



## AVG ANTIVIRUS RESELLER AGREEMENT

This Agreement is made as of the \_\_\_\_ day of \_\_\_\_\_, 2004, by and between Walling Data Systems, Inc., a North Carolina corporation with offices at 3029 Centennial Blvd, Claremont, NC 28610. ("WDS"), and \_\_\_\_\_, a \_\_\_\_\_ corporation with offices at \_\_\_\_\_ ("Company").

### Background

WDS has rights to distribute a family of virus protection software products known as "Grisoft AVG Antivirus Software." Company is in the business of \_\_\_\_\_.

Company, on the terms and conditions of this Agreement, intends to provide copies of the AVG Software to Company's customers for such customers' internal use. WDS, on the terms and conditions set forth in this Agreement, has agreed to permit Company to reproduce and distribute the AVG Software to its customers.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

### 1. GRANT; RELATED PROVISIONS

- a. Grant. WDS, subject to the terms and conditions of this Agreement, hereby grants Company a nonexclusive, nontransferable right and license during the term of this Agreement to distribute the AVG Software to individuals and companies solely for use within the Territory as defined below (each an "End User") for such End Users' internal use and not for resale, and to reproduce the AVG Software as necessary to deliver the same to such End Users. While acting under this agreement, Company has a right to use the "Authorized AVG Anti-Virus Reseller" logo. The "Territory," for these purposes means the following countries: United States of America
- b. Procedure. Company acknowledges that, in order to activate any copy of the AVG Software, Company or the End User must obtain a unique license number from WDS in accordance with the procedures then-currently established at [http://www.grisoft.com/us/us\\_register.php](http://www.grisoft.com/us/us_register.php) or such other Internet site as WDS may specify from time to time by written notice (the "AVG Reseller Center").
- c. End-User Licenses. Company acknowledges that each End User is required to accept WDS's then-current End User License Agreement before its first use of the AVG Software. Company agrees that it shall either (i) refrain from clicking the "Accept" button on installation of the AVG Software for use by an End User, (ii) obtain the End User's separate agreement to abide by and be bound by the terms of WDS's then-current End User License Agreement or (iii) indemnify WDS against all costs, expenses, losses and liabilities arising from Company's failure to perform under subsection (i) or (ii) of this Section 1.c. Company shall sell WDS products in accordance with the WDS standard license agreement (and shall honor WDS's standard 60 day money back guarantee).



Walling Data Systems, Inc.  
AVG Antivirus Authorized Distributor  
Toll Free 866-833-5727  
CUSTOMER NUMBER \_\_\_\_\_

## 2. PRICES; PAYMENT

a. Price list. In exchange for the rights granted by this Agreement, Company will pay the license fees, minimum order amounts, shipping and handling charges and other fees and charges, and shall enjoy the discounts and credits, if any, established by WDS's then-current Price List as published in the AVG Reseller Center. WDS in its sole discretion may make changes to such Price List from time to time by posting the revised Retail Price List at <http://www.avg-antivirus.net> at least thirty (30) days before the revised Price List takes effect. Orders placed prior to the effective date of the Price List revisions will be honored at the lower of the revised Price List or the Price List then in effect.

b. Payment. Company shall pay license fees and all other applicable fees and charges by credit card, check or wire transfer (provided that the wire charges are paid by Company and each wire transfer references the Reseller Account Number set forth in the header of this Agreement). WDS shall have no obligation to deliver product or licenses before it receives payment in full in accordance with this section.

c. Taxes. Company shall pay directly all income, franchise, sales, use, personal property, ad valorem, value added, stamp or other taxes, levies, customs, duties or other imposts or fees, including withheld taxes (except only a tax levied by the United States of America or any political subdivision thereof based on the net income of WDS), together with all penalties, fines and interest thereon that in any way arise out of this Agreement, whether on or measured by the price, the charges, the programs or the services furnished, or their use, however designated, levied or based (collectively a "Tax").

## 3. TERM; TERMINATION

a. Term. The term of this Agreement will commence on the date Company submits this agreement to WDS (the "Effective Date"), and will continue until terminated in accordance with this Section 3.

b. Termination for Convenience. Either party may terminate this Agreement for convenience on thirty (30) days' prior written notice. In addition, WDS, without notice, may suspend this Agreement and Company's access to the avg-antivirus.net reseller site. As of the date of this Agreement, WDS policy permits WDS to suspend this Agreement if Company fails to submit at least one order in any three month period. In the event of suspension pursuant to this Section 3.b, Company may contact WDS for reinstatement in accordance with WDS's then-current policies.

c. Termination for Cause. Either party may terminate this Agreement for cause if the other party breaches any of its obligations under this Agreement and fails to remedy such breach within thirty (30) days after the first party gives written notice thereof.

d. Immediate Termination by WDS. WDS may terminate this Agreement, effective immediately, if Company breaches any of its obligations under Section 1. of this Agreement.



