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**VECTRA NETWORKS**

**RESELLER AGREEMENT**

This Vectra Networks Reseller Agreement (“Agreement”) is made as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 201\_ (“Effective Date”) by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_ corporation with offices located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Reseller”) and Vectra Networks Inc., a Delaware corporationwith headquarters located at 560 S Winchester Blvd #200, San Jose, CA 95128, USA (“Vendor”).

**RECITALS**

WHEREAS, Reseller resells hardware, software, support services and other products; and

WHEREAS, Reseller and Vendor desire to authorize Reseller to resell and distribute Vendor’s Products (as defined below) subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**AGREEMENT**

**1. APPOINTMENT**.

1.1 Appointment. Vendor hereby appoints Reseller, and Reseller hereby accepts the appointment, as a non-exclusive reseller of the Products (as defined below) to end-user customers in the Territory (as defined below) during the Term solely in accordance with the terms and conditions of this Agreement. For the purpose of this Agreement, “Territory” shall mean the geographic territory set forth on **Exhibit A**, and “Product” or “Products” shall mean, collectively, the Vendor hardware, software, subscriptions, documentation, and support and maintenance services set forth on **Exhibit A**.

1.2 Training. Sales and technical training, and certification will be provided to Reseller.

1.3 Non-Exclusive. The relationship between Vendor and Reseller is non-exclusive, and nothing in this Agreement shall prohibit either party from purchasing, selling or licensing any products from or to any third party or otherwise providing services to or doing business with any third party.

1.4 End User Agreement. Notwithstanding the rights granted in Section 1.1, software and subscriptions provided to Reseller or end users under this Agreement are subject to license and not sale. All applicable end user agreements, licenses, warranties and documentation (collectively, “End User Agreements”) shall be directly between Vendor and the end user, however Reseller will remain responsible for payment to Vectra for the Products distributed by Reseller under this Agreement. Nothing in this Agreement shall limit any End User Agreements separately provided by Vendor to end users.

**2. PRICES, PAYMENT, AND ORDERING**

2.1 Prices. The prices and fees to be paid by Reseller shall be as set forth in the then-current price list made available to Reseller from time to time during the Term. Vendor reserves the right to change the list price of any Product at any time by providing thirty (30) days prior written notice to Reseller. Vendor may quote a different price and/or discount applicable to a specific transaction by providing Reseller with a written quote that sets forth such price and/or discount. Reseller shall have the right, in its sole discretion, to determine the prices for Products sold or licensed by Reseller to its end users.

2.2 Payment. Reseller shall pay for all orders Reseller issues to Vendor (“Purchase Orders”) in U.S. currency by check or wire transfer net thirty (30) days after receipt of Vendor’s accurate, complete invoice. Vendor will send Reseller the invoice upon the earlier of: (a) the shipment of the applicable hardware and/or software, or (b) the start of the applicable subscription and/or support and maintenance period. Reseller shall be solely responsible for all collection efforts related to payments from Reseller’s end users to Reseller and shall pay Vendor for accepted Purchase Orders of Products regardless of whether Reseller’s end users pay Reseller. Vendor reserves the right to refuse, cancel, withhold or delay shipment of an order in the event Reseller fails to make timely payment in accordance with this Agreement.

2.3 Order Procedure. All Purchase Orders must be mailed to the address stated above or sent in accordance with Vendor’s written instructions. Reseller agrees that all Purchase Orders shall be governed by this Agreement, regardless of any additional or conflicting term in Reseller’s Purchase Order. A Purchase Order is only binding on Vendor when Vendor accepts such Purchase Order in writing or via e-mail or otherwise fulfills the order set forth on such Purchase Order. Notwithstanding anything in this Agreement to the contrary, Reseller acknowledges and agrees that all shipment and delivery dates are estimates only.

