

PARTICIPATING DEALER AGREEMENT

This Participating Dealer Agreement ("Agreement") is made and entered into as of the last date of signature below ("Effective Date") by and between _____ ("Reseller"), having its place of business at _____ and TD SYNnex Corporation ("TD SYNnex"), having its place of business at 39 Pelham Ridge Dr. Greenville, SC 29615-593939.

BACKGROUND

This Agreement governs the appointment of Reseller as a nonexclusive authorized reseller of Products (as defined below) through the **NCPA 01-170 Advanced Technology Solutions Aggregator** ("Contract"). The General Terms and Conditions comprising the body of this Agreement set forth the general terms of such appointment.

AGREEMENT DOCUMENTS

The parties agree to be bound by this Agreement, which consists of this signature page, the General Terms and Conditions, and any Exhibits attached hereto (if any):

The duly authorized representatives of the parties have executed and delivered this Agreement as of the Effective Date.

TD SYNnex Corporation

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

GENERAL TERMS AND CONDITIONS

SECTION 1 **DEFINITIONS.**

1.1 “Confidential Information” shall mean the information of a party, which information is conspicuously marked with “Confidential,” or “Proprietary” or other similar legend. If Confidential Information is orally disclosed it shall be identified as such at the time of disclosure and a brief written non-confidential description of the information and confirmation of the confidential nature of the information shall be sent to the recipient within thirty (30) days after the disclosure. Quantities, schedules, pricing, sales reports and inventory reports shall be considered Confidential Information hereunder whether disclosed orally or in writing, or whether or not marked “Confidential” or “Proprietary.” Confidential Information does not include information that: (1) was in the possession of, or was known by, the receiving party prior to its receipt from the disclosing party, without an obligation to maintain its confidentiality; (2) is or becomes generally known to the public without violation of this Agreement; (3) is obtained by the receiving party from a third party, without an obligation to keep such information confidential; or (4) is independently developed by the receiving party without use of Confidential Information.

1.2 “Customer” means end-users authorized to purchase through the Contract.

1.3 “Reseller” shall have the meaning set forth in the signature page 1.

1.4 “Contract Price List” is the negotiated contractual pricing for the Products.

1.5 “Products” means the products that are available to be sold through the Contract.

SECTION 2 **APPOINTMENT AND LICENSE.**

2.1 **Appointment, License Grant and Sublicense.** Subject to the terms and conditions of this Agreement and the qualification requirements delineated herein, TD SYNEX hereby appoints Reseller, and Reseller hereby accepts the appointment, as a non-exclusive authorized Dealer of Products to Customers who can purchase through the Contract. TD SYNEX grants to Reseller a nontransferable and nonexclusive license during the term of this Agreement to distribute the Products and any software (only as incorporated in the Products) to Customers.

2.2 **Authority.** Except as expressly set forth in this Agreement, Reseller will have no authority to bind TD SYNEX or its suppliers to any contract, representation, understanding, act or deed concerning TD SYNEX, its suppliers or any Products covered by this Agreement without TD SYNEX’s prior written consent. This Agreement will not be deemed to establish a joint venture or partnership. Reseller will make no warranties or representations, such as representations concerning prices, terms of delivery and payment, or conditions of sale, relating to the Products unless TD SYNEX authorizes such warranties and representations in writing. The parties recognize and agree that the reseller relationship referenced herein does not establish privity of contract between Reseller and Customer. Reseller expressly understands that the scope of its representation is limited to the terms of this Agreement.

2.3 Sales to End Users Only. Unless otherwise authorized by TD SYNnex in writing, Reseller shall only sell Products to Customers who do not intend to further remarket such Products.

2.4 Reserved Rights. This Agreement shall in no way limit TD SYNnex's ability to sell, directly or indirectly, any Products to any Customers, and Reseller shall not be entitled to any commission or other compensation with respect to such sales. TD SYNnex shall be entitled to appoint other reseller(s) for any Customers without notice or liability to Reseller.

2.5 Procurement of Products. Any Products sold to Customer by Reseller under the Contract must be procured through TD SYNnex.