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#### 4. OWNERSHIP; RESTRICTIONS

a. Ownership. Company hereby acknowledges that all patents, copyrights, trade secret rights and other intellectual property rights embodied in the AVG Software are and at all times shall remain the sole and exclusive property of Grisoft or Grisoft's licensors. Company shall reproduce the applicable copyright notices, confidential or proprietary legends and trademarks on each copy of the AVG Software that Company creates pursuant to this Agreement. The existence of a copyright notice shall not cause, or be construed as causing, any of the AVG Software to be anything other than a copyrighted work with all rights reserved under the applicable copyright laws.

b. Further Limitations. Company shall not, and shall not permit or cause any third party to, reverse engineer, disassemble, decompile or otherwise decode by any method any of the AVG Software in whole or in part for any purpose whatsoever. Company shall not, and shall not permit or cause any third party, to update, upgrade, modify or revise the AVG Software. Nothing in this Agreement shall be construed to grant Company any rights with respect to the source code version of the AVG Software.

c. Confidentiality. All information (except for public information) disclosed by WDS to Company under this Agreement is considered confidential. Such information may be used only for performance under this Agreement but may not be copied or reproduced unless such copying or reproduction is a requirement for using such information. Any and all confidential information remains the property of WDS with Company being obligated to return to WDS all copies and reproductions no later than the date of termination of this Agreement. Company is obligated to ensure that all confidential information is secure with all persons to whom such information will have been disclosed or otherwise communicated up to the time such information becomes public.

#### 5. WARRANTIES

a. By Grisoft. Grisoft represents and warrants to Company that WDS has sufficient rights in and to the AVG Software to grant the rights contemplated by this Agreement without obtaining the consent of any other person, and the AVG Software does not infringe any U.S. copyright, U.S. patent or other U.S. intellectual property right.

WDS EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING (x) ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE AVG SOFTWARE, (y) ALL WARRANTIES THAT THE AVG SOFTWARE WILL MEET THE REQUIREMENTS OF COMPANY OR ANY END USER OR OPERATE IN ANY COMBINATION SELECTED BY COMPANY OR ANY END USER, AND (z) ALL WARRANTIES THAT THE AVG SOFTWARE WILL BE BUG-FREE OR OPERATE ERROR-FREE.

b. By Company. Company represents and warrants to WDS that Company will make no representation, warranty, claim or promise to any party relating to the AVG Software except as WDS has expressly authorized in writing.



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## 6. LIMITATION OF LIABILITY

a. WDS's liability to Company or to any third party, in tort, contract or otherwise, for claims, losses, damages or injuries arising out of or relating to this Agreement will be limited to the License Fee paid by Company in respect of the copy or copies of AVG Software giving rise thereto. IN NO EVENT SHALL WDS BE LIABLE TO COMPANY OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL OR SPECIAL DAMAGES OR LOST PROFITS, INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL OR SPECIAL DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOSS OF DATA, LOSS OF WORK PRODUCT, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, DIRECT OR INDIRECT, EVEN IF WDS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.

b. Company's sole and exclusive remedy for any damage or loss in any way connected with the AVG Software, whether or not caused by WDS's breach of warranty, negligence or any breach of any other duty, shall, at WDS's option, be replacement of the affected copies of the AVG Software. Any replacement of the AVG Software shall be effected by WDS free of charge.

## 7. MISCELLANEOUS

a. Notices. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given when delivered in person or, if mailed, when mailed by the appropriate postal service, postage prepaid, to the parties at the addresses first set forth above or at such other address as may be given in writing by either party to the other in accordance with this Section 7.a.

b. Choice of Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of North Carolina without reference to conflicts of laws principles.

c. Entire Agreement; Amendment. This Agreement constitutes the entire understanding between the parties relating to the subject matter of this Agreement and supersedes all prior writings, negotiations or understandings with respect thereto. Without limiting the foregoing, this Agreement shall not be amended or supplemented by the preprinted terms or conditions on any purchase order, acknowledgment or other business form employed by either party. No modification or addition to this Agreement shall have any effect unless it is set forth in writing and signed by both parties.

d. Assignment. Neither party may assign its rights or obligations hereunder or subcontract any portion of its performance hereunder without the other party's prior written consent. Notwithstanding the above, WDS without Customer's consent may assign its rights or delegate its duties hereunder in whole or in part to any WDS affiliate or subsidiary, to a purchaser of substantially all of WDS's stock, or to a purchaser of substantially all of WDS's assets to which this Agreement relates.

e. Waiver. The waiver by either party of a breach of any provision of this Agreement shall not be construed as a continuing waiver of such breach or as a waiver of other breaches of the same or of other provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the effective date.



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