2.4 Delivery. Products delivered pursuant to this Agreement will be suitably packaged for shipment in Vendor’s standard shipping cartons, marked for shipment to the destination specified in Reseller’s Purchase Order, and delivered to the carrier agent FCA (Incoterms 2010) Vendor’s shipping location where Products are delivered to the common carrier, at which time risk of loss shall pass to Reseller. All freight, insurance, and other shipping expenses shall be paid by Reseller. Products are deemed accepted upon delivery, but remain subject to warranty as set forth in Section 4.1.

2.5 Product Change & Obsolescence. Vendor reserves the right in its sole discretion to change its offering of Products, and to update, change or discontinue any Product, at any time; provided, however, that Vendor shall abide by any Vendor warranty terms and End User Agreements with respect to any Products previously sold or licensed.

2.6 Taxes. Prices do not include and are net of any foreign or domestic governmental taxes or charges of any kind that may be applicable to the sale, licensing, marketing or distribution of the Products, including without limitation excise, sales, use, or value-added taxes; customs or other import duties; or other taxes, tariffs or duties. Reseller shall be responsible for and shall pay all such taxes and charges levied against Vendor in a timely manner. When Vendor has the legal obligation to pay or collect such taxes, excluding taxes on the income of Vendor, the appropriate amount shall be invoiced to Reseller and paid by Reseller within thirty (30) days of the date of invoice, unless Reseller provides Vendor with a valid tax exemption certificate authorized by the appropriate taxing authority. All payments by Reseller shall be made free and clear of, and without reduction for, any withholding taxes. Any such taxes which are otherwise imposed on payments to Vendor shall be the sole responsibility of Reseller. Reseller shall provide Vendor with official receipts issued by the appropriate taxing authority or such other evidence as is reasonably requested by Vendor to establish that such taxes have been paid.

2.7 Late Payments. Any amounts not paid when due will be subject to finance charges equal to one and one-half percent (1.5%) of the unpaid balance per month or the highest rate permitted by applicable law, whichever is less, determined and compounded daily from the date due until the date paid. Reseller will reimburse any costs or expenses (including, but not limited to, reasonable attorneys’ fees) incurred by Vendor to collect any amount that is not paid when due.

**3. RESELLER’S RESPONSIBILITIES**

3.1 Marketing. Reseller shall use commercially reasonable efforts to promote the sale and distribution of the Products in the Territory. Vendor will, at its expense, provide Reseller with reasonable quantities of Vendor’s standard reseller advertising, marketing and sales materials in English; provided that Reseller shall pay the freight costs and other taxes and duties on any such materials provided. Reseller may modify, translate or localize such advertising, marketing and sales materials only with Vendor’s prior written approval, and Reseller hereby assigns to Vendor all ownership rights in and to such modified, translated or localized versions. Except as otherwise expressly set forth herein, Reseller shall be solely responsible for all costs and expenses related to Reseller’s promotion of the Products in the Territory, and for otherwise performing its obligations hereunder.

3.2 Technical Support and Maintenance. Reseller will not provide technical support and maintenance services for the Products to its end users. All support and maintenance services for the Products shall be provided directly by Vendor to the end users subject to the applicable End User Agreements, and Reseller shall have no responsibility related thereto; however, Reseller will remain responsible for the payment of applicable fees to Vendor.

3.3 Reseller Conduct. Reseller agrees: (a) not to falsely disparage the Products or engage in any deceptive, misleading, illegal or unethical practices that are detrimental to Vendor or the Products; (b) to make no false representations about Vendor or the Products; and (c) not to make any representations, warranties or guarantees concerning the Products that are inconsistent with or in addition to those made by Vendor in this Agreement. Reseller shall have no obligation to maintain an inventory of Products.

3.4 Compliance with Laws; Export Regulations. Reseller shall comply with all applicable laws and regulations in performing its obligations under this Agreement. Without limiting the generality of the foregoing, Reseller may only export or re-export the Products in accordance with applicable laws and regulations.

3.5 Source. In order to assure the authenticity and quality of the Products, Reseller shall obtain any and all Products solely from Vendor or Vendor’s designee.

