



This Panzura Reseller Agreement (this “Agreement”) is made between Panzura, LLC (“Panzura”), and the corporation, LLC, partnership, sole proprietorship, or other business entity (“Reseller”) offering Panzura Software for resale to Customers. This Agreement is made effective as of the earlier of (i) the date Reseller executes an **Exhibit A, Panzura Partner Resale Program**, or (ii) the date Reseller begins offering the Software to Customers (“the Effective Date”). Panzura and Reseller may individually be referred to as a “Party”; and together as the “Parties”). The definitions of certain capitalized terms are found in **Section 14** below.

1. BACKGROUND.

- 1.1 Panzura has developed the Software listed within **Panzura’s Partner Portal** (“Portal”) at <https://partners.panzura.com> and referenced in Reseller’s **Exhibit A, Panzura Partner Resale Program** (“Program”), as provided directly to Reseller by Panzura or an Authorized Distributor.
- 1.2 Reseller desires to obtain, and Panzura has agreed to grant, the right to resell the Software in accordance with the terms of this Agreement.

2. APPOINTMENT OF RESELLER. Subject to Reseller’s compliance with the terms of this Agreement, Panzura hereby appoints Reseller as a “Panzura Authorized Reseller” and grants to Reseller the rights described in **Section 3**.

3. RESELLER RIGHTS AND OBLIGATIONS.

3.1 Reseller Software Rights. Subject to all the terms and conditions of this Agreement, Panzura hereby grants to Reseller a nonexclusive, nontransferable, non-sublicensable right during the Term:

- (a) To resell the Software on a subscription basis solely to Customers for which Reseller has provided Panzura’s Subscription Software and Services Agreement found at www.panzura.com/legal (“Customer Agreement”) in accordance with **Section 5.3**;
- (b) To include Panzura’s name and trademarks in Reseller’s sales and marketing materials consistent with Panzura’s reasonable policies for trademark and logo usage as provided in the Portal.

3.2 Documentation License. Subject to all the terms and conditions of this Agreement, Panzura hereby grants to Reseller during the Term:

- (a) a nonexclusive, nontransferable license under Panzura’s intellectual property rights in the Documentation to use and copy the Documentation in support of resale of the Software to Customers; and,
- (b) the right to distribute copies of the Documentation to Customers.

3.3 Compliance Assistance. Upon Panzura’s request, Reseller will provide commercially reasonable assistance to enable Panzura to verify that Customers are complying with the applicable Customer Agreement.

3.4 Restrictions.

- (a) General. Reseller will be bound by and observe the proprietary nature of the Software and Documentation as provided in this Agreement. Reseller will take the actions necessary to fulfill its obligations in this Agreement by instruction or agreement with its employees or agents who are permitted access to the Software or Documentation. Reseller may only give access to the Software or Documentation on a need-to-know basis.
- (b) Proprietary Rights. Reseller acknowledges that the Software and Documentation contain valuable trade secret and confidential information of Panzura or its licensors. Title to and all patents, copyrights, trade secrets, and other proprietary rights in or related to the Software and Documentation (including all their parts) are and will remain the exclusive property of Panzura or its licensors, whether or not specifically recognized or perfected under the laws of the United States or any other jurisdiction. Reseller will not acquire any right in the Software or Documentation except the limited rights specified in this Agreement or take any action that jeopardizes Panzura’s or its licensors’ proprietary rights.
- (c) No Implied Licenses. Any use, modification, or distribution of the Software or Documentation by Reseller outside the scope of the rights granted in **Section 3.1** is expressly prohibited.
- (d) Required Proprietary Notices. Reseller will ensure that each copy it makes of the Documentation contains the same proprietary notices that appear on or in the same as provided by Panzura to Reseller and as otherwise reasonably required by Panzura.
- (e) Unauthorized Distribution or Copying. Other than in strict accordance with this Agreement, Reseller will not, and will not knowingly permit others to:
 - (i) lease, license, sublicense, transfer, or assign any of its rights under this Agreement;
 - (ii) sell, rent, or distribute the Software or Documentation, including providing access to the Software or Documentation or using the Software or Documentation to operate a service bureau or on a timesharing basis; or,
 - (iii) use, copy, duplicate, or otherwise reproduce all or any part of the Software or Documentation.
- (f) No Registration of Similar Names. Neither Party will register any trademark or domain name, or use any name, that is confusingly similar to any trademark or name of the other Party.

