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## Software Reseller Agreement

designed by



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This Non-Exclusive, non-transferable Software Reseller Agreement (this "Agreement") is entered into as of day of month year, by and between SA Oregon, S.L., a software company having a primary place of business at C/ Fotografo Fco. Sanchez 2, 3 ºA, 03015 Alicante Spain("SAO") and Reseller's Company Name., having a primary place of business at Address ("Reseller").

## Background

A. SAO has developed and desires to advertise, promote, market and distribute one of the company's software products collectively known as iBroadcast pro, referred to from here on as "The Products".

B. Reseller desires to obtain the right to act as an independent Reseller of the Products, with the non-exclusive right to market, promote and resell the Products.

## SAO and Reseller agree as follows:

**1. APPOINTMENT AS A RESELLER.** On the terms and subject to the conditions set forth herein, SAO appoints Reseller as an independent, non-exclusive authorized Reseller of the Products in the geographic area identified as the European Union hereto ("Market"), and Reseller hereby accepts such appointment. Reseller may advertise, promote, give support and resell the Products solely to third party End Users within the Market. For purposes of this Agreement, the term "End User" means a person or entity that desires to acquire the Products for its own use, rather than for resale or distribution. Reseller may not authorize or appoint any dealers, sub-resellers, agents, representatives, subcontractors, or other third parties to advertise, promote, resell, to give technical or customer support or support of any type, or distribute the Products. All rights not specifically granted by SAO hereunder are reserved by SAO. Without limiting the generality of the foregoing, SAO reserves the right to advertise, promote, market and distribute the Products, and to appoint third parties to advertise, give support, promote, market and distribute the Products, worldwide, including in the Market. Further, SAO reserves the right, in its sole discretion, at any time and from time to time, to modify any or all of the Products, or to discontinue the publication, distribution, sale or licensing of any or all of the Products without liability of any kind.

**2. CONSIDERATION, ORDERS AND DELIVERY.** Reseller's initial price, support and service prices ("Price") for Products shall be as set forth in a subsequent product and pricing agreement. Reseller acknowledges that SAO has the right, at any time and from time to time, to modify any or all of the products Prices, licenses and services. SAO shall ship Products upon acceptance of Reseller's written order and Reseller's payment in full, except as otherwise mutually agreed in writing, for the Products. Reseller shall pay for the Products in European Euros in immediately available funds using bank transfer, or in such other manner as SAO may approve. Except as otherwise mutually agreed in writing, Reseller shall be responsible for all costs associated with its performance of this Agreement. All freight, insurance, duty

and taxes applicable to Reseller's purchase and sale of Products shall be paid by Reseller. Reseller will indemnify and hold SAO harmless from any obligation to pay any governmental entity any employer statutory taxes, withholding taxes, social security taxes or other taxes, levies or duties in connection with Reseller's performance under this Agreement, and from any and all damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs of litigation) arising out of or resulting therefrom.

### 3. MARKETING AND PROMOTION OF PRODUCTS

**3.1 Promotion.** Reseller shall use its best efforts to market and promote Products to End Users in the Market, including by: (a) attendance by Reseller at trade shows at which Reseller promotes the Products, (b) listing the Products in Reseller's product lists and Reseller's other marketing materials, (c) advertising the Products in trade journals, magazines, and other appropriate publications, and (d) at SAO's request, translating and distributing SAO's press releases and other publicity and sales materials in the Market.

**3.2 Marketing Practices.** Reseller will at all times perform hereunder in a professional manner and in accordance with this Agreement and any guidelines issued by SAO. Reseller will: (a) conduct business in a manner that reflects favorably at all times on the Products and the good name, goodwill and reputation of SAO; (b) avoid deceptive, misleading or unethical practices that are or might be detrimental to SAO, the Products or the public, including but not limited to disparagement of SAO or the Products; (c) make no false or misleading representation with respect to SAO or the Products; and (d) make no representations with respect to SAO or the Products that are inconsistent with SAO's end user license agreement for the Products, promotional materials and other literature distributed by SAO, including all liability limitations and disclaimers contained in such materials.

**3.3 Branding.** The software itself must reach the end customer as SAO software, and not be re-branded.

**3.4 Related Documents.** All material produced by the Reseller for the Product, whether marketing, promotional, advertising, manuals, signs, documents of any kind, CDs, announcements, brochures, flyers, etc. and the like pertaining to any iBroadcast pro product must always visibly display the unaltered SAO logotype on the front side of the material and include one of the phrases to the effect "powered by SAO" -or- "designed by SAO" -or- "SAO iBroadcast pro product" or similar phrase approved by SAO. The space occupied by logotype and accompanying phrase must not be less than 14% of the total advertisement, manual out-side cover, etc.. space, or less than 3x6cm which ever is bigger.