**4. LIMITED WARRANTIES AND LIMITATION ON DAMAGES**.

4.1 Vendor Limited Warranty. Vendor’s standard warranties as specified in the End User Agreements apply to the sale and license of the Products. Vendor shall not be responsible for any modification or expansion of Vendor’s warranty obligations by Reseller.

4.2 Limitation of Liability. Except in connection with each party’s obligations as provided in Sections 5 and 8, each party shall not be liable to the other party for any indirect, incidental, consequential or special damages (including lost profits) sustained or incurred in connection with this Agreement or the resale of the Products, regardless of the form of action and whether such damages are foreseeable or known in advance to be possible. Except in connection with each party’s obligations as provided in Sections 5 and 8, each party’s liability to the other party shall not exceed the amounts paid to Vendor by Reseller under this Agreement during the twelve (12) month period immediately preceding the date of the claim. This limitation applies to all causes of action, including without limitation any action for breach of contract, breach of warranty, negligence, strict liability, misrepresentation and other torts.

4.3 No Guarantee. Each party offers no commitments or guarantees of any minimum volume of purchases or of revenues, product sales or otherwise. Any sales or revenue projections or commitments made by either party at any time are non-binding estimates only.

4.4 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 4.1, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, VENDOR DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, STATUTORY OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.

**5. INDEMNIFICATION**.

5.1 Vendor Indemnification. Subject to the last sentence in this Section 5.1, Vendor will, at its expense, defend, or at its option settle, any claim brought against Reseller to the extent the claim alleges that the Products used as authorized in this Agreement infringes any patent, copyright, trademark, trade secret or other intellectual property right of a third party, and will indemnify Reseller for any damages, costs and attorneys’ fees awarded thereon or agreed to by Vendor in settlement thereof; provided that Reseller provides Vendor with: (i) prompt written notice of such claim; (ii) sole control over the defense and settlement of such claim; and (iii) all information and assistance reasonably requested by Vendor in connection with the defense and settlement of such claim. In the event that it is finally determined by a court of competent jurisdiction, or if Vendor believes, that the Products infringe or violate a patent, copyright, trademark, trade secret or other intellectual property right, Vendor may, at its option and expense: (i) replace the infringing Products, or part thereof, with suitable non-infringing products or part thereof; or (ii) modify the Products so that they become non-infringing; or (iii) procure for Reseller the right under such patent, copyright, trademark, trade secret or other intellectual property right to sell or use, as appropriate, the Products or part thereof. Notwithstanding the foregoing, in no event will Vendor have any obligations under this Section or any liability for any claim or action if the claim arises out of or is based upon: (i) the combination or use of the Products with software, services, or products not developed or offered by Vendor, (ii) modification of the Products not made or authorized in writing by Vendor, if the alleged infringement would not have occurred but for such modification, (iii) the continued allegedly infringing activity after being notified thereof or after being provided modifications that would have avoided the alleged infringement, or (iv) the use or sale of the Products in a manner not in accordance with this Agreement or instructions provided by Vendor.

5.2 Reseller Indemnification. Reseller will, at its expense, defend, or at its option settle, any claim brought against Vendor to the extent the claim arises out of or relates to: (a) any gross negligence or willful misconduct on the part of Reseller, its affiliates or representatives; (b) any claims, warranties or representations made by Reseller or Reseller’s employees or agents which are not approved by Vendor in writing; or (c) except for infringement claims covered under Section 5.1, Reseller’s use or distribution of the Products, and Reseller will indemnify Vendor for any damages, costs and attorneys’ fees awarded thereon or agreed to by Reseller in settlement thereof; provided that Vendor provides Reseller with: (i) prompt written notice of such claim; (ii) sole control over the defense and settlement of such claim; and (iii) all information and assistance reasonably requested by Reseller in connection with the defense and settlement of such claim.