Any breach of this **Section 3.4** will be considered a material breach of this Agreement that is incapable of cure.

3.5 No Exclusivity. Panzura is under no obligation to restrict other vendors from reselling the Software in any geographical location and Panzura retains the right to transact directly with any entity.



4. PANZURA RESELLER SUPPORT SERVICES.

- 4.1 Sales Training. Panzura will provide training to Reseller's staff in the important characteristics, benefits, markets, competition, and operation of the Software, as Panzura deems appropriate and as provided in the Portal.
- 4.2 Sales Materials. Panzura will provide the information, descriptive materials, demonstration programs, and manuals on the sale of the Software as Panzura provides generally to its resellers (the "Panzura Sales Materials"). Panzura hereby grants Reseller the right to reproduce and distribute the Panzura Sales Materials to fulfill its obligations under this Agreement and the Program. Reseller may provide feedback on the Panzura Sales Materials from time to time and Panzura will make reasonable efforts to modify the Panzura Sales Materials to accommodate Reseller's feedback.

5. DUTIES OF AUTHORIZED RESELLERS.

- 5.1 Sales and Marketing. Reseller will do the following:
- (a) Promotion. Use commercially reasonable efforts to promote the purchase of the Software.
 - (b) Panzura Standards. Comply with all reasonable standards of Panzura for displaying, advertising, demonstrating, and explaining the operation and use of the Software.
- 5.2 Operations. Reseller will do the following:
- (a) Training. Ensure that its staff is appropriately trained.
 - (b) IP Notices. Include copyright and patent notices, as applicable, in appropriate locations and forms on all copies of the Software and Documentation distributed by Reseller.
 - (c) Information. Provide accurate and adequate information to Panzura regarding each Customer's systems, software, equipment and infrastructure.
 - (d) Access. Provide Panzura necessary access to Reseller's and Customer's personnel, documentation, records, and facilities as needed for Panzura to timely perform any services hereunder.
 - (e) Customer Support. Attend to the needs of its Customers on a timely basis and inform Panzura in a timely manner to the extent necessary.
 - (f) Notice of Issues. Alert Panzura promptly of any material issues related to the Software (including possible infringement issues) and use its best efforts to resolve any customer satisfaction issues that may arise from the use of the Software.
 - (g) Legal Notices. Advise Panzura immediately of any legal notices served on Reseller or filed by Reseller that might affect Panzura or the market prospects of the Software.
- 5.3 Customer Agreement.
- (a) Reseller will ensure all Software provided to Customers hereunder is governed by the Customer Agreement found at www.panzura.com/legal. The acceptance of any proposed changes to the Customer Agreement are at the sole discretion of Panzura.
 - (b) Panzura may from time to time update its Customer Agreement. Reseller will use the updated Customer Agreement from the date of such update for all Customers except as otherwise provided in an Order.
 - (c) Notwithstanding the terms of any agreement with any Customer, Reseller remains obligated to Panzura pursuant to the terms and conditions of this Agreement.
- 5.4 Non-Compete. During the Term of this Agreement, and for the remainder of any Customer term as provided in an Order, Reseller will not offer to any Customer either directly, or indirectly through any third party any software or service that is materially similar or competitive to the Software offered for resale by Panzura. Notwithstanding anything to the contrary herein, this **Section 5.4** will not apply to Reseller in the event of Panzura's (a) gross negligence or willful misconduct; or (b) material non-performance of its duties and obligations hereunder. In the event of a violation of this **Section 5.4**, Panzura may immediately terminate this Agreement, including any Order hereto, and any rights of Reseller hereunder. Any exceptions granted to Reseller under this **Section 5.4** must be in a signed writing by an executive of Panzura.
- 5.5 Reseller Failure to Perform. Reseller understands that failure to perform the duties in this **Section 5** is a material breach of this Agreement subject to **Section 12.2(a)**.
- 5.6 Authorized Distributor Requirement. Panzura, in its sole discretion, may require Reseller to purchase the Software directly from an Authorized Distributor. Reseller will be solely responsible for any terms and conditions or other requirements as between an Authorized Distributor and Reseller. Panzura may update its Authorized Distributors at any time and for any reason. In the event of additional pricing discounts that Panzura may provide to Reseller on a deal-by-deal basis as provided in Reseller's **Exhibit A**, Panzura may require Reseller and Authorized Distributor to proportionately share the additional discount, as determined by Panzura in its sole discretion.
- #### 6. PRICING AND TERMS.
- 6.1 Software Fees. Reseller will pay to Panzura or an Authorized Distributor the prices for the Software as provided in the Portal located at <https://partners.panzura.com> minus all applicable discounts granted in Reseller's **Exhibit A** (the "Fees"), unless otherwise agreed to by Panzura and provided in an Order. Reseller is free to determine the prices it charges to Customers. Panzura may change the prices and terms at any time; provided however, that Panzura will honor pricing during any period of deal registration protection. Panzura may agree to reduce Fees in any Order for a Customer in Panzura's sole discretion. Any Fees modified in an Order will not apply to subsequent Customers unless approved in advance by Panzura.
- 6.2 Software Updates and Version Releases. Panzura will provide Updates and Version Releases to the Software as they are made generally available for all Customers for whom Reseller is current on all applicable undisputed Fees, and that are otherwise in compliance with the Customer Agreement.

