

## Centerline Partner Agreement

### RECITALS

Centerline is in the business of manufacturing, producing, distributing and licensing the use of certain computer software programs and related documentation for business and financial accounting applications.

Partner is engaged in, among other things, the business of reselling computer software and/or the implementation of software systems.

Centerline and Partner desire to enter into this Agreement whereby Partner shall become an Authorized Partner of Centerline based upon the terms and conditions contained below.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, terms and conditions hereinafter contained the parties hereto agree as follows:

**1. Scope.** In summary, the PARTNER AGREEMENT gives you the non-exclusive right to provide the Product to Customers.

**2. Definitions.** "You" and "your" means the company or entity that has accepted the PARTNER AGREEMENT and any of your affiliates.

"We", "us," "our" and "Centerline" means the Centerline company that has signed this agreement and any of our affiliates. The "parties" refers to both you and us, and the term "party" may be used to refer to you or us individually. In addition, the following definitions apply:

- 2.1 **"Customer"** means anyone who acquires the Product from you for their own use and not with the intent to resell, redistribute or use for commercial hosting.
- 2.2 **"Customizations"** means (a) changes, modifications, enhancements, revisions and alterations you make to the Product or, when applicable, software documentation and (b) computer software that you independently develop for customers that works with the Product.
- 2.3 **"Derivatives"** means those changes, modifications, enhancements, revisions and alterations made to the Product or any programs, features or applications developed based on any viewable source code.
- 2.4 **Product(s)** means software product offerings, upgrades, and external components developed by Centerline.
- 2.5 **"Centerline Partner Program Site"** means the Centerline Web site at <http://www.Centerlinesft.com>
- 2.6 **"Software Documentation"** means any electronic and written aids and specifications we develop for the Product and make available to you or your customers.
- 2.7 **"Software Use Terms"** means the end user license agreement (EULA) that governs the Product and grants customer use rights.

### **3.0 Intentionally Left Blank**

**4.1 Distribution Rights.** You can only provide Product directly to customers. No additional distribution rights are granted under the PARTNER AGREEMENT.

**4.2 Software documentation.** You may provide software documentation to customers in print or electronic form, in connection with the provision of the Product. You must include all relevant Centerline copyrights, notices and marks. You must not distribute the software documentation as part of any publication for sale separate from the Product.

## Centerline Partner Agreement

**4.3 Software Use Terms.** Customer use of the Product is governed by software use terms which accompany the Product. We will make the software use terms (Centerline End User License Agreement) available to you and, if appropriate, directly to customers either in electronic form on a Web site, or as part of the Product, or by other reasonable means.

**4.4 Software for Demonstration, Development and Test use.** Under the PARTNER AGREEMENT, Centerline will make available to you the Product for your demonstration, testing and development purposes.

**5. Limitations.** The rights granted in the PARTNER AGREEMENT are subject to the following limitations:

**5.1 Dangerous applications. YOU MUST NOT PROVIDE ANY PRODUCT FOR USE IN CONTROLLING THE OPERATION OF EQUIPMENT IN ANY NUCLEAR FACILITIES, AIRCRAFT NAVIGATION, AIRCRAFT COMMUNICATIONS OR FLIGHT CONTROL SYSTEMS, AIR TRAFFIC CONTROL, MASS TRANSIT, MEDICAL EQUIPMENT (FDA CLASS 2 OR 3, OR EQUIVALENT), OR WEAPONS SYSTEMS, OR IN ANY OTHER INHERENTLY DANGEROUS APPLICATIONS IN WHICH THE FAILURE OF THE PRODUCT COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.**

**5.2 Full functionality.** The Product must be delivered to customers in its entirety. You must not adversely affect the full functionality of the Product (see below), but you may configure the Product as described in software documentation and customize the Product. You may not alter any information within any financial applications of the Product that could damage the integrity of data files or audit trails or modify data to deviate from established accounting rules, regulations, authoritative pronouncements, principles and practices that apply to your customers.