5.3 Disclaimer. THE FOREGOING PROVISIONS OF THIS SECTION 5 STATE THE ENTIRE LIABILITY AND OBLIGATION OF VENDOR, AND THE EXCLUSIVE REMEDY OF RESELLER, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS BY THE PRODUCTS OR ANY PART THEREOF.

**6. TERM & TERMINATION**.

6.1 Term. The initial term of this Agreement shall be one (1) year commencing on the Effective Date. The term of this Agreement shall automatically renew for successive periods of one (1) year after expiration of the initial term, unless either party gives written notice of its intent not to renew at least thirty (30) days before the expiration of the then-current term, in which event this Agreement shall expire at the end of the then-current term. The initial term and applicable renewal periods shall collectively be referred to as the “Term”.

6.2 Termination For Cause. Either party may immediately terminate this Agreement upon written notice to the other party if the other party: (a) breaches this Agreement and fails to cure the breach within ten (10) days after receiving written notice of such breach; (b) makes, or attempts to make, an assignment for the benefit of its creditors; (c) commences proceedings for relief under any bankruptcy, insolvency or debtor’s relief law; (d) is the subject of a bankruptcy, insolvency or debtor’s relief proceedings, and fails to have such proceeding dismissed within sixty (60) days; or (e) liquidates or dissolves or attempts to liquidate or dissolve.

6.3 Termination For Convenience. Either party may terminate this Agreement for any reason or no reason by notifying the other party in writing thirty (30) days prior to the effective date of termination.

6.4 Effect of Termination. The expiration or termination of this Agreement shall not discharge or relieve either party from any obligation which accrued prior to termination including, without limitation, Vendor’s obligation to fulfill accepted Purchase Orders and Reseller’s obligation to pay for any accepted Purchase Orders, and shall not relieve any breaching party from liability for damages resulting from such breach. Any termination rights contained in this section are in addition to, and not in lieu of, any remedies available at law or in equity or otherwise. Notwithstanding in this Agreement anything to the contrary, neither party shall incur any liability for any damage, loss or expense of any kind suffered or incurred by the other party arising from or incident to any expiration or termination of this Agreement that complies with the terms of this Agreement.

**7. INTELLECTUAL PROPERTY**.

7.1 Trademarks. Subject to Vendor’s trademark policies and guidelines located at www.vectranetworks.com/company/trademarks, which may be amended from time to time in Vendor’s sole discretion, Vendor hereby grants to Reseller a non-exclusive, non-transferable license (without the right to sublicense) to use Vendor’s trademarks in the Territory during the Term solely in connection with the permitted promotion, advertising, and resale of the Products in accordance with the terms and conditions of this Agreement. Other than the license described herein, nothing contained in this Agreement shall give Reseller any right, title or interest in the Vendor’s trademarks and Reseller agrees not to assert or claim any interest in any of Vendor’s trademarks. Reseller will promptly discontinue the display or use of any trademark to change the manner in which a trademark is displayed or used with regard to the Products when requested by Vendor.

7.2 Notice of Unauthorized Use. Reseller shall promptly notify Vendor of any known unauthorized use of any of the Products. Reseller shall reasonably cooperate with Vendor in the prosecution of any claim against unauthorized users, including providing personnel and documents as reasonably required, all at no cost to Reseller. Vendor shall be responsible for all costs in connection with such action including, without limitation, reimbursing Reseller at its then current hourly rates, and shall reimburse Reseller for all expenses incurred by Reseller.

7.3 Product Tampering, Reverse Engineering and Unauthorized Uses. Unless authorized by Vendor in writing or as expressly authorized under applicable law, Reseller shall not: (a) copy or authorize any third party to copy the Products; (b) reverse engineer the Products; or (c) alter the Products or their packaging in any unauthorized way, including without limitation alteration or destruction of any copyright, trademarks, trade names or service marks or other notices affixed to the Products or their packaging.