- 6.3 **Additional Services.** Reseller will pay Panzura's then-current time and material rates, including payment for actual expenses incurred, for any Additional Services (collectively, the "Additional Charges"). Prior to providing Additional Services Panzura will submit for Reseller's prior approval estimates for the time and expenses required. Reseller will pay any Additional Charges billed to Reseller within thirty 30 days after receipt of an invoice from Panzura.
- 6.4 **Taxes.** Reseller will pay all applicable transaction taxes, including sales and use taxes, value added taxes, and other transactional charges such as duties, customs, tariffs, imposts, and government-imposed surcharges ("Transaction Taxes") except to the extent excluded from such Transaction Taxes as demonstrated in any exemption certificate provided to Panzura. Transaction Taxes are not included in Panzura's pricing. If Panzura is required to collect Transaction Taxes from Reseller and remit them to a taxing authority, Panzura or Authorized Distributor will separately state the Transaction Taxes on an invoice. Each Party is responsible for its own income taxes or taxes based on gross revenues or gross receipts.
- 6.5 **Failure to Pay.**
- (a) **Material Breach.** Reseller acknowledges that its failure to timely pay to Panzura or an Authorized Distributor will be a material breach of this Agreement for which Panzura may, in addition to pursuing all other remedies, terminate this Agreement in accordance with **Section 12.2(a)**.
 - (b) **Interest.** Panzura may, at its option, assess interest at the rate of 1% per month on past-due amounts in excess of 30 days.
 - (c) **Reimbursement.** Reseller will also reimburse Panzura for all expenses incurred by Panzura in exercising any of its rights under this Agreement or applicable law with respect to a default in payment for undisputed fees including reasonable attorney fees and the fees of any collection agency retained by Panzura; provided, however that Panzura may not engage a collection agency unless Reseller is 60 or more days late in the payment of undisputed fees.
- 7. RECORD KEEPING.**
- 7.1 **Reseller Records.** Reseller will keep true and accurate records and books of account containing data reasonably required for the computation and verification of payments to be made under this Agreement. Reseller will retain records for 5 years after the date of origination.
- 7.2 **Audit.** Upon notice to Reseller, Panzura may, at its expense, audit Reseller's compliance with this Agreement. The audit will be conducted during business hours and will not unreasonably interfere with Reseller's business activities. Reseller will provide Panzura with all reasonable assistance and information required to enable it to determine whether Reseller is in compliance with this Agreement. If the audit reveals that Reseller has underpaid amounts due under this Agreement, Reseller will pay the underpaid amounts plus interest at the rate set forth in **Section 6.5** within 20 days after written notice.
- 8. RESELLER STATUS.** During the Term of this Agreement, Reseller may represent that it is a "Panzura Authorized Reseller" of the Software. Reseller will not in any way misrepresent, or in any way cause to be ambiguous, Reseller's relationship with Panzura, Reseller's duties as specified in this Agreement, the features of the Software (including any technical specifications and expected benefits of use), or the origin of the Software. In particular, Reseller will not represent itself as the exclusive agent or exclusive vendor of the Software. Reseller will not represent itself as the manufacturer of the Software, or as Panzura itself.
- 9. WARRANTY DISCLAIMERS AND LIMITATIONS OF LIABILITY.**
- 9.1 **DISCLAIMERS.**
- (a) THE SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS," AND PANZURA MAKES NO WARRANTIES, EXPRESS, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY, AS TO THE SOFTWARE, DOCUMENTATION, AND SERVICES PROVIDED UNDER THIS AGREEMENT. IN PARTICULAR, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT ARE HEREBY DISCLAIMED AND EXCLUDED BY THE PARTIES.
 - (b) PANZURA DOES NOT WARRANT THAT THE SOFTWARE WILL MEET RESELLER OR CUSTOMER REQUIREMENTS, THAT THE SOFTWARE WILL OPERATE IN THE COMBINATIONS THAT RESELLER OR ANY CUSTOMER MAY SELECT FOR USE, THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL SOFTWARE ERRORS WILL BE CORRECTED.
- 9.2 **LIMITATION OF LIABILITY.**
- (a) PANZURA WILL NOT BE LIABLE FOR ANY PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, SAVINGS, REVENUE, USE, LOSS OF DATA, DAMAGED FILES OR DATA, OR BUSINESS INTERRUPTION), THAT MAY ARISE IN CONNECTION WITH THIS AGREEMENT OR THE USE AND SUPPORT OF THE SOFTWARE, REGARDLESS OF THE CAUSE OF ACTION OR CHARACTERIZATION OF THE DAMAGES, EVEN IF THE PARTY SOUGHT TO BE HELD LIABLE HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES. PANZURA WILL NOT BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, EXCLUDING IP ACTION CLAIMS AS PROVIDED IN SECTION 10, PANZURA'S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE USE AND SUPPORT OF THE SOFTWARE WILL NOT EXCEED THE AMOUNT OF FEES PAID BY RESELLER TO PANZURA IN THE PREVIOUS 12 MONTHS' FOR THE SPECIFIC CUSTOMER FROM WHICH THE CLAIM ARISES, AS PROVIDED IN AN ORDER. THESE LIMITATIONS OF LIABILITY ARE INDEPENDENT OF ANY EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY IN THIS AGREEMENT AND WILL SURVIVE AND APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDIES SPECIFIED IN THIS AGREEMENT.