**5.3 Other limitations.** The following additional limitations apply:

- (a) We do not assign any of our intellectual property rights for the Product.
- (b) You must not sublicense, rent, lease, lend, provide commercial hosting services with, or operate a service bureau with the Product except if we expressly authorize it.
- (c) You and your affiliates must not use the Product for internal use unless we have granted you the right to do so separately.
- (d) You must not reverse engineer, decompile or disassemble any Product, except to the extent expressly permitted by applicable law despite this limitation.
- (e) You must employ the best available and commercially reasonable tests for viruses in your reproduction, integration, and installation processes for the Product and any customizations, to ensure that no Product or customizations that have been infected with a virus will be deployed.
- (f) You must offer to each customer acquiring Product at least one full copy of the software documentation to which the customer is entitled to under the applicable software use terms and the price list.
- (g) Your rights to any of the Product or Centerline materials does not include any license, right, power or authority to (i) create derivative works of or customizations to the Product in any manner that would cause the Product in whole or in part to become subject to any of the terms of an excluded license or (ii) distribute the Product (or derivative works or customizations to the Product) in any manner that would cause the Product to become subject to any terms of an excluded license. An excluded license is any license that requires as a condition of use, modification and/or distribution of software subject to the excluded license, that such software or other software combined and/or provided with such software be (a) disclosed or distributed in source code form; (b) licensed for the purpose of making derivative works; or (c) redistributable at no charge.

## Centerline Partner Agreement

**6. Technical and other support, training, brand and software for your use.** Technical support, training, account management, marketing and sales support, brand or logo rights, and internal use software, are not offered under the PARTNER AGREEMENT, but they may be available to you subject to separate terms, conditions and eligibility criteria through other Centerline programs, offerings or initiatives. We are not obligated to and do not provide any technical support to you or your customers for your customizations. You are solely responsible for providing technical support to customers for your customizations.

**7. Payment terms/Credit.** We may change the following terms from time to time upon 30 days prior written notice to you:

### **7.1 Payment terms.**

- (a) Payment is due on the date and in the currency specified in your order to Centerline.
- (b) If you fail to make payment of any sums by the due date we may take any, some or all of the following actions:
  - (i) If your payment is not received within thirty (30) days of due date, we may terminate the PARTNER AGREEMENT upon thirty (30) days written notice to you. If you have two (2) or more late payments during the term, we may terminate the PARTNER AGREEMENT immediately upon written notice to you and without an opportunity to cure;
  - (ii) Hold all pending orders and suspend further shipments under the PARTNER AGREEMENT and/or any other agreement between us and you until all PARTNER AGREEMENT payments due are received;
  - (iii) Charge interest on the past due amount from the first day the amount is past due until the amount is paid in full. This includes any before or after judgment amounts. Interest will be charged on a day to day basis at the rate of 1.5% per month (18% per annum) on a simple interest basis, or the legal maximum, whichever is less. Interest will be paid on demand to us by you.

If we choose to take one, some or all of these actions we do not waive any other right or remedy available to us under this agreement or at law.

- (c) All payments must be made by wire transfer to the account identified in our invoices or in the PARTNER AGREEMENT guide, or by any other means we may agree to from time to time. Any remittance costs must be paid by you and may not be deducted from the amount due. You must include our invoice number (if applicable) on each wire transfer payment made hereunder.
- (d) Unless we issue a credit note, you may not withhold payment or make deductions on the amount due on any invoice (by way of offset, counterclaim or otherwise). This includes returns, rebates, price adjustments, billing errors, handling fees, allowances or any other charges. The only exception is for disputed items notified as described in section 7.1(e) of this agreement.
- (e) If you dispute any amount invoiced by us or have a complaint about the Product delivered to you (other than an end user return or a warranty claim) then: (i) you must pay the non-disputed amount on the invoice as described in section 7 of this agreement; and (ii) you must provide details of the disputed item or complaint (together with supporting documentation and information) within 21 days of the date of our invoice.
- (f) Your payment to us is not contingent on your receipt of any payments from affiliates or customers.

## Centerline Partner Agreement

- (g) All payments (i) must be made in the currency specified in our invoice (subject to applicable law), and (ii) must not be discharged or satisfied by any tender, or any recovery pursuant to any judgment, which is expressed in or converted by you to any currency other than the full amount expressed in our invoices.
- (h) New orders will not be accepted until any outstanding overdue balances with Centerline are paid

**7.2 Financial statements.** We reserve right to periodically require audited financial statements (or equivalent information that may be acceptable to us) in connection with your obtaining or retaining credit terms. Our credit department uses these financial statements for the sole purpose of establishing and reviewing your credit and will treat unpublished financial statements as confidential information.