SECTION 3 **RESELLER OBLIGATIONS.**

3.1 Contract Pricing. Reseller shall comply with the approved product and pricing of the Contract. The Contract Pricing will be maintained for the term of this Agreement, including any extensions.

3.2 Warranty. Contract Pricing includes the standard warranty provided by the manufacturer. Additional extensions of the warranty beyond the standard warranty will be an additional cost to the Customer.

3.3 Ordering Instructions. Reseller agrees to send orders to TD SYNnex through a TD SYNnex approved method. Reseller is responsible for providing the End User Purchase Order for a contract order to be placed. Reseller is responsible for ensuring that only authorized employees place, change or delete orders and that the orders conform to all requirements of this Agreement.

3.4 Customer Purchase Order Forms. Reseller agrees to provide a copy of the Customer's purchase order when placing an order to TD SYNnex through this Contract.

3.5 Audit. TD SYNnex shall, at all reasonable times and for five (5) years after termination or expiration of this Agreement, have full access to Reseller's books, records, files and related correspondence relating to Reseller's performance under this Agreement.

3.6 Reseller Services. Reseller must request a one-off approval from TD SYNnex to include their services in a contract quote and/or order.

3.7 Contract Terms and Conditions. Reseller agrees to comply with the terms and conditions of the Contract at [R200803 SYNnex MAD 2020 08 25.pdf \(omniapartners.com\)](#).

SECTION 4 **ORDERS, PAYMENT, AND DELIVERY**

4.1 Ordering Information. Reseller shall ensure that Customers are eligible to purchase through the Contract.

4.2 Order Acceptance. All orders shall be subject to TD SYNnex's acceptance, and TD SYNnex shall have no liability for any orders it rejects.

4.3 Shipment and Payment. The negotiated price includes delivery to the Customer, FOB Destination standard ground freight within the continental US only. Customers may be charged additional fees if shipment must be expedited, requires special handling or delivery and/or OCONUS delivery.

4.4 Timely Shipment. TD SYNEX will use commercially reasonable efforts to meet the Customer's requested delivery date at the location specified by the Customer.

4.5 Timely Processing. Reseller will use its best commercial efforts to process orders and to provide customer service and support in a timely manner.

4.6 Payment. Reseller shall pay TD SYNEX invoiced amounts in U.S. dollars within the terms of their reseller account.

SECTION 5 **ADDITIONAL DUTIES OF RESELLER.**

5.1 Best Efforts. Reseller shall use its best efforts to promote and sell the Products to Customers, all consistent with good business ethics and in a manner that will reflect favorably on TD SYNEX.

5.2 Compliance. Reseller shall comply with all applicable federal, state and local laws, rules, regulations, ordinances and executive orders. If either party receives any notice or becomes aware of any violation of any applicable law, statute, rule, regulation or ordinance by the Products or the distribution thereof, such party shall promptly notify the other party of such notice or violation.

5.3 Conduct of Reseller. Reseller shall at all times refrain from engaging in any illegal, unfair, or deceptive trade practices or unethical business practices whatsoever. Reseller shall not make any false or misleading representations to Customers or other persons with regard to TD SYNEX or the Products. Reseller shall not make any representations with respect to the specifications, features, or capabilities of Products which are not consistent with those described in the manufacturer's publicly available Product documentation.

5.4 Reporting - Administrative Fees - Contacts.

(A) Reporting. Once a month sales reporting is required for contract transactions not recorded through your TD SYNEX Account. Monthly sales reporting consists of a completed Transaction Sales Report Template, Reseller's Purchase Orders ("POs") issued to TD SYNEX and the end-user Customer's POs issued to Reseller. The Transaction Sales Report shall be submitted online at <https://www.synnecorp.com/us/govsolr/monthly-contract-reporting/> along with copies of the required PO's. For the avoidance of doubt, Reporting is a mandatory requirement of the Contract and the Agreement.

(B) Administrative Fees. Reseller is responsible for payment of the Contract fee: 0.80% or 80 Bps for Commodity Products and 2.00% or 200 Bps for Enterprise Products associated with this Agreement (the "Administrative Fee"). TD SYNEX will therefore include the associated fees in each quotation provided to Reseller and billed accordingly to Reseller.