- (b) RESELLER ACKNOWLEDGES AND AGREES THAT THE FEES CHARGED BY PANZURA IN THIS AGREEMENT REFLECT THE OVERALL ALLOCATION OF RISK BETWEEN THE PARTIES, INCLUDING BY MEANS OF THE PROVISIONS FOR EXCLUSIVE REMEDIES, DISCLAIMERS, LIMITATIONS OF LIABILITY, AND INDEMNIFICATION IN THIS AGREEMENT. THESE PROVISIONS ARE AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES, AND A MODIFICATION OF THESE PROVISIONS WOULD AFFECT SUBSTANTIALLY THE FEES CHARGED BY PANZURA. IN CONSIDERATION OF THESE FEES, RESELLER AGREES TO THIS ALLOCATION OF RISK AND HEREBY WAIVES ANY AND ALL RIGHTS, THROUGH EQUITABLE RELIEF OR OTHERWISE, TO SUBSEQUENTLY SEEK A MODIFICATION OF THESE PROVISIONS OR ALLOCATION OF RISK.

9.3 No Inconsistent Actions. Reseller will not make any statements, representations, or warranties, or accept any liabilities or responsibilities, which are inconsistent with any disclaimer or limitation included in this **Section 9**.

10. INDEMNITY.

10.1 Panzura Intellectual Property Indemnity.

- (a) Panzura Obligations. Panzura will defend or, at its sole option, settle, at its own expense any suit, action, or proceeding brought in a court of competent jurisdiction against Reseller, or its officers or employees (each, a “Reseller Indemnified Party”) by a third party to the extent it is based on a claim that any Software infringes any copyright or trade secret arising under the laws of any jurisdiction (an “IP Action”), and Panzura will pay the damages awarded against any Reseller Indemnified Party in the IP Action, or those monetary damages agreed to in a written settlement of the IP Action.
- (b) Procedures. The Reseller Indemnified Party must (i) notify Panzura promptly in writing of an IP Action, (ii) tender to Panzura sole control of the defense or settlement of the IP Action (including the right to settle the IP Action solely for monetary consideration), and (iii) cooperate and, at Panzura’s expense, assist in the defense. Panzura will not settle an IP Action with an admission of liability of a Reseller Indemnified Party without the prior written approval of that party. A Reseller Indemnified Party will have the right to participate at its own expense in an IP Action or related settlement negotiations using counsel of its own choice. If Panzura does not assume direction and control of the defense of any IP Action, or if the interests of Panzura and a Reseller Indemnified Party conflict in any material respect, the Reseller Indemnified Party may assume direction and control of its defense and Panzura will pay the reasonable costs and expenses incurred in connection with the defense.
- (c) Remedies. If Panzura receives notice of an allegation that any Software infringes or misappropriates a third party’s intellectual property rights, or if Reseller’s or Customer’s use of any Software is prohibited by permanent injunction, Panzura may, at its sole option and expense:
- (i) procure for Customers the right to continue using the Software;