### **8. Warranty and indemnity obligations.**

#### **8.1 Our warranty and indemnity obligations.**

- (a) **NOTICE REGARDING PRODUCT.** Each item of the Product is complex computer software. Its performance will vary depending upon hardware platform, software interactions, and Product configuration. You acknowledge that the Product is neither fault tolerant nor free from errors, conflicts or interruptions. You also acknowledge that software bugs may be identified upon customization or installation of Product. You therefore accept the responsibility of determining that the Product is suitable in quality and performance for use on the computer systems on which it may be installed. This includes conducting sufficient testing of your customizations and installations on computer systems on which it may be installed (including failure mode and effects analysis on such computer systems), and providing any necessary notices or warnings to your customers.
- (b) **No warranty.** Unless otherwise is expressly stated in this agreement, the software use terms, or in mandatory statutory legislation applicable to this agreement, Centerline disclaims and excludes all warranties, conditions and representations (express or implied, by statute or otherwise) in relation to the Product, including without limitation, warranties and conditions of title, merchantability, satisfactory quality, non-infringement, fitness for a particular purpose or any implied warranty arising from course of dealing or usage of trade. Centerline makes no warranty that the Product will operate properly in connection with any customization or on any customer system(s), or that any customization will operate properly with a later release of the Product.
- (c) **Defense of infringement claims.** We will defend you, at our expense, in a lawsuit, and pay the amount of any adverse final judgment (or settlement to which we consent) from such lawsuit, for any third party claim(s) that the Product infringes the third party's copyright(s), trademark right(s), or patent(s) in the geographical boundaries of those countries in which you provide or market such Product. Our obligations are subject to the following conditions:
  - (i) you must promptly notify us in writing of the claim; (ii) we will have sole control over defense and/or settlement of the claim;
  - (iii) you will provide us with reasonable assistance in the defense of the claim; and (iv) our obligations to defend and pay a patent claim will be limited to patent claims where the Product alone, without combination or modification, constitutes direct or contributory infringement of the patent.
- (d) **Limitations on our defense obligation.** We will not be liable for any claim *to the extent* that the claim is based on you, your affiliate, or your customer's (i) copying, providing or use of the Product after we notify you in writing to discontinue copying, using or providing Product due to such a claim; (ii) combining the Product with customizations or any other non-Centerline product, program or data; or (iii) customizing or otherwise altering the Product. You will reimburse us for any costs or damages that result from these

## Centerline Partner Agreement

actions, provided, however, that you will have no obligation to us under this Section 8.1(d) for actions of your customer acting without your involvement or knowledge.

- (e) **Our options.** If we receive information concerning an infringement claim as noted in Section 8.1(c) above, we are entitled to, at our expense: (i) procure for you copyright, trademark or patent right(s) or license(s) to address the claim; or (ii) replace or modify the Product or trademark to make it non-infringing and such replacements or modifications will be substantially similar to the Product being replaced; or (iii) require you, your affiliate or your customer to discontinue copying, using or providing the Product affected by the claim.

### **8.2 Your warranty and indemnity obligations.**

- (a) **No representations.** You must not make any representation or warranty with respect to any Product or its use to any customer on our behalf.
- (b) **Indemnity.** You must defend, indemnify and hold us harmless from any claim from a third party arising as a result of: (i) Product installed outside generally accepted industry standards; (ii) any software virus introduced by you to Product; (iii) its use or inability to use Product if such claim would not have occurred solely from use of the Product without your customization; (iv) the customized Product infringing any proprietary right of that third party if such claim would have been avoided by the exclusive use of the Product; (v) any breach by you of the terms of the PARTNER AGREEMENT that results in a claim, and (vi) any loss or damage suffered by us, for which you have been compensated by a customer, which we would not have suffered if we were a third party beneficiary, if the law governing your agreement with the customer prevents us from being a valid third party beneficiary of your agreement with your customer.

