

AIX HEALTH CHECK

*The number one in AIX Health Checks; Provided by IBM
Certified Advanced Technical Experts*

Reseller terms & conditions

THIS RESELLER AGREEMENT ("AGREEMENT"), IS ENTERED INTO BETWEEN YOU ("RESELLER") AND AIX HEALTH CHECK.

ACCEPTANCE:

RESELLER MUST READ THIS AGREEMENT. IF RESELLER DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, RESELLER WILL NOT BE PERMITTED TO RESELL AIX HEALTH CHECK ("CLIENT SOFTWARE"). THIS AGREEMENT IS EFFECTIVE IMMEDIATELY.

NON-EXCLUSIVE AGREEMENT

Reseller agrees to resell the Client Software to end users in accordance with the terms of this Agreement and the International License Agreement for Non-Warranted Programs at www.aixhealthcheck.com/license.php. This Agreement is not exclusive to Reseller, and AIX Health Check reserves the unrestricted right to sell, license, market and distribute or to grant to others the right to sell, license, market and distribute the Client Software anywhere in the world.

COMMISSIONS

Reseller shall receive 20% of Net Collected Revenue (as defined below) received by AIX Health Check, starting with the second resale. There is no discount for the first resale by Reseller. All payments will be made to Reseller within 30 days following the end of each calendar quarter, during which the amount owed to Reseller is greater than US\$50. AIX Health Check may amend the commission rate at any time. All commissions shall be paid in US dollars. "Net Collected Revenue" means the fees paid to AIX Health Check by Referred End-Users for the Client Software minus credit card chargebacks (and associated fees) and refunds.

CLIENT SOFTWARE

AIX Health Check has the right to modify, alter, and update the Client Software at any time at its discretion. Reseller agrees not to remove from the Client Software any copyright notice included therein. Neither party shall obtain any ownership or other interest in the intellectual property of the other by reason of this Agreement.

CONFIDENTIALITY

In the performance of this Agreement, each party may have access to confidential, proprietary or trade secret information owned or provided by the other party ("Confidential Information"). All Confidential Information supplied by one party to another pursuant to this Agreement shall remain the exclusive property of the disclosing party. The receiving party shall use such Confidential Information only for the purposes of this Agreement and shall not copy, disclose, convey or transfer any of the Confidential Information. Neither party shall have any obligation with respect to Confidential Information which: (i) is or becomes generally known to the public by any means other than a breach of the obligations of the receiving party; (ii) was previously known to the receiving party or received by the receiving party from a third party, which was not subject to similar confidentiality obligations to the disclosing party; (iii) is independently developed by the receiving party, without breaching the confidentiality obligations of this Agreement; or (iv) is disclosed pursuant to applicable law, or by order of any court or governmental agency provided that the receiving party gives the disclosing party the opportunity to contest or obtain a protective order regarding such disclosure. The obligations or confidentiality hereunder, except as to trade secrets, shall survive for a period of three (3) years following the disclosure thereof.

RELATIONSHIP OF THE PARTIES

Nothing contained in this Agreement shall create or imply any agency relationship between the parties, nor shall this Agreement be deemed to constitute a joint venture or partnership between the parties. Neither party shall have authority to act for or on behalf of the other, except as expressly provided for in this Agreement. Each party acknowledges and agrees that it is not authorized to bind the other party to any contract or agreement of any nature whatsoever.

TERM AND TERMINATION

This Agreement shall continue until a party shall give notice to the other party of its desire to terminate this Agreement upon at least ninety (90) days prior written notice. The Agreement may be terminated by AIX Health Check at any time.

LIMITATION OF LIABILITY

- a. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OR EXPENSES ARISING OUT OF THIS AGREEMENT WHATSOEVER (INCLUDING BUT NOT LIMITED TO ANY DAMAGES OR EXPENSES FOR ANY: LOSS OF USE; LOST PROFITS; LOST BUSINESS; LOST OPPORTUNITY, LOST DATA; COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; AND, BUSINESS INTERRUPTION) WHETHER IN AN ACTION OF CONTRACT, NEGLIGENCE OR OTHER TORTIOUS ACTION, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR EXPENSE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
- b. AIX HEALTH CHECKS' MAXIMUM AGGREGATE LIABILITY TO RESELLER SHALL NOT EXCEED THE GREATER OF AN AMOUNT EQUAL TO (A) \$100, AND (B) THE COMMISSION EARNED BY RESELLER IN THE CALENDAR QUARTER IMMEDIATELY PRECEDING THE ACT OR OMISSION THAT HAS BEEN ALLEGED WILL GIVE RISE TO LIABILITY HEREUNDER. THE LIMITATIONS IN THIS SECTION SHALL APPLY WHETHER OR NOT THE ALLEGED BREACH OR DEFAULT IS A BREACH OF A FUNDAMENTAL CONDITION OR TERM OR A FUNDAMENTAL BREACH. SOME STATES/COUNTRIES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY.