 - (ii) modify the Software so that it is no longer infringing; or
 - (iii) replace the Software with other Software of equal or superior functional capability.
- If none of the foregoing is in Panzura’s determination commercially reasonable, Panzura will have the right to terminate any use of the Software by Customers. If Panzura terminates any Software use as described above:
- (1) Panzura will refund the prorated amount of unused prepaid Fees for the Software; and
 - (2) Reseller and Customers will immediately cease use of the Software in Reseller’s and Customer’s possession or control.

Notwithstanding any other provision of this Agreement, in no event will Reseller have the right to distribute copies of any Software after it becomes subject to a claim of infringement.

10.2 PANZURA IP INDEMNITY LIMITATIONS. THE RIGHTS GRANTED TO THE RESELLER INDEMNIFIED PARTIES UNDER **SECTION 10.1** WILL BE THE SOLE AND EXCLUSIVE REMEDY AND PANZURA’S SOLE OBLIGATION FOR ANY ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHT. PANZURA WILL HAVE NO LIABILITY, INCLUDING UNDER **SECTION 10.1**, TO THE RESELLER INDEMNIFIED PARTIES IF ANY INFRINGEMENT OR CLAIM OF INFRINGEMENT IS BASED UPON OR ARISES OUT OF (A) SOFTWARE MODIFIED BY ANY PARTY OTHER THAN PANZURA; (B) ANY RESELLER OR THIRD-PARTY TECHNOLOGY; (C) USE OF THE SOFTWARE IN CONNECTION OR IN COMBINATION WITH EQUIPMENT, DEVICES, OR SOFTWARE NOT PROVIDED BY PANZURA (BUT ONLY TO THE EXTENT THAT THE SOFTWARE ALONE WOULD NOT HAVE INFRINGED); (D) COMPLIANCE WITH RESELLER’S OR ITS CUSTOMER’S DESIGN REQUIREMENTS OR SPECIFICATIONS; (E) THE USE OF SOFTWARE OTHER THAN AS PERMITTED UNDER THIS AGREEMENT OR IN A MANNER FOR WHICH IT WAS NOT INTENDED; OR (F) USE OR DISTRIBUTION OF OTHER THAN THE MOST CURRENT RELEASE OR VERSION OF THE SOFTWARE (IF THE INFRINGEMENT OR CLAIM WOULD HAVE BEEN PREVENTED BY THE USE OF THIS RELEASE OR VERSION).

10.3 Reseller Use Indemnity.

- (a) Reseller Obligations. Except with respect to infringement of third-party rights for which Panzura is obligated to indemnify under **Section 10.1** and other claims for which Panzura is obligated to indemnify Customers under the Customer Agreement, Reseller will defend and indemnify Panzura and its officers, directors, employees, and agents (each of the foregoing a “Panzura Indemnified Party”), for and against any and all claims, demands, damages, losses, and expenses of any nature (including attorney fees and other litigation expenses) arising from or in connection with the use, manufacture, promotion, distribution, or other disposition of Software by Reseller or Customers to whom it provides Software (a “Use Action”).
- (b) Procedures. The Panzura Indemnified Party must:
- (i) notify Reseller promptly in writing of a Use Action;

- (ii) tender to Reseller sole control of the defense or settlement of the Use Action (including the right to settle the Use Action solely for monetary consideration); and
- (iii) cooperate and, at Reseller's expense, assist in the defense.