7.4 Reservation of Rights. Except as expressly provided herein, no right, title or interest is granted by Vendor to Reseller. Nothing in this Agreement shall be deemed an assignment of, or otherwise restrict Vendor’s use of, Vendor’s trademarks and other intellectual property rights, all of which trademarks and other intellectual property rights shall continue to be owned by Vendor.

**8. CONFIDENTIAL INFORMATION**. A party (“Receiving Party”) may, during the Term, acquire information or knowledge of the other party (“Disclosing Party”) that such Disclosing Party designates in writing is confidential or that a reasonable person would understand to be confidential (“Confidential Information”). The Receiving Party will, during the term of this Agreement and for three (3) years thereafter, (i) treat the Disclosing Party’s Confidential Information as confidential and take reasonable measures to protect the Disclosing Party’s Confidential Information, and at least those measures it takes to protect its own confidential information of a similar nature; (ii) not disclose any such Confidential Information to any third party; and (iii) not use such Confidential Information other than to exercise its rights and perform its obligations under this Agreement. A party may disclose Confidential Information to its employees, advisors and consultants who have a need to know the Confidential Information solely to the extent necessary to exercise its rights and perform its obligations under this Agreement; provided that such employee, advisor or consultant is bound to restrictions at least as protective of the Disclosing Party’s Confidential Information as those set forth in this Agreement. “Confidential Information” shall not include information that the Receiving Party can document was independently developed by the Receiving Party, is or becomes publicly available without breach of this Agreement, is known prior to disclosure by the Receiving Party, or is acquired by the Receiving Party from a third party free of disclosure obligations. In addition, the Receiving Party may disclose the Disclosing Party’s Confidential Information if required by applicable law, rule or court order, provided that the Receiving Party gives the Disclosing Party prompt notice thereof and cooperates, at the Disclosing Party’s expense, in any attempt to obtain a protective order or other confidential treatment of such disclosure. A violation or breach of this Section will cause severe and irreparable injury to the non-breaching party with no adequate remedy at law. Accordingly, in the event of any actual or threatened violation or breach, the breaching party agrees that the non-breaching party shall be entitled to seek immediate injunctive relief to prevent or stop such violation or breach, as well as other equitable and legal remedies against the breaching party. The obligations set forth in this Section will survive the termination of this Agreement.

**9. NON-SOLICITATION**. Each party agrees that it and its employees will not, either during or for a period of twelve (12) months after termination or expiration of this Agreement, solicit to hire as an employee or contractor any of the other party’s employees. Publication of open positions in media of general circulation (e.g., Internet website job postings) will not constitute solicitation of the other party’s employees, nor will this section prevent a party from hiring any person who contacts such party on his or her own initiative without any direct solicitation from the hiring party.

**10. MISCELLANEOUS**.

10.1 Independent Contractors. Vendor and Reseller are independent contractors. Nothing in this Agreement shall be construed to make either party a joint venturer, partner, employee or agent of the other. Neither party may bind the other to any agreement or contract.

10.2 Severability. If any term, provision, covenant or condition of this Agreement is held invalid or unenforceable for any reason, the remaining provisions of this Agreement shall continue in full force and effect as if the Agreement had been executed with the invalid portions eliminated. The parties agree to substitute for the invalid provision a valid provision, which most closely approximates the intent and economic effect of the invalid provision.

10.3 Assignment. Reseller may not assign or transfer this Agreement or its rights or duties hereunder, in whole or in part, by operation of law or otherwise, without Vendor’s prior written consent. Any such assignment or transfer without Vendor’s prior written consent will be null and void and of no force or effect. Vendor may assign this Agreement in connection with the sale or other transfer of all or a material part of its business or assets, whether by merger, operation of law or otherwise. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's permitted successors and assigns.

10.4 Waivers. Any delay, omission or failure to exercise any right or remedy under this Agreement shall not constitute a continuing waiver of such right or remedy.