5.5 No Contract Modification. Reseller shall not alter, change, or modify in any way, any contract or order under any contract between TD SYNEX and any Customer. Reseller will

indemnify and hold TD SYNnex harmless from any alteration, change, or modification to a contract between TD SYNnex and any Customer caused by the actions of Reseller.

5.6 Failure to comply with any of the provisions of this section will result in immediate termination of the Agreement by TD SYNnex at will.

SECTION 6 **QUALIFICATIONS OF RESELLER.**

6.1 **Good Standing.** Reseller's business and credit accounts with TD SYNnex must be current and in good standing. Reseller cannot have defaulted on any Reporting, or payments due to TD SYNnex and must have a history of prompt and timely payments for all amounts due TD SYNnex.

6.2 **Reseller Financials.** Reseller agrees to provide TD SYNnex with updated credit information on request. Reseller understands and agrees that TD SYNnex may order a credit report in connection with the Agreement.

SECTION 7 **CONFIDENTIALITY.**

7.1 **Confidentiality Obligations.** The receiving party shall protect the confidentiality and secrecy of the disclosing party's Confidential Information and shall prevent any improper disclosure or use thereof by its employees, agents, contractors or consultants, in the same manner and with the same degree of care (but in no event less than a reasonable degree of care) as it uses in protecting its own information of a confidential nature for a period of three (3) years from the date of such disclosure. Each party must inform its employees having access to the other's Confidential Information of restrictions required to comply with this **Section 7.1**. Each party agrees to provide notice to the other immediately after learning of or having reason to suspect a breach of any of the restrictions of this **Section 7.1**. Notwithstanding the foregoing, each party may disclose the other party's Confidential Information if and to the extent that such disclosure is required by applicable law, provided that the receiving party uses reasonable efforts to limit the disclosure and provides the disclosing party a reasonable opportunity to review the disclosure before it is made and to interpose its own objection to the disclosure.

Each party retains for itself all proprietary rights it possesses in and to all of its own Confidential Information. Accordingly, Confidential Information which the disclosing party may furnish to the receiving party shall be in the receiving party's possession pursuant only to a restrictive, nontransferable, nonexclusive license under which the receiving party may use such Confidential Information under the terms of this Agreement, solely for the purposes of satisfying its obligations hereunder. Each party understands that the party receiving Confidential Information may now or in the future be developing proprietary information internally, or receiving proprietary information from third parties in confidence that may be similar to disclosed Confidential Information. Nothing in this Agreement shall be construed as a representation or inference that the receiving party will not develop products, for itself or others, that compete with the products, processes, systems or methods contemplated by disclosed Confidential Information. Each party acknowledges that any material violation of the rights and obligations provided in this **Section 7.1** may result in immediate and irreparable injury to the other party, and hereby agrees that the aggrieved party shall be entitled to immediate temporary, preliminary, and permanent injunctive relief against any such continued violations upon adequate proof, as required by applicable law. Notwithstanding **Section 13.6**, each

party hereby submits itself to the personal jurisdiction of the courts of competent subject matter jurisdiction for purposes of entry of such injunctive relief.

SECTION 8 **STAFFING.**

8.1 **Staffing.** Each of the parties agrees not to solicit, hire or engage any employees of the other party that are directly involved in the activities of the other party in connection with this Agreement during the period such employees are employed by the other party and for a period of one hundred eighty (180) days after the date of such employee's termination of employment from the other party. Each party acknowledges that any material violation of the rights and obligations provided in this **Section 8.1** may result in immediate and irreparable injury to the other party, and hereby agrees that the aggrieved party shall be entitled to immediate temporary, preliminary, and permanent injunctive relief against any such continued violations upon adequate proof, as required by applicable law. Notwithstanding **Section 13.6**, each party hereby submits itself to the personal jurisdiction of the courts of competent subject matter jurisdiction for purposes of entry of such injunctive relief.