**3.5 Promotional Materials.** Reseller consents to the listing of its business name, address, phone number and web site addresses in such SAO advertising and promotional materials as SAO may determine in its sole discretion, including product literature and SAO's web sites. During the term

of this Agreement, SAO may provide to Reseller promotional materials with respect to Products. Reseller may not use the promotional materials for any purpose other than advertising and promoting the Products to End Users in the Market. Notwithstanding anything to the contrary herein, Reseller may not distribute any Reseller- created promotional materials with respect to SAO or the Products without SAO's prior written approval of such materials. SAO will reserve the right to ensure a high level of quality of service and of product to the final customer. Thus SAO receives a complete and timely updated database of all final customers and their contact details from Reseller. SAO reserves the right at any time to directly contact the final customers under the pretext of a survey of "quality of service", to ask the customers level of satisfaction of the Installation, technical service, conduct of technicians/employees, software quality.

**3.6 Privacy/Data Collection.** Reseller will at all times during the term of this Agreement maintain appropriate technical and organizational measures to protect any End User data that it collects, accesses or processes in connection with this Agreement against unauthorized or unlawful use, disclosure, processing or alteration. Reseller will act only on SAO's instructions in relation to the collection, use, disclosure and processing of any such End User data, but in all instances in accordance with all applicable laws, rules and regulations.

**4. RESALE OF PRODUCTS.** SAO shall provide copies of its end user license agreements to Reseller. Reseller shall promptly review such agreements and advise SAO as to what revisions, if any, should be made to the end user license agreements for resale in the Market to ensure that the agreements comply with requirements of local law in the Market, and that SAO has protection concerning proprietary rights, warranty disclaimers and limitations of liability under such local law. Reseller must inform all customers that only SAO charges a yearly software license fee directly to the end customer. Any customer who does not pay this fee will be considered to have a "pirated" illegal copy subject to legal action; and of course will not have right to software fixes, updates, etc. The relationship between the End User and SAO shall be as specified in the applicable SAO end user license agreement. Notwithstanding the foregoing, as between SAO and Reseller, Reseller shall be solely responsible for providing customer support to End Users in the Market. Reseller will notify SAO immediately in the event that it is unable to respond effectively to any End User request. What is more,, Reseller must pre-advise SAO in the event that Reseller lacks the capability to provide proper technical service in the Market.

**5. OWNERSHIP.** As between SAO and Reseller, all right, title and interest in and to the Products and associated SAO promotional materials and documentation, including without limitation all copyrights, patent rights, trademark and service mark rights, trade secret rights and other intellectual property rights are and will remain the property of SAO, and such items may only be used by Reseller as expressly permitted hereunder. Reseller shall not remove, alter or otherwise modify any copyright, trademark or other notices of proprietary interest contained in the Products, SAO promotional

materials and/or documentation.

## 6. CONFIDENTIAL INFORMATION

**6.1 "Confidential Information" Defined.** "Confidential Information" includes: (a) the Products; (b) any personally identifiable data or information regarding any End User; (c) any and all information disclosed by SAO to Reseller, in whatever format, that is either identified as or would reasonably be understood to be confidential and/or proprietary; (d) any notes, extracts, analyses or materials prepared by Reseller which are copies of or derivative works of Confidential Information or from which Confidential Information can be inferred or otherwise understood; and (e) the terms and conditions of this Agreement. "Confidential Information" does not include information received from SAO that Reseller can clearly establish by written evidence: (x) is or becomes known to Reseller from a third party without an obligation to maintain its confidentiality; (y) is or becomes generally known to the public through no act or omission of Reseller; or (z) is independently developed by Reseller without the use of Confidential Information.

**6.2 Reseller's Obligations.** Reseller will make no use of Confidential Information for any purpose except as expressly authorized by this Agreement. Except as expressly provided in this Agreement, Reseller will not disclose Confidential Information to any third party and will protect and treat all Confidential Information with the same degree of care as it uses to protect its own confidential information of like importance, but in no event with less than reasonable care. Except as expressly provided in this Agreement, Reseller will not use, make or have made any copies of Confidential Information, in whole or in part, without the prior written authorization of SAO. In the event that Reseller is required to disclose Confidential Information pursuant to law, Reseller will notify SAO of the required disclosure with sufficient time for SAO to seek relief, will cooperate with SAO in taking appropriate protective measures, and will make such disclosure in a fashion that maximizes protection of the Confidential Information from further disclosure.