10.5 Attorneys’ Fees. If either party brings legal action to enforce this Agreement, the prevailing party in such action shall be entitled to receive all reasonable costs and expenses, including but not limited to reasonable attorneys’, accountants’ and other experts’ fees and expenses, incurred by the prevailing party in investigating and prosecuting (or defending) such action, and in any appeal of any judgment thereon.

10.6 Notices. All notices shall be in writing and delivered to the other party to the addresses listed below, in one of the following manners: (a) by first class mail, postage prepaid; (b) by registered or certified mail, return receipt requested; (c) by nationally-recognized overnight courier, mail, or delivery service; or (d) by personal delivery. Mailed notices shall be considered given on the date received, or if not received by reason of fault of addressee, when delivered. Notice delivered personally shall be considered given at the time of delivery.

10.7 Execution in Counterparts.  This Agreement may be executed by hand or electronically and in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.  Delivery of an executed counterpart of this Agreement by electronic transmission, or any other reliable means shall be effective for all purposes as delivery of a manually executed original counterpart.  Either party may maintain a copy of this Agreement in electronic form.

10.8 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without regard to conflicts of law principles. The parties exclude in its entirety the application to the Agreement of the United Nations Convention on Contracts for the International Sale of Goods. The parties consent to the exclusive jurisdiction of the state and federal courts in Santa Clara County, California in connection with any disputes, litigation or lawsuits related to this Agreement.

10.9 Exhibit. **Exhibit A** is attached hereto and incorporated herein by reference.

10.10 Entire Agreement. This Agreement is the complete, entire, final and exclusive agreement between the parties related to the subject matter hereof and supersedes all prior agreements between the parties related to the subject matter hereof. This Agreement supersedes all pre-printed terms and conditions contained in any Purchase Order or other business form submitted hereafter by Reseller and any inconsistent non-pre-printed terms, all of which are specifically rejected and excluded. This Agreement may not be modified except in a writing executed by the parties.

10.11 Force Majeure. Except for the payment of money; neither party will be responsible for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control, including but not limited to war, terrorism, riot or acts of God.

10.12 Survival. Sections 4, 5, 7.4, 8, 9, 10, and any other sections intended to survive termination or expiration of this Agreement will survive the termination or expiration of this Agreement.

10.13 Publicity. Vendor may not use Reseller’s name or trademarks in or on any press releases, marketing materials, websites, or other public announcements without Reseller’s prior written consent.

10.14 Foreign Corrupt Practices Act. In conformity with the United States Foreign Corrupt Practices Act and with Vendor’s established corporate policies regarding foreign business practices, Reseller and its employees and agents shall not directly or indirectly make any offer, payment, or promise to pay; authorize payment; offer a gift, promise to give, or authorize the giving of anything of value for the purpose of influencing any act or decision of any official of any government within the Territory or the United States Government (including a decision not to act) or inducing such a person to use his or her influence to affect any such governmental act or decision in order to assist Vendor in obtaining, retaining or directing any such business.

10.15 Conflicting Terms. The parties agree that the terms and conditions of this Agreement shall prevail, notwithstanding contrary or additional terms in any Purchase Order, sales acknowledgement, confirmation or any other document issued by either party effecting the purchase and/or sale of Products.

IN WITNESS WHEREOF**,** the parties hereto have executed this Agreement by their duly authorized representatives as of the dates indicated below.

**VECTRA NETWORKS, INC. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** (**RESELLER)**

By: By:

Name: Name: Click or tap here to enter text.

Title: Title: Click or tap here to enter text.

Date: Date: Click or tap to enter a date.

**EXHIBIT A**

**PRODUCTS AND TERRITORY**

**Products:** All products and services as listed on the then current Vectra price-list for the Territory.

**Territory:** This agreement is for the resell of Vectra solutions in the following geographies:

Canada

Caribbean

Mexico

United State (Excluding U.S. Federal Government and SLED)

U.S. Federal Government

U.S. State Government, Local Government, and Education (SLED)

*(includes state and local government entities, K-12 educational entities, and institutions of higher education)*