SECTION 9 **LIMITATION OF LIABILITY.**

9.1 EXCEPT FOR A BREACH OF **SECTION 5** OR **SECTION 7.1** OR **SECTION 8.1**, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, EXEMPLARY, PUNITIVE, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES OR COSTS HOWSOEVER ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER OR NOT EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR COSTS. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR LOSS, DAMAGE, OR INJURY OF ANY KIND OR NATURE ARISING OUT OF OR IN CONNECTION WITH THESE TERMS AND CONDITIONS, OR ANY AGREEMENTS INTO WHICH THEY ARE INCORPORATED, OR ANY PERFORMANCE OR NONPERFORMANCE UNDER THESE TERMS AND CONDITIONS, IN EXCESS OF THE NET PURCHASE PRICE OF THE PRODUCTS OR SERVICES ACTUALLY DELIVERED TO AND PAID FOR HEREUNDER THAT GIVES RISE TO THE CLAIM.

SECTION 10 **INDEMNIFICATION.**

10.1 **Reseller Indemnification.** Reseller will indemnify, defend and hold harmless TD SYNEX, its dealers, employees, successors, assigns, parent company and affiliated companies (each individually an "Indemnified Party" and collectively the "Indemnified Parties") from and against any and all claims, demands, causes of action, expenses (including reasonable attorneys' fees) and liabilities, arising out of Reseller's acts or omissions relating in any way to its activities in connection with this Agreement, or actual or alleged misrepresentation relating to any of the Indemnified Parties, the Products or this Agreement, regardless of the form of action. Reseller shall pay any damages and costs assessed against the Indemnified Parties in connection with such claim. Any Indemnified Party shall have the right, at its own expense, to participate and be represented in any such action, suit or proceeding by its own attorneys. Reseller shall not enter into any settlement that affects an Indemnified Party's rights or interests without such Indemnified Party's prior written approval.

10.2 TD SYNnex Indemnification. TD SYNnex will indemnify, defend and hold harmless Reseller from and against any and all claims, demands, causes of action, expenses (including reasonable attorneys' fees) and liabilities, arising out of TD SYNnex's wrongful acts or omissions relating in any way to its activities in connection with this Agreement, or actual or alleged misrepresentation relating to the Products or this Agreement, regardless of the form of action. TD SYNnex shall pay any damages and costs assessed against Reseller in connection with such claim. Reseller shall have the right, at its own expense, to participate and be represented in any such action, suit or proceeding by its own attorneys. TD SYNnex shall not enter into any settlement that affects Reseller's rights or interests without Reseller's prior written approval.

SECTION 11 **INTELLECTUAL PROPERTY.**

11.1 Nothing contained in this Agreement shall give Reseller any interest, license or right in any trademark, name, logo, or other trade designation of TD SYNnex or any TD SYNnex parent or affiliated company. Reseller agrees that it will not at any time during or after this Agreement assert or claim any interest in, or do anything that may adversely affect the validity or enforceability of, any trade name, trademark or logo belonging to or licensed to any TD SYNnex parent or affiliated company or the rights therein.

SECTION 12 **TERM AND TERMINATION.**

12.1 Term. The initial term of this Agreement shall commence on the Effective Date of this Agreement and extend for the life of the Contract unless terminated according to one or more of the following provisions:

- (A) At any time upon the mutual written agreement of both parties;
- (B) By either party with or without cause upon thirty (30) days prior written notice of termination to the other party;
- (C) By either party, following a material breach of this Agreement by the other party and the breaching party's failure to cure such breach within thirty (30) days of it receiving written notice of such breach;
- (D) By TD SYNnex, immediately by written notice, in the event Reseller breaches Section 5; and
- (E) By either party upon the other party seeking an order for relief under the bankruptcy laws of the United States or similar laws of any other jurisdiction, a composition with or assignment for the benefit of creditors, or dissolution or liquidation.

Notwithstanding the foregoing, TD SYNnex may in its sole discretion, and without any further liability or obligation of any kind, revoke its appointment of Reseller by providing five (5) business days written notice.

12.2 Effect of Termination. The termination of this Agreement shall in no way affect the obligations of either party regarding orders accepted by TD SYNnex prior to the effective date of such termination.