Reseller will not settle any Use Action with an admission of liability of a Panzura Indemnified Party without the prior written approval of that party. A Panzura Indemnified Party will have the right to participate at its own expense in a Use Action or related settlement negotiations using counsel of its own choice. If Reseller does not assume direction and control of the defense of any Use Action, or if the interests of Reseller and a Panzura Indemnified Party conflict in any material respect, then the Panzura Indemnified Party may assume direction and control of its defense and Reseller will pay all reasonable costs and expenses incurred in connection with the defense.

- (c) Step-In Right. A Panzura Indemnified Party may at its option agree to waive its indemnification with respect to any Use Action and assume control over the defense and settlement of the action at its own expense.

11. CONFIDENTIAL INFORMATION.

11.1 Definition. In the course of performing under this Agreement, either Party (a "Disclosing Party") may provide Confidential Information to the other Party (a "Receiving Party"). "Confidential Information" means (a) technical information relating to the Software, Documentation, or other products of the Parties; (b) marketing and other business information of the Parties with potential competitive value (e.g., customer information, promotional plans, market data, etc.), provided such is marked as "Confidential" or otherwise identified as confidential at the time of disclosure or promptly afterward; and (c) all pricing, discounts, and associated information, and any other information of a Party of which a reasonable person would understand to be Confidential Information at the time of disclosure. The contents of this Agreement and Panzura's other agreements with its authorized resellers will be deemed Confidential Information of Panzura. A Party's granting of access to information (including by the granting of access to its premises) constitutes providing that information for purposes of this section.

11.2 Obligations. The Receiving Party acknowledges that Confidential Information is entrusted to it in confidence and the reputation and success of the Disclosing Party depend on maintaining and safeguarding the secrecy of its Confidential Information. The Receiving Party, during and after the Term:

- (a) will take all reasonable precautions to protect the confidentiality of the Confidential Information and will use no less than the degree of care it uses in protecting its own Confidential Information of a similar nature;
- (b) will not use any Confidential Information except for the purpose of fulfilling its obligations or exercising its rights under this Agreement;
- (c) will not, or permit others to, disclose any Confidential Information to any other person or entity; and
- (d) will not remove, or permit to be removed, any notice indicating the confidential nature of the Confidential Information.

11.3 Exceptions. Except for personal information governed by applicable privacy law, the Receiving Party is not obligated under **Section 11.2** for Confidential Information that:

- (a) is generally known, or readily ascertainable by proper means, by the public other than through a breach of this Agreement by the Receiving Party;
- (b) is known by the Receiving Party before it is disclosed to the Receiving Party by the Disclosing Party as evidenced by the Receiving Party's written records; or
- (c) is disclosed to the Receiving Party by a third party not subject to any nondisclosure obligations with respect to the Confidential Information.

11.4 Return of Confidential Information. The Receiving Party will return all Confidential Information at the earlier of the termination of this Agreement or upon the request of the Disclosing Party, except that the Receiving Party may retain a limited number of electronic backup copies of the Confidential Information as are automatically created and retained by its standard backup processes and systems. The Receiving Party will comply with its nondisclosure obligations under this **Section 11** with regard to these copies and will destroy them in accordance with its normal destruction processes. Reseller may also retain copies of Panzura Confidential Information solely to the extent needed for Reseller to meet its contractual obligations entered into prior to the date of termination. Reseller will comply with its nondisclosure obligations under this **Section 11** with regard to the retained copies.

11.5 Compelled Disclosure. If the Receiving Party receives a request to disclose all or any part of the Confidential Information under the terms of a subpoena or order issued by a court or other governmental agency, the Receiving Party will:

- (a) immediately notify the Disclosing Party of the existence, terms and circumstances surrounding the request;
- (b) consult with the Disclosing Party on the advisability of taking legally available steps to resist or narrow the request; and
- (c) if disclosure is required, cooperate with the Disclosing Party at the Disclosing Party's expense in obtaining an order or other reliable assurance that confidential treatment will be accorded to the portion of the information as the Disclosing Party may designate.

11.6 Replacement of Previous Nondisclosure Agreements. From and after the Effective Date, the Parties will treat any information previously disclosed under any other confidentiality or nondisclosure agreement executed by the Parties in accordance with this **Section 11** and the other agreement is of no further force or effect.