## **9. Limitation of liability.**

### **9.1 Limitation.**

- a) Your total cumulative liability to us under the PARTNER AGREEMENT and our exclusive remedy for any such liability will be limited to 100% of the amount actually paid and any amounts owed by you to us during the then-current term of the PARTNER AGREEMENT. Our total cumulative liability to you, and your exclusive remedy for any liability not described in subsections 9.1(b)-(e) below, will not exceed the amount actually paid by you to us under the PARTNER AGREEMENT during its then-current term.
- b) For copyright and trademark infringement claims our cumulative liability to you arising within the geographical boundaries of a given country will be further limited to an amount not to exceed 100% of the amount you actually paid to us for the infringing Product that you provided into or from that country during the then-current term of the PARTNER AGREEMENT.
- c) For patent infringement claims arising within the geographical boundaries of Australia, Canada, the European Union member nations, Japan, Norway, Switzerland, or the United States our cumulative liability to you will be further limited to an amount not to exceed 100% of the amount you actually paid to us for the infringing the Product that you provided into or from that country during the then-current term of the PARTNER AGREEMENT.
- d) For patent infringement claims arising within the geographical boundaries of any country other than those in section 9.1(c), our cumulative liability to you will be limited to infringement damages resulting from your direct provision of the Product to customers located in the applicable country, and any such liability will be further limited to an amount not to exceed 100% of the amount actually paid by you to us for the infringing the Product resulting in such infringement damages.
- e) The limits on liability in this section apply to third party claims under section 8. The limitations contained in this paragraph will not apply to the costs of defending any claim we are obligated, or agree, to defend under this agreement.

## Centerline Partner Agreement

- f) The limits on liability in this section do not apply to your and our liabilities and remedies for fraud, gross negligence, intentional breach of the terms of the PARTNER AGREEMENT, unauthorized use of intellectual property or breach of confidentiality obligations.
- g) You release us and we release you, from all liability in excess of the limitations in this section, including any claim for indemnification or contribution, whether arising under statutory or common law or otherwise.

### **9.2 No liability for certain damages.**

- a. In the absence of fraud or gross negligence, neither you nor any of your or our affiliates or suppliers will be liable to the other for any damages for loss (whether direct or indirect) of profits or revenues, business interruption, loss of or damage to data or records, or loss of business information, or for any indirect damages of whatever nature (including without limitation, consequential, special or incidental damages) arising in connection with the PARTNER AGREEMENT or for any other indirect, consequential, punitive, incidental or special damages arising out of or related to the PARTNER AGREEMENT (even if the other party has been advised of the possibility of such damages). A party's liability for loss or damage of any kind (including loss or damage caused by negligence) is reduced to the extent that the other party or its agents caused or contributed to that loss or damage.
- b. The exclusion of liability in this section applies to third party claims under section 8.
- c. The exclusion of liability in this section does not apply to your or our liability to the other for violation of its confidentiality obligation or of the other party's intellectual property rights.

**9.3 Application.** The limitations on and exclusions of liability for damages in the PARTNER AGREEMENT apply to the maximum extent permitted by applicable law, regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, statute, breach of warranties, or any other legal theory.

**9.4 Consumer rights.** If the provision of any Product under the PARTNER AGREEMENT is considered to constitute a supply of goods or services to a "consumer" for the purposes of applicable local law, for which liability may not be excluded or restricted, then nothing in the PARTNER AGREEMENT will have the effect of excluding those rights or remedies. If such liability may not be excluded, then to the maximum extent permitted by law, such liability is limited, at our exclusive option, in the case of services to either supplying the services again or the payment of the cost of having the services supplied again, and in the case of goods to either (i) replacement of the goods, (ii) correction of defects in the goods, or (iii) payment of the cost of replacing or repairing the goods or acquiring equivalent goods.

**9.5 Business purposes.** You confirm that you are entering the PARTNER AGREEMENT for business purposes only. You agree that the provisions of any consumer protection legislation for the relevant will not apply to the extent that contracting out of such legislation is permitted by law.

## **10. Term and termination.**

**10.1 Term.** The PARTNER AGREEMENT will take effect on the date you register as a partner.

**10.2 Early termination.** You may voluntarily terminate this agreement or any addenda. Both parties may terminate this agreement or any addenda:

- i. to protect their intellectual property rights;
- ii. if the other party breaches any terms of the agreement;
- iii. as expressed elsewhere in this agreement; or
- iv. if required by a valid judicial or governmental order.

## Centerline Partner Agreement

A party terminating this agreement must give the other party 30 calendar days written notice. The other party must be given an opportunity to cure before a termination for breach will become effective. The following terminations are effective immediately upon written notice (or as soon as permitted by applicable law):

- i. the breach is not curable within 30 days; or
- ii. if the other party becomes:
  - (a) insolvent;
  - (b) voluntarily or involuntarily enters bankruptcy, reorganization, composition or other similar proceedings under applicable laws;
  - (c) admits in writing its inability to pay debts; or
  - (d) makes or attempts to make an assignment for the benefit of creditors.

