

MICROLITE CORPORATION DEALER AGREEMENT

This Dealer Agreement (the "Agreement") is made and entered into by and between **Microlite Corporation** ("MICROLITE"), a Pennsylvania corporation having a principal place of business at **2315 Mill Street, Aliquippa, Pennsylvania 15001-2228**, and

("Dealer"), having a place of business at

("Dealer's Business Address/City/State-Province/Zip-Postal-code").

In consideration of the mutual covenants contained in this Agreement, MICROLITE and Dealer agree as follows:

- 1. Definitions.** Software. All programs and files comprising the *Microlite BackupEDGE* backup and disaster recovery product, with part numbers and descriptions provided by MICROLITE and which may be amended from time to time, along with an End User License form describing a single end user License number (the Serial Number) and terms of use (the End User License Agreement).
- 2. Appointment as a Dealer.** MICROLITE hereby appoints Dealer as an "Authorized Microlite Corporation Software Dealer", at Dealer's Business Location to sell Software described in Section 1. As an authorized MICROLITE Corporation Software Dealer, Dealer shall have the non-exclusive and non-transferable right, for the term and subject to the conditions of this agreement, to purchase and sell only to end users, limited Licenses for the use of Software, which includes Software, its documentation, and related materials, in the form, and if packaged by MICROLITE the packaging, supplied by MICROLITE. Dealer shall not resell or distribute to any other person any Software provided for demonstration purposes only. The Dealer shall use commercially reasonable efforts to sell and promote the sale of Software.
- 3. Orders and Delivery Direct.** Dealer may order Software either by written purchase order or by a telephone order followed by written confirmation or electronic mail at Dealer prices and terms then in effect and which may be modified from time to time by notice in writing to Dealer. Acceptable payment methods are Wire Transfer for orders over \$1,000 US funds, Visa. MasterCard. Discover or American Express or certified Check or Money Order payable in U S funds. Dealer will be responsible for bank charges incurred by Microlite to receive any prepaid orders. All orders accepted by MICROLITE, whether or not delivery dates are specified therein, may be subject to delays or failures in manufacture or in delivery due to any cause beyond the control of MICROLITE. Orders shall be shipped F.O.B. MICROLITE's warehouse and to the "SHIP TO" address specified by Dealer. Dealer shall examine the Software upon arrival at the SHIP TO address, and within ten (10) days of arrival, shall supply a MICROLITE Marketing Representative with a written list of all items not delivered pursuant to Dealer's order. Delivery shall be deemed to be complete, and the Software accepted, pursuant to said order, if a Marketing Representative does not receive the written list within ten (10) days of delivery. The delivered Software shall be held at risk of Dealer or the SHIP TO party. All freight, insurance, duty, value added tax, sales tax, use tax, or excise tax applicable to the sale of product shall be paid by Dealer in addition to the current dealer price.
- 4. Orders and Delivery through Distribution.** Dealer may choose to purchase products from any Authorized Microlite Distributor while still retaining all of the benefits of being an "Authorized Microlite Corporation Software Dealer". Distributor has the unrestricted right to set the prices for which it sells Product to Dealers. A list of Authorized Distributors is maintained on the MICROLITE Website. Products purchased through non Authorized Distributors are not eligible for Technical Support.
- 5. Technical Support.** MICROLITE Corporation will provide telephone technical support for in-house licenses as Dealer may reasonably request, without charge to Dealer's technical support personnel during regular working hours (8:30 am to 5:00 pm United States Eastern Standard Time). Technical support to Dealer's End-User customers is the responsibility of Dealer. Dealer may contact MICROLITE on behalf of an End-User for support, provided End-User license is less than one year old or has a valid support agreement in effect.

6. **Warranties and Disclaimers.** MICROLITE warrants that it has good title to the Software and that it has the right to grant to Dealer the right to sell the Software described in this agreement. MICROLITE warrants to and for the benefit of Dealer that the Software and the distribution and sale thereof do not infringe the trademarks, patents, copyrights or other proprietary rights of any third party.

MICROLITE SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO ALL OF THE SOFTWARE PRODUCTS.