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- c. THE LIMITATIONS OF LIABILITY IN a. AND b. ABOVE SHALL BE DEEMED TO APPLY TO, AND EXIST FOR THE BENEFIT OF, AIX HEALTH CHECKS' PARTNERS, SUPPLIERS, CONTRACTORS, AGENTS, VENDORS, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, SUPPLIERS, RESELLERS, LICENSORS AND DISTRIBUTORS.

INDEMNITY

RESELLER HEREBY AGREES TO INDEMNIFY, RELEASE AND HOLD HARMLESS AIX HEALTH CHECK, ITS PARENTS, SUBSIDIARIES AND AFFILIATES (TOGETHER THE "AIX HEALTH CHECK ENTITIES"), AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, SUPPLIERS, RESELLERS, LICENSORS AND DISTRIBUTORS AGAINST ANY AND ALL CLAIMS, ACTIONS, PROCEEDINGS, SUITS, LIABILITIES, DAMAGES, SETTLEMENTS, PENALTIES, FINES, COSTS OR EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE LAWYER'S FEES AND OTHER LITIGATION EXPENSES) INCURRED BY THE AIX HEALTH CHECK ENTITIES, ARISING OUT OF OR RELATING TO (A) RESELLER'S VIOLATION OR BREACH OF ANY TERM, CONDITION, REPRESENTATION OR WARRANTY OF THIS AGREEMENT; (B) RESELLER'S USE OF THE "CLIENT SOFTWARE"; OR (C) RESELLER'S VIOLATION, ALLEGED VIOLATION, OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT (INCLUDING, WITHOUT LIMITATION, TRADEMARK, COPYRIGHT, PATENT, TRADE SECRETS) OR NON-PROPRIETARY RIGHT OF A THIRD PARTY (INCLUDING, WITHOUT LIMITATION, DEFAMATION, LIBEL, VIOLATION OF PRIVACY OR PUBLICITY). RESELLER HEREBY ACKNOWLEDGES AND AGREES THAT THIS INDEMNITY SHALL BE DEEMED TO APPLY TO, AND EXIST FOR THE BENEFIT OF, ANY SUPPLIER AND ITS PARENTS, SUBSIDIARIES, AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, SUPPLIERS, RESELLERS, LICENSORS AND DISTRIBUTORS.

NOTICE

Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or email:

AIX Health Check
P.O. Box 6153
McKinney, TX 75071, USA
Tel: +1 (214) 708-0929
E-mail: sales@aixhealthcheck.com

SEVERABILITY

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

GOVERNING LAW

This Agreement shall be interpreted under the laws of the Netherlands.

MISCELLANEOUS

Assignment. This Agreement may not be assigned by Reseller without AIX Health Check' prior written consent.

Modification. This Agreement may not be modified except by a written instrument signed by Reseller and AIX Health Check.

Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior written or oral agreement including any prior reseller or referral agreement or understanding with respect to the subject matter thereof. The terms and conditions of any past, present or future purchase order submitted by Partner which alter, modify or conflict with the terms and conditions of this Agreement are void.

RESELLER AGREES TO THE TERMS OF THIS AGREEMENT, WHENEVER CLIENT SOFTWARE IS SOLD BY RESELLER. RESELLER REPRESENTS AND WARRANTS THAT: (A) THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS DULY AUTHORIZED TO ACCEPT THIS AGREEMENT ON RESELLER'S BEHALF AND TO BIND RESELLER TO THE TERMS OF THIS AGREEMENT; (B) RESELLER HAS THE FULL POWER, CORPORATE OR OTHERWISE, TO ENTER INTO THIS AGREEMENT AND PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT; AND (C) THIS AGREEMENT AND THE PERFORMANCE OF RESELLER'S OBLIGATIONS UNDER THIS AGREEMENT DO NOT VIOLATE ANY THIRD-PARTY AGREEMENT TO WHICH RESELLER IS A PARTY.

CONTACT

AIX Health Check
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