**7. DISCLAIMER OF WARRANTIES.** Except for the express warranties, if any, made to the end user in the applicable SAO end user license agreement, SAO makes no other warranties relating to the products, express or implied. SAO disclaims and excludes any and all implied warranties, including but not limited to implied warranties of merchantability, fitness for a particular purpose or use and non-infringement. No person is authorized to make any other warranty or representation concerning the products or the media on which products are supplied. Reseller will make no warranty, express or implied, on behalf of SAO.

**7.1 SAO's "As Is Policy".** SAO will not guarantee any modifications of the software, nor guarantee updates to the software. The Product is used at the OWN risk, any data loss, hardware damage, personal injury etc. due to faulty software, misuse or anything remotely related to the Product is not the responsibility of SAO nor of Reseller.



**8. LIMITATION OF LIABILITY.** SAO'S aggregate liability to reseller under this agreement, whether for breach or in tort, is limited to the price paid by reseller for the copy of the product which gives rise to the claim. in no event will sao be liable for any indirect, punitive, special, incidental or consequential damages in connection with or arising out of this agreement (including loss of business, revenue, profits, use, data or other economic advantage), however caused and regardless of the theory of liability, even if sao has been previously advised of the possibility of such damages, and even if any exclusive remedy provided for herein fails of its essential purpose.

**9. INDEMNIFICATION BY RESELLER.** Reseller will indemnify, defend and hold harmless SAO from and against any and all claims, damages and expenses (including reasonable attorneys' fees and costs of litigation) by any third party resulting from any acts or omissions of Reseller relating to its activities in connection with this Agreement, Reseller's breach of this Agreement, or Reseller's misrepresentations relating to SAO, the Products or this Agreement, regardless of the form of action. Reseller will be solely responsible for any claims, warranties or representations made by Reseller or Reseller's representatives or agents which differ from the warranties provided by SAO in the applicable end user license agreement.

**10. INFRINGEMENT.** SAO agrees to defend or, at its option, settle any claim or action against Reseller to the extent arising from a third party claim that a permitted use of a Product by End Users infringes any patent or copyright, provided SAO has control of such defense or settlement negotiations and Reseller gives SAO prompt notice of any such claim and provides reasonable assistance in its defense. In the event of such a claim of infringement, SAO, at its option, may provide Reseller with substitute Products reasonably satisfactory to Reseller to replace those affected Products then in Reseller's inventory. SAO will not be liable under this Section if the infringement arises out of Reseller's activities after SAO has notified Reseller that SAO believes in good faith that Reseller's activities will result in such infringement. The foregoing states the entire liability of SAO with respect to infringement of intellectual property rights.

**11. SAO SUPPORT.** SAO shall offer Reseller technical training for the Products from time to time upon reasonable request from Reseller at SAO's then-current charges for such training. All training will be at SAO's offices unless SAO, in its sole discretion, agrees to offer training at another location.

**12. SAO TRADEMARKS.** "SAO Trademarks" means all names, marks, logos, designs, trade dress and other brand designations used by SAO in connection with its products and services. In performing its obligations hereunder, Reseller may refer to the Products by the associated SAO Trademarks, provided that such reference is not misleading and complies with any guidelines issued by SAO. Reseller is granted no right, title or license to, or interest in, any SAO Trademarks. Reseller acknowledges and agrees that any use of the SAO Trademarks by Reseller will inure to the sole benefit of SAO. If Reseller acquires any rights in any SAO Trademarks by operation of

law or otherwise, it will immediately, at no cost or expense to SAO, assign such rights to SAO along with all associated goodwill.

**13. RELATIONSHIP OF PARTIES.** This Agreement does not constitute either party the agent of the other, or create a partnership, joint venture or similar relationship between the parties, and neither party will have the power to obligate the other in any manner whatsoever. Reseller acknowledges and agrees that its relationship with SAO is that of an independent contractor, and Reseller will not act in a manner that expresses or implies a relationship other than that of an independent contractor. SAO and Reseller acknowledge and agree that: (a) Reseller is permitted to promote and sell products and services of companies other than SAO; (b) Reseller is not required to promote SAO products or services exclusively; and (c) Reseller's decision to devote all or some of its business efforts to the products or services of any particular company is solely in the discretion of Reseller.

