

Last Modified Date: February 12, 2013

**PLEASE READ THIS CLICK-THROUGH AGREEMENT BEFORE REGISTERING AS A TELYPARTNER RESELLER WITH TELY LABS, INC.**

If you accept this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind that company or other legal entity to this Agreement.

Tely Labs may revise and update this Agreement from time to time at its sole discretion by posting such modifications to this Agreement on the Tely Labs telyPartner Portal with the effective date posted at the top of the Agreement as "Last modified date". All changes are effective immediately when Tely Labs posts them, and apply to all telyPartner activities thereafter.

**1. Definitions**

- 1.1. **"Confidential Information"** means information disclosed by one party to the other party in the course of this Agreement that is marked or identified as, or should be reasonably understood to be, confidential or proprietary to the disclosing party. Confidential information does not include information that is publicly available through no wrongful act of either party, rightfully received from a third party without obligation of confidentiality, rightfully known or received prior to disclosure, or independently developed without breach of any confidentiality agreement.
- 1.2. **"Distributor"** means the authorized distributor(s) from whom Reseller purchases Products.
- 1.3. **"End User"** means any person or entity that purchases Products for its own personal or internal use.
- 1.4. **"Marks"** means Tely Labs' trademarks, service marks, trade names, product names and logos, including those made available for Resellers' use on the telyPartner Portal.
- 1.5. **"Product"** means any hardware, software and service which Reseller is licensed to resell.
- 1.6. **"Reseller"** means the legal entity and its representative that accepts this Agreement and registers with Tely Labs to purchase Products from a Tely Labs authorized Distributor for resale to End Users.
- 1.7. **"telyPartner Reseller Program Guide"** means the program guide describing the features, benefits and requirements of the telyPartner Reseller Program as posted on the telyPartner Portal, as modified from time to time.
- 1.8. **"telyPartner Reseller Program"** means the program established by Tely Labs for the sales and promotion of Tely Labs products by Resellers, as detailed in the telyPartner Reseller Program Guide.

- 1.9. **“telyPartner Portal”** means the web site maintained by Tely Labs through which authorized Resellers may access information and tools in connection with the telyPartner Reseller Program.
- 1.10. **“Territory”** means the country in which the reseller is headquartered, unless otherwise specified in writing by Tely Labs.

## **2. Appointment and Grant of License**

- 2.1. During the term of this Agreement, and subject to compliance with the terms of this Agreement and the telyPartner Reseller Guide, Tely Labs appoints Reseller with a non-exclusive, non-transferrable right to buy from authorized Distributors and promote and sell the Products to End Users, for their internal use only in the Territory.
- 2.2. Software and documentation constituting or included with Products are licensed, not sold. Subject to the terms of this Agreement, Tely Labs grants Reseller a non-exclusive, non-transferable license to distribute the software and documentation, only as originally packaged or included with Products, to End Users that are bound by the applicable End User license agreement. Reseller acknowledges and agrees that it shall not modify, copy or reverse engineer the software.
- 2.3. Subject to the terms of this Agreement, Tely Labs grants Reseller the non-exclusive, non-transferrable right to use the Marks for the sole purpose of promoting the Products for sale to End Users in the Territory. Specific Reseller usage must be approved in advance by Tely Labs and will conform to Tely Labs trademark and logo usage guidelines.
- 2.4. Subject to the terms of this Agreement, Tely Labs grants Reseller the non-exclusive, non-transferrable right to access and use the telyPartner Portal and the information included on the site for the limited purpose of participating in the telyPartner Reseller Program. Reseller shall limit access to only those employees reasonably requiring such access, and shall promptly notify Tely Labs of any change in their employment status. Unless otherwise described or labeled, the information included in the telyPartner Portal shall be considered Confidential Information of Tely Labs.

## **3. Program Terms**

- 3.1. Additional terms and conditions applicable to Reseller’s participation in the telyPartner Reseller Program, including Reseller’s designated partner level requirements, are defined in the telyPartner Reseller Program Guide. Tely Labs reserves the right to modify the telyPartner Reseller Program Guide upon 30 days notice. If Reseller fails to comply with any applicable requirements, Tely Labs may change the Reseller’s partner level or may immediately terminate this Agreement. The telyPartner Reseller Program Guide is posted on the telyPartner Portal.
- 3.2. Distributor shall determine the pricing for Products offered for sale to Reseller. Reseller shall determine the pricing for products offered for resale to End Users. If Reseller is based in the United States of America, Reseller acknowledges that Tely Labs has unilaterally adopted a Minimum

Advertised Price Policy that is only applicable in the United States, a copy of which is attached as Exhibit 1.

