepted on or before the termination date, except where termination is for nonpayment.

(b) Partner may sell only Product in its inventory and any additional Product for which purchase orders have been accepted on or before termination date.

(c) If Partner was providing Services to End Users, NETGEAR will provide such services to End Users in accordance with NETGEAR' standard support policies or reassign the provision of COMPANY'S Services to another authorized reseller in the region, provided that Partner pays NETGEAR or the other authorized reseller all Services fees paid by End User to Partner for the remainder of the Services term.

(d) The parties will immediately return to the other all of the other's materials, documentation, data and Confidential Information, including all related materials that were derived there from.

(e) Neither party will be liable to the other party for any claims or damages of any kind arising out of termination of this Agreement in accordance with Sections 9.4.1, 9.4.2 or 9.4.3, including any incidental or consequential damages, including without limitation any compensation, reimbursement for the loss of prospective profits, anticipated sales or goodwill. However, termination will not extinguish any liability of either party arising before termination of this Agreement, including without limitation for payments due. PARTNER WAIVES ANY RIGHT IT MAY HAVE TO RECEIVE ANY COMPENSATION OR REPARATIONS UPON TERMINATION OF THIS AGREEMENT BY OPERATION OF LAW OR OTHERWISE, OTHER THAN AS EXPRESSLY PROVIDED IN THIS AGREEMENT.

(f) The parties shall cooperate with each other to complete all outstanding obligations to End Users and to each other.

**9.5 Survival.** No termination of this Agreement will release either party from any payment or other obligations owed to the other, or affect any rights or liabilities of either party with respect to any breach of this Agreement. Section 9 shall survive termination of this Agreement until the obligations of this section are completed. Neither party will be liable to the other for any damages, losses or expenses incurred by the other arising from or incident to any termination in accordance with the terms of this Agreement, regardless of whether such party is aware of any such damage, loss or expenses. Partner hereby waives any compensation to which it may be entitled by operation of law or otherwise for such termination.

**9.6 Severability.** If any part of this Agreement is found to be unenforceable, the remainder shall continue in full force and effect and the unenforceable provision shall be reformed so as to give maximum legal effect to the intentions of the parties as expressed herein.

**9.7 Waiver.** The failure of any party to enforce any of the terms and conditions of the Agreement shall not constitute a waiver of that party's right thereafter to enforce each and every term and condition of this Agreement.

**9.8 Governing Law and Venue.** This Agreement shall be governed by and interpreted in accordance with the law of the State of California USA except for its choice of law rules and without application of the United Nations Convention on the International Sale of Goods. For any disputes arising out of this Agreement, Partner consents to the personal and exclusive jurisdiction of, and venue in, the state and federal courts within Santa Clara County, California...

**9.9 Assignment.** Partner may not assign or delegate its rights and obligations under this Agreement without the prior written consent of NETGEAR.

**9.10 Notices.** All notices or other communications required or permitted hereunder shall be in writing and shall be deemed to have been given if sent via electronic mail: chnlnmktg@netgear.com. Notices shall be deemed received one business day after being sent by electronic mail.

**9.11 Force Majeure.** Except for Partner's payment obligations, neither party will be responsible for any failure to perform due to causes beyond its reasonable control.

**9.12 Independent Contractors.** The relationship established by this Agreement is that of independent contractors and nothing contained in this Agreement shall be construed to: (i) give either party the power to direct and control the business activities of the other, (ii) constitute the parties in the legal relationship of partnership, joint venture, franchise or otherwise as participants in a joint or common undertaking, or (iii) allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever.

**9.13 LIMITATIONS OF LIABILITY. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, NETGEAR' AND ITS SUPPLIERS' CUMULATIVE AND AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT AND/OR SALE OF THE PRODUCTS OR SERVICES SHALL BE LIMITED TO THE AMOUNT PAID BY PARTNER TO ITS DISTRIBUTOR FOR NETGEAR PRODUCTS (AS DEFINED ABOVE) OR NETGEAR SERVICES IN THE THREE MONTHS IMMEDIATELY PRECEDING THE EVENT OR SITUATION GIVING RISE TO SUCH LIABILITY. IN NO EVENT SHALL NETGEAR HAVE ANY LIABILITY FOR ANY LOST PROFITS, LOSS OF DATA OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT, UNDER ANY THEORY OF LIABILITY, INCLUDING, WITHOUT LIMITATION, THOSE RESULTING FROM THE USE OF PRODUCT PURCHASED HEREUNDER, OR THE FAILURE OF PRODUCTS OR SERVICES TO PERFORM, OR FOR ANY OTHER REASON. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.**

**9.14 Updates on NETGEAR Web Site.** This Agreement, along with other materials on the NETGEAR web sites, may be updated from time to time. NETGEAR reserves the right to change elements of the Partner program at its discretion. Partner is solely responsible for checking NETGEAR web sites for updates and for continued compliance with all applicable Partner program requirements. Partner's continuing participation in the Partner program constitutes acceptance of NETGEAR then-current terms and conditions.

**9.15 Click-to-accept English Version of Agreement Governs.** The click-to-accept, English language version of this Agreement (which appears during the Partner registration process and must be accepted by Partner in order to complete the registration process) supersedes all prior agreements, commitments or representations between the parties, whether oral or written, as well as any downloaded or translated version of the Agreement, whether or not such downloaded or translated version is signed by either party.