12.3 Return of Confidential Information. Upon termination of this Agreement by either party, each party shall return all originals and copies of Confidential Information or destroy the same with certification of such destruction, provided, however, that the Receiving Party may retain an archival copy of Confidential Information as required by record retention policies or law.

12.4 Survival. Provisions herein which by their nature extend beyond the termination or expiration of this Agreement will remain in effect until fulfilled.

SECTION 13 MISCELLANEOUS.

13.1 Entire Agreement and Modification. This Agreement shall constitute the entire agreement between the parties with respect to the transactions contemplated hereby and supersedes all prior agreements and understandings between the parties relating to such transactions. The Exhibits attached hereto are considered to be a part of this Agreement. No modification of this Agreement shall be binding, unless in writing and signed by an authorized representative of each party.

13.2 Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Neither party hereto shall in any way sell, transfer, assign, or otherwise dispose of any of the rights, privileges, duties and obligations granted or imposed upon it under this Agreement; *provided, however*, TD SYNEX shall have the right to assign its rights, duties and responsibilities under this Agreement to an affiliate of TD SYNEX. An affiliate of TD SYNEX means any corporation, partnership or other business entity which controls, is controlled by, or is under common control with TD SYNEX.

13.3 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, except in those instances where removal or elimination of such invalid, illegal, or unenforceable provision or provisions would result in a failure of consideration under this Agreement, such invalidity, illegality or unenforceability shall be severed and shall not affect any other provision hereof. Furthermore, the severed provision shall be replaced by a provision which comes close so such severed provision, or part thereof, in language and intent, without being invalid, illegal or unenforceable.

13.4 Force Majeure. Neither party shall be liable to the other for any delay in performance or failure to perform, in whole or in part, due to labor dispute, strike, war or act of war (whether an actual declaration is made or not), insurrection, riot, civil commotion, act of public enemy, accident, fire, flood, earthquake, or other act of God, act of any governmental authority, judicial action, computer virus or worm, or similar causes beyond the reasonable control of such party. If any event of force majeure occurs, the party affected by such event shall promptly notify the other party of such event and take all reasonable actions to avoid the effect of such event.

13.5 Independent Contractor. TD SYNEX and Reseller are and shall be independent contractors to one another, and nothing herein shall be deemed to cause this Agreement to create an agency, partnership, or joint venture between the parties.

13.6 Disputes. Both parties agree to negotiate in good faith the settlement of any disputes that may arise under this Agreement. If necessary, such disputes shall be escalated to appropriate senior management of each party. In the event that such good faith settlements fail, excluding any and all disputes and controversies arising out of or in connection with **Sections 7.1 or 8.1**, any and all

other disputes and controversies of every kind and nature between the parties arising out of or in connection with the existence, construction, validity, interpretation, or meaning, performance, non-performance, enforcement, operation, breach, continuance, or termination of this Agreement shall be submitted to binding arbitration, pursuant to the Rules of the American Arbitration Association, before a single arbitrator in Alameda County, California. In the event the parties cannot agree on the arbitrator, then an administrator of the American Arbitration Association shall select an appropriate arbitrator from among arbitrators of the American Arbitration Association with experience in commercial disputes related to technology products. In the event of any litigation arising out of this Agreement or its enforcement by either party, the prevailing party shall be entitled to recover as part of any judgment, reasonable attorneys' fees and court costs.

13.7 No Waiver. The failure of either party to require performance by the other party of any provision of this Agreement shall not affect the full right to require such performance at any later time, nor shall the waiver by a party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.

13.8 Jurisprudence. This Agreement shall be governed by and construed in accordance with the laws of California and the United Nations Convention on Contracts for the International Sale of Goods shall not apply.

13.9 Notice. All written notices required by this Agreement must be delivered in person or by means evidenced by a delivery receipt and will be effective upon receipt.

13.10 Exhibits. If any Exhibit is attached hereto such Exhibit is incorporated herein by reference. The parties may amend any Exhibit from time to time by entering into a separate written agreement, referencing such Exhibit and specifying the amendment thereto, signed by an authorized employee of each of the parties.

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