### **10.3 Other obligations.**

- (a) When the PARTNER AGREEMENT is no longer in effect, you must (i) immediately stop using all rights granted by the PARTNER AGREEMENT and (ii) pay us any amounts due under the PARTNER AGREEMENT.
- (b) On the date the PARTNER AGREEMENT terminates, if you have existing obligations to provide customers with service plan coverage, you may continue to provide the Product to them for the sole purpose of fulfilling these specific obligations. All rights necessary to fulfill the existing service plan obligations under the PARTNER AGREEMENT will survive only for this purpose, and will terminate one year from the date the PARTNER AGREEMENT terminates.
- (c) Termination of the PARTNER AGREEMENT will not affect licenses for the Product that were previously granted to customers. Those licenses will continue as described in the EULA terms.
- (d) Where there are existing Product customers when the PARTNER AGREEMENT is terminated and the customer has indicated a desire to have Centerline move them to another partner Centerline shall have the right to move those customers to another partner except as provided above for service plan obligations.

**10.4 Statutory form.** We reserve the right to either terminate or vary the PARTNER AGREEMENT without use of a statutory form, including in circumstances where a statutory form is required, without any liability to you.

**10.5 Waiver of rights and obligations.** To the extent necessary to implement the termination of this agreement, you and we each waive any right or obligation under any applicable law or regulation to request or obtain intervention of the courts to terminate this agreement.

**10.6 Survival.** Sections of this agreement that, by their terms, require performance after the termination or expiration of this agreement will survive, including sections 2, 5, 8, 9, 10, 11, 12, 13, 14, 15, and 16.

**11. Verifying compliance.** Upon notice from Centerline: a) You shall forthwith provide Centerline with copies of such billing records and supporting documentation relating to customer installations of the Product as may be reasonably requested; and b) Centerline may audit the amounts reported and paid to determine if such amounts are accurate and in accordance with the PARTNER AGREEMENT. If, as a result of such audit, it is determined that you have underpaid, Centerline shall notify you that you are alleged to have underpaid a specified amount, and if it is determined that there was an underpayment, then you will promptly pay the amounts of the underpayment. In addition to the rights above, in the event such audit reveals an underpayment of ten percent (10%) or more of the total amounts audited, you will reimburse Centerline for the full costs of such audit. The results of any audit conducted under this agreement will be considered Confidential Information as defined by Section 15.4 herein.

## Centerline Partner Agreement

### **12. Intellectual property.**

**12.1 Referential use of trademarks.** The PARTNER AGREEMENT does not grant you any right, title, interest, or license in or to any of Centerline names, word marks, logos, logotypes, trade dress, designs, or other trademarks related to or used in the Product. You may use our corporate name, technology names and trademarks in plain text (but not logos, trade dress, designs or word marks in stylized form) to accurately identify and refer to Centerline and its technology and services, provided that your use is not likely to cause confusion about the source of your solutions or your relationship with us and your use is according to our usage guidelines.

**12.2 Proprietary notices.** You must not remove any copyright, trademark or patent notices contained in or on any of the Product. You must include our copyright notice on all copies of the Product, packaging and on any documentation for the Product, including on-line documentation. You must use the appropriate trademark, Product descriptor and trademark symbol (either “™” or “®”), and clearly indicate our (or our suppliers’) ownership of trademark(s) whenever the Product name is first mentioned in any advertisement, brochure or in any other manner in connection with the licensed software.

**12.3 Use of your marks.** By accepting the PARTNER AGREEMENT, you also expressly agree that we are entitled to publish your names, trade names, trademarks, and logos in connection with your participation as a provider of the Product as outlined on the PARTNER AGREEMENT Web site, for purposes reasonably related to the PARTNER AGREEMENT. We will not modify your names, trade names, trademarks and logos. Upon our request, you will provide us artwork for your logos, in printed or electronic form or both. The PARTNER AGREEMENT does not grant us any other right, title, interest or license to any of your names, word marks, logos, logotypes, trade dress, designs, or other trademarks.