12. TERM AND TERMINATION.

12.1 Term.

Unless terminated in accordance with this **Section 12**, this Agreement commences on the Effective Date and remains in effect until terminated by either Party as provided herein (the "Term").

12.2 Termination for Cause. Either Party may terminate this Agreement in the event of the occurrence of any of the following:

- (a) Material Breach. The material breach by the other Party of any provision of this Agreement if the breach is not remedied within 30 days after notice of the breach is delivered to the breaching Party (excluding any breach of Section 5.4 in which case the termination is immediate upon notice to Reseller); or
 - (b) Liquidation, Etc. The other Party becomes insolvent or becomes the subject of any voluntary or involuntary bankruptcy, receivership, or other similar insolvency proceeding.
- 12.3 Termination for Convenience. Either Party may terminate this Agreement upon at least 60 days' written notice to the other Party.
- 12.4 Effect of Termination. Upon any termination of this Agreement:
- (a) All rights granted by Panzura to Reseller in this Agreement will terminate and revert immediately to Panzura;
 - (b) Each Customer then in effect will remain in effect until its expiration or termination, but without any renewals, extensions or the like through Reseller;
 - (c) Upon expiration or termination, Customers will have the option of purchasing the Software and other products and services directly from Panzura or a Panzura authorized reseller by entering into Panzura's then-standard Customer Agreement and Order; and
 - (d) **Sections 3.3, 3.4, 3.5, 6.4, 6.5, 7, 9, 10, 11, 12.4, 12.5, and 13** will survive.
- 12.5 Other Remedies. No termination under this **Section 12** will be deemed a waiver or limitation of a Party's other remedies for breach of this Agreement.
- 13. MISCELLANEOUS.**
- 13.1 Assignment. Neither Party may assign or transfer, by merger, operation of law, or otherwise, this Agreement or any right or duty under this Agreement to a third party without the other Party's prior written consent, except that Panzura may transfer this Agreement, together with all of its rights and duties under this Agreement, to a successor entity if Panzura is acquired, whether by equity or asset purchase, merger, corporate restructuring or reorganization, or the like. Any purported assignment in violation of this **Section 13.1** is void.
- 13.2 Non-Solicitation. During the Term and for an additional 12 months, neither Party may solicit for employment or engagement as an independent contractor, or employ or engage as an independent contractor, any person who is or was an employee or contractor of the other Party during the 12-month period prior to this action, without the prior written consent of the other Party.
- 13.3 No Waiver. No failure to exercise and no delay in exercising, any right will operate as a waiver, and no single or partial exercise of any right preclude any further exercise of that right or the exercise of any other right. The waiver by a Party of any default or breach of this Agreement will not constitute a waiver of any other breach.
- 13.4 Entire Agreement; Amendments. This Agreement contains all the agreements, representations, and understandings of the Parties and supersedes any previous understandings, commitments, representations, or agreements, oral or written, with respect to the subject matter of this Agreement. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each Party that expressly states the sections of this Agreement to be modified; provided, however, that Panzura or an Authorized Distributor may supersede Reseller's Exhibit A without a signature requirement upon 30 days' notice to Reseller. Each Party hereby waives any right it may have to claim that this Agreement was subsequently modified other than in accordance with this **Section 13.4**.
- 13.5 Applicable Terms; Reseller Purchase Orders. All provision of Software or services by Panzura to Reseller will be governed exclusively by this Agreement and the applicable Order, whether or not this Agreement is specifically mentioned. Any submission to Panzura of Reseller's standard form of purchase order is for administrative convenience only and any terms or conditions on any Reseller purchase order in any way different from or in addition to the terms and conditions of this Agreement will have no effect and Panzura hereby rejects these terms and conditions.
- 13.6 Nature of Relationship. Reseller is an independent contractor of Panzura. Reseller has no power or authority to accept offers or enter into or execute any contract on behalf of Panzura. This Agreement will not be construed to constitute Reseller or any of its employees or agents as an agent, employee, partner, or joint venturer of Panzura, nor to create any relationship between the Parties other than is expressly provided.
- 13.7 Notices. All notices, requests, demands, and other communications under this Agreement by either Party will be in writing and will be deemed to have been duly given if (i) delivered by hand (and duly receipted); (ii) mailed, certified or registered mail, return receipt requested; (iii) sent by internationally recognized overnight courier; or (iv) emailed, with documented verification of receipt. Notice given by mail, overnight courier, or email will be deemed to have been given upon the date shown on the receipt showing delivery to the recipient. For notices addressed to Panzura: Panzura, LLC, Attention: Legal, 5850 Granite Parkway, Suite 450, Plano, TX 75024, legal@panzura.com. For notices addressed to Reseller, the information will be as provided in an Order.
- 13.8 Governing Law; Venue. This Agreement will be governed and construed and enforced in accordance with the laws of the State of Texas and the United States of America. The Parties agree that any litigation concerning issues arising from this Agreement will take place in a state court residing in Dallas County, Texas or the U.S. District Court for the Northern District of Texas. Reseller hereby consents to the personal jurisdiction of these courts.
- 13.9 Remedies Cumulative. Each remedy of a Party is cumulative with each other remedy contained in this Agreement and with all other remedies available to that Party at law, in equity, and otherwise, and no pursuit of any particular remedy will constitute an exclusive election of any particular remedy.
- 13.10 Legal Expenses. In the event legal action is taken by either Party to enforce its rights under this Agreement, all costs and expenses incurred by the prevailing Party, including reasonable attorney fees and court costs, will be paid by the other Party.