- 3.3. Reseller may be eligible for certain discounts and incentives as defined in the telyPartner Reseller Program Guide. The discounts and incentives are based on the Tely Labs published list price for the Territory. Tely Labs reserves the right to revise its published prices or change or discontinue the Products on its published price list upon 30 days notice. The published price list for Products is posted on the telyPartner Portal.

#### **4. Term and Termination**

Except as otherwise noted, the initial term of this Agreement begins on the effective date and continues until terminated. Either party may terminate this Agreement for convenience at any time upon 30 days prior written notice to the other party. If either party fails to perform any material provision of this Agreement, the other party may immediately terminate this Agreement if such failure is not cured within 30 days after notice thereof. All licenses granted herein, including Reseller's rights to distribute and support Products, shall immediately terminate upon termination of the Agreement. Reseller agrees that it will not be damaged by termination of this Agreement in the manner permitted. Sections 4 through 9 shall survive termination of this Agreement.

#### **5. Confidential Information**

For five years from the date of disclosure, the recipient of Confidential Information agrees to protect the Confidential Information as it would protect its own information of like importance, but with not less than a reasonable degree of care; use the Confidential Information only for the purposes stated in this Agreement; disclose the Confidential Information only to employees with a need to know and to consultants with a need to know who are bound by a written agreement sufficient to enable the recipient to comply with this Agreement; and not disclose the Confidential Information to third parties. If recipient attempts to use, disseminate, or dispose of Confidential Information in a manner contrary to the terms of this Agreement, due to the absence of an adequate remedy at law, the disclosing party may be irreparably injured and shall have the right to injunctive relief enjoining such acts or attempts without the necessity of obtaining a bond or other security therefore. Should recipient be required to disclose Confidential Information by governmental or judicial order, recipient will give the disclosing party prompt notice and will comply with any protective order that is imposed on such disclosure. Neither party warrants or guarantees the accuracy of any Confidential Information. Upon termination of this agreement and request of the disclosing party, the receiving party shall return to the disclosing party or destroy all Confidential Information of the other party in its possession or control.

#### **6. Warranty Disclaimer**

Tely Labs makes no express or implied warranty of any kind with respect to the products through this agreement and specifically disclaims the implied warranties of merchantability, fitness for a particular purpose and non-infringement of third party rights. Reseller is not authorized to make any warranties or representations on behalf of Tely Labs. The only warranties provided by Tely Labs with respect to Products are provided to end-user customers pursuant to the applicable end-user license agreements.

#### **7. Limitation of Liability**

In no event shall Tely Labs or its suppliers be liable for damages for loss of profits, goodwill, or other special, incidental, or consequential damages even if damages could have been foreseen or if Tely Labs has been apprised of the possibility of such damages. Notwithstanding anything else in this agreement, Tely Labs will not be liable under this agreement for amounts that in the aggregate are in excess of the amounts paid to distributor for products during the six-month period prior to the date the cause of damages arose.

#### **8. Indemnification**

Reseller agrees to defend, indemnify and hold Tely Labs harmless from and against any and all damages, liabilities, costs and expenses (including but not limited to attorneys' fees) arising out of, related to or incurred by Reseller in connection with or as a result of any claim or proceeding made or brought against Reseller with respect to any allegation that (i) any product(s) other than the Products infringes upon any intellectual property right, (ii) any product(s) other than the Products fails to perform, (iii) the combination of the Products with any other products infringes upon any intellectual property right, (iv) Reseller's sales and marketing efforts and activities, or (v) there is any material breach or default by Reseller in the performance of its obligations under agreements with Tely Labs or its distributors.