**12.4 Unsolicited commercial email.** You may not use our marks in connection with the transmission or distribution of unsolicited commercial email or in any manner that would violate local law or custom or conflict with our policies.

#### **12.5 License compliance.**

**(a)** You must not engage or participate with any third party in the unauthorized manufacture, duplication, delivery, transfer or use of counterfeit, pirated or illegal software and you must not otherwise infringe any of our other intellectual property rights. You must reasonably cooperate with our affiliates and us in the investigation of counterfeit, pirated or illegal software. You must report to us, as soon as possible after you notice it, any suspected counterfeiting, piracy or other infringement of copyright in computer programs, manuals, marketing materials or other copyrighted materials owned by us and/or our licensors.

**(b)** Your customers must acquire from you or us sufficient numbers of Centerline licenses for software to match (1) the quantities of the Product provided to the customer, and (2) the maximum number of users and/or devices that may access or use the Product under the customer’s license agreement with you or us. You will promptly inform us of any known or suspected failure by a customer to possess sufficient numbers of Centerline licenses.

**12.6 No technology transfer arrangement.** The PARTNER AGREEMENT does not create a “technology transfer” agreement, as defined by applicable law because (a) the technology (including any Product) made available under the PARTNER AGREEMENT is not an integrated part of a technology chain for production or management purposes and (b) the technology (including any Product) will have its own technology license. You will not hold yourself out as our technology recipient and will not attempt to identify us as a technology provider under the PARTNER AGREEMENT.

### **13. Compliance with laws.**

**13.1 Export restrictions.** You acknowledge that the Product, is subject to U.S. export laws and regulations. You must comply with all domestic and international export laws and regulations that apply to the Product. Such laws include restrictions on destinations, end-users and end use. You agree to defend, indemnify, and hold harmless

## Centerline Partner Agreement

Centerline from and against any claim, loss liability, expense, or damage (including fines or legal fees) incurred by Centerline with respect to any of Partner's export or re-export activities contrary to the foregoing instructions.

**13.2 Government approvals.** You and your affiliates must, at your own expense, obtain and arrange for the maintenance of any government approvals and comply with all applicable local laws and regulations necessary for your provision of the Product and your performance of the PARTNER AGREEMENT. You may import, provide, or license the Product in or to a country or territory only if allowed by, and in compliance with, all applicable laws and regulations of the country or territory as well as all provisions of the PARTNER AGREEMENT.

**14. Taxation.** The amounts to be paid to us under the PARTNER AGREEMENT do not include any foreign, U.S. federal, state, provincial, local, municipal or other governmental taxes (including without limitation goods and services taxes), stamp or documentary taxes, duties, levies, fees, excises or tariffs, arising as a result of or in connection with the transactions contemplated under or any supply made under the PARTNER AGREEMENT. However, you must pay to us any applicable value added, goods and services, sales or use taxes or like taxes that are owed by you solely as a result of entering into the PARTNER AGREEMENT and which are permitted to be collected from you by us under applicable law. You may provide to us a valid exemption certificate in which case we will not collect the taxes covered by such certificate. We are not liable for any of your taxes that you are legally obligated to pay which are incurred or arise in connection with or related to the sale of goods and services under the PARTNER AGREEMENT or your resale, and all such taxes (including but not limited to net income or gross receipts taxes, franchise taxes, and/or property taxes) shall be your financial responsibility. You agree to indemnify, defend and hold us harmless from any taxes (including sales or use taxes paid by you to us) or claims, causes of action, costs (including, without limitation, reasonable attorneys' and legal fees) and any other liabilities of any nature whatsoever related to such taxes.

If, in accordance with local laws and regulations or after a determination by foreign tax authorities, any taxes are required to be withheld on payments made by you to us, you may deduct such taxes from the amount owed to us and pay them to the appropriate taxing authority; provided, however, that you shall promptly secure and deliver to us an official receipt for any such taxes withheld or other documents necessary to enable us to claim a U.S. Foreign Tax Credit. The withholding taxes referred to in this section apply to withholding taxes required by the taxing authorities on payments to us only and do not include any withholding taxes suffered by you for payments made to you by your customers, such withholding taxes will be your financial responsibility. You will make certain that any taxes withheld are minimized to the extent possible under applicable law.

This tax section shall govern the treatment of all taxes arising as a result of or in connection with the PARTNER AGREEMENT notwithstanding any other section of this agreement or any other document included in the PARTNER AGREEMENT.