- 13.11 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, unenforceable, or in conflict with any law of a federal, state, or local government, the validity of the remaining portions or provisions will remain in full force and effect.
- 13.12 Third-Party Beneficiaries. The Reseller Indemnified Parties and the Panzura Indemnified Parties are third-party beneficiaries to this Agreement and may enforce their respective rights under **Section 10**. No other party, including Reseller's Customers, will be deemed a third-party beneficiary.
- 13.13 Compliance with Laws. Reseller will comply with all applicable laws and regulations, including those relating to this Agreement and to the testing, production, importation, transportation, packaging, labeling, use, sale, sublicensing, or other distribution of the Software, or otherwise applicable to Reseller's activities. Reseller understands and acknowledges that the transfer of certain commodities and technical data, including the transfer of products made with the use of technical data, is subject to U.S. laws and regulations controlling the export of commodities and technical data, including all Export Administration Regulations of the U.S. Department of Commerce. Reseller understands that computer software is included in the definition of technical data. These laws and regulations prohibit or require a license for the export of certain types of products and technical data to certain specified countries, individuals and organizations. Reseller will comply with all U.S. laws and regulations controlling the export of commodities and technical data and to be solely responsible for any violation of these laws and regulations by Reseller or its sublicensees. Each Party will comply with the Health Insurance Portability and Accountability Act to the extent it is applicable.
- 14. DEFINITIONS.** For the purposes of this Agreement, the following terms will be defined as set forth below:
- 14.1 "Additional Services" means services provided by Panzura beyond those specifically described in this Agreement.
- 14.2 "Authorized Distributor" means a third-party entity authorized by Panzura to distribute the Software to Reseller on behalf of Panzura.
- 14.3 "Customer" means a Reseller customer or prospective customer who Panzura may grant a right to access and to use the Software pursuant to the Customer Agreement and the applicable Order.
- 14.4 "Customer Agreement" means the Panzura Subscription Software and Services Agreement located <https://panzura.com/legal>, as the same may be updated from time to time by Panzura in accordance with **Section 5.3**.
- 14.5 "Documentation" means all user documentation pertaining to the use of the Software and provided by Panzura.
- 14.6 "Order" means any document executed for the provision of Software by Panzura to a Customer, which incorporates by reference this Agreement.
- 14.7 "Portal" means the **Panzura Partner Portal** located at <https://partners.panzura.com>.
- 14.8 "Software" means the Panzura software listed in the Portal and referenced in Reseller's **Exhibit A**, and provided on a subscription basis to Customers, including any Updates and Version Releases.
- 14.9 "Term" means the period from the Effective Date to the termination of this Agreement, including any Orders hereunder, as between Panzura and Reseller.
- 14.10 "Updates" means any bug fixes, patches, modifications, or enhancements to the Software that Panzura may make generally available to Customers at no additional charge. Updates do not include any Version Releases, options, or future products that Panzura licenses separately for a fee.
- 14.11 "Version Release" means a new version of the Software identified by a change of the second digit in the Software numbering format, e.g., the "1" in "Version 8.1."