#### **14. TERM AND TERMINATION**

**14.1 Term.** This Agreement shall be effective for a term of five years from the Effective Date. It shall be automatically extended for further one-year terms unless either party gives written notice to the other at least 60 days before the expiration of the initial or any renewal term of the party's intent not to renew.

**14.2 Termination.** Notwithstanding anything in this Agreement that may be interpreted to the contrary, SAO may terminate this Agreement without cause and without liability upon 30 days' prior written notice to Reseller. Either party may terminate this Agreement for any material breach of the Agreement that is not cured to the non-breaching party's satisfaction within 10 days of written notice that specifies the breach.

**14.3 Effect of Termination.** Upon termination of this Agreement, Reseller will cease all advertising, marketing and resale of the Products. Termination of this Agreement will not effect either party's rights or obligations with respect to Products distributed by Reseller prior to the effective date of the termination.

**14.4 No Liability for Termination.** Neither party will be liable for any damages arising out of the termination of this Agreement in accordance with this Section 14. Reseller acknowledges and agrees that SAO is not responsible for Reseller's dependence on revenues hereunder, and Reseller agrees to release, hold harmless and indemnify SAO from any and all claims and liabilities relating to Reseller's revenues, financial forecasts or economic value that may result from any termination by SAO of this Agreement as permitted hereunder.

**14.5 Survival.** Expiration or termination of this Agreement will not relieve either party from its obligations arising hereunder prior to such expiration or termination. Rights and obligations which by their nature should survive will remain in effect after termination or expiration of this Agreement.

**15. ASSIGNMENT.** Neither this Agreement nor any rights or obligations of Reseller hereunder shall be assignable or transferable by Reseller, in whole or in part, by operation of law or otherwise, without the prior written consent of SAO. Any attempted assignment, subcontract or other transfer of this Agreement or any of Reseller's rights or obligations hereunder will be void ab initio and will be considered a material breach of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.

**16. NOTICES.** Any notices or other communications required or permitted hereunder shall be in writing and personally delivered at the principal business addresses designated at the beginning of this Agreement, or mailed by registered or certified mail, return receipt requested, postage prepaid, at the address set forth above, or to such other address or addresses as may be hereafter furnished by one party to the other party in compliance with the terms hereof. Notwithstanding the foregoing, SAO may give notice of changes in Prices, Product descriptions, order procedures, delivery procedures and other routine events and procedures by way of printed materials or newsletter.

**17. FORCE MAJEURE.** SAO shall not be liable for failure or delay in performance of any of its obligations hereunder if such delay or failure to perform is caused by circumstances beyond its control. Reseller shall be required to accept any delayed shipment or delivery made within a reasonable time.

**18. GOVERNING LAWS; ATTORNEYS' FEES.** This Agreement shall be governed by and construed and enforced in accordance with the laws of Spain. The parties agree that any legal action or proceeding with respect to this Agreement may be initiated only in the courts located in the country of Spain. By execution and delivery of this Agreement, the parties submit to and accept with regard to any such action or proceeding the exclusive jurisdiction of such courts. If any legal action or proceeding is initiated, the prevailing party shall be entitled to all attorney fees, court costs, and expenses in addition to any other relief to which such prevailing party may be entitled.

**19. EQUITABLE RELIEF.** Reseller acknowledges that any breach or threatened breach of this Agreement involving an unauthorized use of Confidential Information or SAO intellectual property will result in irreparable harm to SAO for which damages would not be an adequate remedy, and therefore, in addition to its rights and remedies otherwise available at law, SAO will be entitled to seek injunctive or other equitable relief, as appropriate, and Reseller hereby waives the right to require SAO to post a bond. If SAO seeks injunctive or other equitable relief in the event of a breach or threatened breach of this Agreement by Reseller involving an unauthorized use of Confidential Information or SAO intellectual property, Reseller agrees that it will not allege in any such proceeding that SAO's remedy at law is adequate. If SAO seeks any equitable remedies, it will not be precluded or prevented from seeking remedies at law, nor will SAO be deemed to have made an election of remedies.



**20. ENTIRE AGREEMENT; WAIVER.** This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes and terminates all other priConfidential Page 9

27/12/2010 or commitments, arrangements or understandings, both oral and written, between the parties with respect thereto. This Agreement may not be modified or amended except by an instrument in writing executed by each of the parties. None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of either party, their agents or employees, but may be waived only by an instrument in writing signed by an officer of the waiving party. No waiver of any provision of this Agreement on one occasion shall constitute a waiver of any other provision or of the same provision on another occasion.

**Reseller Representative**

**SAO Representative**

Signature: \_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_