### **15. General.**

**15.1 Entire agreement.** The terms and conditions of the PARTNER AGREEMENT form our entire agreement concerning your provision of the Product to customers, and supersedes any prior or contemporaneous communications, and any prior agreement between us and you or your affiliates relating to the resale or provision of any of the Product (including any prior agreements between you and Centerline. Any purchase order or any general terms and conditions you or your affiliates maintain do not apply to the transactions between you and us relating to our relationship under the PARTNER AGREEMENT.

**15.2 Notices.** All notices and requests in connection with the PARTNER AGREEMENT must be sent as specified in other sections of the PARTNER AGREEMENT to the named contact person and the address you provide us in your profile on the Centerline Partner Program Site. For notices and requests to us, see the PARTNER AGREEMENT Web site. You will give us prompt written notice if you or your affiliates who have entered into an affiliate agreement become insolvent, enter bankruptcy, reorganization, composition or other similar proceedings, whether voluntary or involuntary, or admit in writing your inability to pay debts, or make or attempt to make an assignment for the benefit of creditors. Notices will be deemed delivered on the date shown on the postal return receipt or on the courier, facsimile or email confirmation of delivery.

## Centerline Partner Agreement

**15.3 Assignment.** You may not assign or transfer the PARTNER AGREEMENT or your rights or obligations under it, or subcontract a significant part of your rights or obligations to a third party, whether by contract or by operation of law, without our prior written consent, which will not be withheld without a commercial purpose. We may transfer our rights and obligations under the PARTNER AGREEMENT without your consent, but only to one of our affiliates. Any prohibited assignment is void.

**15.4 Confidentiality.** Because of this Agreement, the parties may have access to information that is confidential to one another ("Confidential Information"). The following terms and conditions apply to exchanges of information that take place under the PARTNER AGREEMENT.

- (a) "Confidential information" means nonpublic information that you, we, or an affiliate designates as being confidential or which, under the circumstances surrounding disclosure, or given the nature of the disclosure, should be treated as confidential.
- (b) Confidential Information includes, without limitation, information relating to the disclosing party's software or hardware products which may include source code, API data files, documentation, specifications, databases, networks, system design, file layouts, tool combinations and development methods as well as information relating to the disclosing party's business or financial affairs, which may include business methods, marketing strategies, pricing, demo programs, competitor information, product development strategies and methods, technical "know-how", customer and perspective customer lists and financial results.
- (c) Confidential Information also includes information received from others that the disclosing party is obligated to treat as confidential and oral information that is identified by the disclosing party as confidential. Confidential Information disclosed by a subsidiary of the disclosing party and/or its agents is covered by this Agreement.
- (d) Confidential Information includes all tangible materials which contain Confidential Information whether written or printed documents, computer disks or tapes whether user or machine-readable.
- (e) The parties agree to maintain the confidentiality of the Confidential Information and to protect as a trade secret any portion of the other party's Confidential Information by preventing any unauthorized copying, use, distribution, installation or transfer of possession of such information. Each party agrees to maintain at least the same procedures regarding Confidential Information that it maintains with respect to its own Confidential Information. Without limiting the generality of the foregoing, neither party shall permit any of its personnel to remove any proprietary or other legend or restrictive notice contained or included in any material provided by the disclosing party and the receiving party shall not permit its personnel to reproduce or copy any such material except as expressly authorized hereunder. The other party may only use one party's Confidential Information in order to fulfill its obligations under this Agreement.
- (f) You and we must refrain from disclosing any confidential information of the other for five years following the date of disclosure, except that if the confidential information contains personal information (such as customer contact information), there is no time limit regarding non-disclosure. The receiving party will not be liable for disclosure of information which (a) is already known to the receiving party without an obligation to maintain the same as confidential; (b) becomes publicly known through no wrongful act of the receiving party; (c) is rightfully received from a third party without breach of an obligation of confidentiality owed to the disclosing party; or (d) is independently developed by the receiving party.
- (g) However, confidential information may be disclosed as required by a judicial or other governmental order, if the receiving party either: (i) gives reasonable notice of the order to allow the other party a reasonable opportunity to seek a protective order or otherwise prevent or restrict its disclosure, or (ii)

## Centerline Partner Agreement

obtains written assurance from the applicable judicial or governmental entity that it will protect the confidential information to the maximum level allowed under applicable law or regulation.