#### **9. Regulatory/Export Compliance**

Reseller, at its own expense, will comply with all applicable laws, orders, and regulations of any governmental authority with jurisdiction over its activities in connection with this Agreement. Reseller will furnish to Tely Labs any information required to enable Tely Labs to comply with applicable laws and regulations related to the Products. Reseller shall not export or re-export the Products purchased under this Agreement in violation of any applicable laws or regulations including without limitation those of the United Nations, the United States of America, the European Union, Switzerland and/or the country in which Products were delivered to Reseller. Reseller agrees to be solely responsible for compliance with any laws, regulations, treaties and other requirements on export control. Additional information about end-users and/or completion of additional export control documents may be required and it is Reseller's responsibility

to ensure it is aware of and complies with such information and documentation. Reseller acknowledges that it is aware of the provisions of the United States Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq. ("FCPA") and that it will comply therewith. Notwithstanding any other provision of this Agreement, and in addition to any other remedies available to Tely Labs, violation of the FCPA shall be grounds for immediate termination of this Agreement without further liability on the part of Tely Labs.

#### **10. Miscellaneous Provisions**

All notices shall be given in writing via certified mail or reputable overnight courier or, in the case of notices to Reseller, notices may also be given via electronic mail at the e-mail address set forth in the partner registration application. Reseller may not assign or otherwise transfer this Agreement or any rights or obligations provided hereunder (including without limitation through a merger, consolidation, or reorganization) without the prior written consent of Tely Labs, such consent not to be unreasonably withheld. Tely Labs may assign this Agreement without the Reseller's consent to any affiliate or an entity that merges with or into Tely Labs or acquires all or substantially all of Tely Labs's business, assets or capital stock. The waiver or failure of either party to exercise any right provided herein will not be deemed a waiver of any further right under this Agreement. If any provision is invalid, illegal, or unenforceable under any applicable statute or rule of law, it is to that extent to be deemed omitted, and the remainder of the Agreement will be valid and enforceable to the maximum extent possible. The parties are independent contractors and this Agreement is not intended to be nor will it be construed as a joint venture, association, partnership, or other form of a business organization or agency relationship. Neither party may represent that it has the authority to assume or create an obligation on behalf of the other. Reseller shall not take any action or make any statement that may reasonably be expected to have any adverse effect on Tely Labs's business, reputation, trademarks, trade names, or goodwill. Reseller shall not issue any press releases or public announcements regarding this Agreement or the relationship of the parties without Tely Labs's prior written approval. This Agreement shall be governed by and construed under the laws of the state of California, without reference to conflicts of laws provisions thereof. Venue and jurisdiction will lie solely in Santa Clara County, California. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior oral and written communications or agreements relating to the subject matter herein, including any existing reseller agreement between Reseller and Tely Labs. Except as otherwise provided herein, this Agreement cannot be changed or modified except by written agreement signed by authorized representatives of both parties.

**EXHIBIT 1**  
**Minimum Advertised Price Policy**

The purpose of the Tely Labs Minimum Advertised Price Policy (the “Policy”) is to maintain and build brand equity and encourage the promotion and investment by Tely Labs’s Resellers in Tely Labs products and services (“Products”). Tely Labs has unilaterally adopted this Policy, and it is applicable to all Tely Labs Resellers. The effective date of this Policy is November 21, 2012, and the Policy applies to each of the telyHD Products listed on Tely Labs’ web site at [www.tely.com](http://www.tely.com).

Each Reseller is free to establish its own resale prices and advertised prices for Tely Labs Products. However, Tely Labs may, without assuming any liability, refuse to accept new orders for Products from a Reseller following verification by Tely Labs to its satisfaction that the Reseller has advertised a Product to End User customers at a net price less than the list price of the Tely Labs Product as set forth on Tely Labs’ published price list. For the purposes of this Policy, “advertising” shall include any price listing for telyHD Products accessible to End User customers directly via the Internet or through print, television, or radio advertisements, but it shall not include a price quotation sent via e-mail to a single End User customer.

This Policy and the suggested minimum advertised prices are subject to change at any time by Tely Labs. Resellers will receive at least thirty (30) days notice of any changes to this Policy, any changes to the suggested advertised price for any affected Product, or any additions or deletions to the Products covered by the Policy.

Tely Labs does not ask for, require, nor will Tely Labs accept, any agreement from Resellers regarding such Reseller’s establishment of resale or advertised prices. Furthermore, Tely Labs will not discuss with any Reseller such Reseller’s establishment of resale or advertised prices. In no event shall any provision in any agreement between Tely Labs and Reseller be interpreted as constituting an agreement by Reseller to establish resale prices for Tely Labs Products or to establish advertised prices for Tely Labs Products.