- (h) We may use any technical information we derive from providing services related to our technology for problem resolution, troubleshooting, functionality enhancements and fixes, and for our knowledge base. We agree not to identify you or disclose any of your confidential information in any item in the knowledge base.
- (i) You agree to keep in strict confidence any customer information given to you by us under the terms of the PARTNER AGREEMENT. You also agree to take reasonable security measures to protect the customer information from unauthorized use, access, disclosure, alteration or destruction. Security measures will include access controls, encryption and any other security means that are required to comply with applicable laws.
- (j) Confidential Information shall not include any information that:
  - a. is already known to the receiving party or its affiliates, free of any obligation to keep it confidential;
  - b. is or becomes publicly known through no wrongful act of the receiving party or its affiliates;
  - c. is received by the receiving party from a third party without any restriction on confidentiality;
  - d. is independently developed by the receiving party or its affiliates;
  - e. is disclosed to third parties by the disclosing party without any obligation of confidentiality; or
  - f. is approved for release by prior written authorization of the disclosing party.
  - g. Both parties acknowledge that any use or disclosure of the other party's Confidential Information in a manner inconsistent with the provisions of this Agreement letter may cause the non-disclosing party irreparable damage for which remedies other than injunctive relief may be inadequate, and both parties agree that the non-disclosing party may request injunctive or other equitable relief seeking to restrain such use or disclosure.
  - h. The terms and provisions of this Section 15.4 shall survive any termination of this Agreement for any reason for a period of five (5) years.
- (k) *Personal Acknowledgments.* Partner will deliver to Centerline at any time Centerline may request, either:
  - a. the written acknowledgment of such directors, officers, shareholders or employees of the Partner as Centerline will in its discretion determine, acknowledging that they have reviewed the confidentiality and non-competition provisions of this Section 15.4 and that they agree to abide and be bound thereby; or
  - b. Centerline's form of non-disclosure and/or non-competition agreement signed by such of them as Centerline may specify.

**15.5 Relationship between you and us.** Even though we may call you a 'partner', you are an independent contractor for all purposes regarding the PARTNER AGREEMENT and its provisions (whether for the Product, customizations or anything else). At no time do you have the power to (i) bind Centerline, (ii) vary any terms, conditions warranties or covenants made by Centerline or (iii) create in favor of any person any rights that we have not previously authorized in writing. Neither the PARTNER AGREEMENT, nor any of its provisions, will be construed

## Centerline Partner Agreement

as creating a partnership (as such term is used in applicable partnership laws to designate a legal partnership entity), joint venture, agency, or franchise relationship or any fiduciary duty between us.

**15.7 Severability.** If a court holds any provision of the PARTNER AGREEMENT to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect and we will amend the PARTNER AGREEMENT to give effect to the stricken section to the maximum extent possible.

**15.8 Waiver.** No waiver of any breach of the PARTNER AGREEMENT shall be a waiver of any other breach, and no waiver will be effective unless made in writing and signed by an authorized representative of the waiving party.

**15.9 No representations.** You acknowledge that Centerline has not made any representation to you about any Product other than as specifically stated in the PARTNER AGREEMENT, and that you have relied on your own skill and judgment or that of your advisers in deciding to enter into the PARTNER AGREEMENT. However, neither party limits or excludes liability for fraudulent misrepresentations.

### **16. Force Majeure**

Neither party shall be held liable for any damage sustained by the other party as a direct or indirect consequence of the non-performing party being delayed, prevented or hindered in the performance of its obligations under this PARTNER AGREEMENT as a result of a force majeure situation. Force majeure situations include war and mobilization, catastrophes of nature, strikes, lock-out, fire, damage to production plant, import and export regulations and other unforeseeable circumstances beyond the control of the party concerned.

**17. Applicable law; attorneys' and legal fees.** The PARTNER AGREEMENT is governed by and construed in accordance with the laws of the State of Colorado. The parties consent to the exclusive jurisdiction and venue in the courts sitting the location of Denver, Colorado. You waive all defenses of lack of personal jurisdiction and forum non conveniens. This choice of jurisdiction and venue does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights, confidentiality obligations or enforcement of recognition of any award or order in any appropriate jurisdiction. If either party commences litigation in connection with this agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees, costs and other expenses.