7. **Limitation of Liability.** MICROLITE SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS OR GOODWILL, LOSS OF USE OR OF DATA, INTERRUPTION OF BUSINESS, NOR OF INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND UNDER OR ARISING OUT OF THIS AGREEMENT, HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, BREACH OR REPUDIATION OF CONTRACT, TORT, NEGLIGENCE, OR OTHERWISE EVEN IF MICROLITE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS. IN NO EVENT WILL MICROLITE'S LIABILITY UNDER OR ARISING OUT OF THIS AGREEMENT EXCEED THE AMOUNT RECEIVED BY MICROLITE FROM DEALER DURING THE THREE (3) MONTH PERIOD PRECEDING THE DISPUTE GIVING RISE TO SUCH LIABILITY UNDER, ARISING OUT OF, OR IN ANY WAY RELATED TO THIS AGREEMENT.
8. **Warranties by Dealer to Customer.** Dealer agrees that any and all warranties made to customers of Dealer shall be made only by Dealer. Dealer acknowledges and agrees that Dealer will make no representation or warranties to its customers with respect to or on behalf of MICROLITE. Dealer hereby agrees to indemnify MICROLITE for any cost, loss, or liability arising out of Dealer's failure to comply with Dealer's obligations hereunder with respect to warranties.
9. **Ownership of Software.** Dealer acknowledges that, subject only to the licenses specifically granted herein, all right, title, and interest in the software encoded on the Software provided to Dealer, and the media on which they are encoded, are the property of MICROLITE, or its licensors, and that the Company, its employees, agents, representatives, successors, assigns and customers, shall not have, at any time, any proprietary interest in or to this software or the concepts embodied herein. DEALER ACKNOWLEDGES THAT THE SOFTWARE IS COPYRIGHTED, AS NOTICED ON THE SOFTWARE, AND THAT DEALER IS NOT AUTHORIZED TO REPRODUCE ANY COPIES OF THE SOFTWARE, NOR AUTHORIZED TO LICENSE OTHERS TO REPRODUCE ANY COPIES OF THE SOFTWARE.
10. **Exports.** MICROLITE Products contain encryption technology and are subject to export regulations under United States law. The Products are eligible for export and subject to License Exception ENC under Sections 740.17(a) and (b)(3) of the export administration regulations of the United States Department of Commerce, Bureau of Export Administration.

Dealer agrees to comply with all export laws, rules and regulations of the United States and foreign agencies or authorities, and not to export or re-export the Products in violation of any such laws, rules or regulations, or without all necessary authorizations. Dealer shall obtain and bear all expenses relating to any necessary licenses and/or exemptions with respect to its export of the Products from the Dealer's country. Neither the Products nor the underlying information or technology may be downloaded or otherwise exported or re-exported (i) to Cuba, Iran, North Korea, Sudan, Syria, or any other country subject to U.S. trade sanctions applicable to the Products, to individuals or entities controlled by such countries, or to nationals or residents of such countries other than nationals who are lawfully admitted permanent residents of countries not subject to such sanctions; or (ii) to any named party or individual on the United States Department of Treasury, Office of Foreign Assets Control (OFAC) list of Specially Designated Nationals and Blocked Persons or on the United States Department of Commerce, Bureau of Export Administration Denied Persons List or Entity List.

11. **Indemnification.** Dealer agrees to indemnify MICROLITE against any claim, losses, liability or damage suffered or incurred by MICROLITE arising out of or relating to any violation by Dealer of any of the provisions or covenants contained in section 10; provided, however, that the foregoing indemnity shall not apply if Dealer reasonably relies on information supplied to it by MICROLITE with respect to export licenses. Dealer shall be given reasonable, prompt notice of such claim and full control and reasonable assistance, at Dealer's expense, in the defense thereof and all negotiations for its settlement or compromise. Both parties shall immediately notify the other party in writing of any governmental consent it receives for such export, upon receipt of any such governmental consent.

12. **Software Protection.** Dealer agrees that all Software delivered by MICROLITE contain secret and valuable products in which MICROLITE has a proprietary interest. Dealer represents that Dealer will not infringe on the rights of MICROLITE in the Software and that Dealer will make commercially reasonable efforts to protect the proprietary interest of MICROLITE in the Software. Dealer agrees not to alter or remove any copyright notices or other notices of proprietary interest in the Software, or other materials supplied by MICROLITE.
13. **Dealer as an Independent Contractor.** Dealer shall be deemed to be an independent contractor hereunder, and as such, Dealer shall not be nor hold itself out to be an employee or agent of MICROLITE. MICROLITE expressly prohibits any direct or indirect use, reference to, or other employment of its name, trademarks, service marks, or trade names, except as expressly provided for in this Agreement.
14. **Termination.** This Agreement shall be in effect for one (1) year, and will automatically renew for additional one year terms, except that it may be terminated by either party by providing at least thirty (30) days written notice prior to the end of the existing term to the other party. Any monies paid by Dealer to MICROLITE shall not be affected by termination. In the event of termination or non-renewal of this Agreement for any reason, neither party shall be liable to the other because of such termination or non-renewal, for compensation, reimbursement or damages on amount of loss of prospective profits or anticipated sales, or on account of expenditures, inventories, investments, leases, or commitments in connection with the business or good will of Dealer or MICROLITE. On the termination of this agreement for any reason, MICROLITE shall have the option to repurchase its products in the possession of the Dealer and available for sale, at prices originally billed to the Dealer and with deductions for monies due or to become due to MICROLITE under this agreement.
15. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Pennsylvania. The terms of this agreement are severable, and in the event that any portion of this agreement shall be found to be unenforceable, the remainder of the agreement shall remain in full force and effect.
16. **Forum Selection; Consent to Jurisdiction.** The Pennsylvania state courts of Beaver County, Pennsylvania (or, if there is exclusive federal jurisdiction, the United States District Court for Western Pennsylvania) shall have exclusive jurisdiction and venue over any dispute arising out of this Agreement, and Dealer hereby consents to the jurisdiction of such courts.
17. **Assignment.** Neither party may assign this Agreement without the written consent of the other party, except that either party may assign this Agreement without consent in the event of a merger, acquisition, or corporate reorganization.

DEALER ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. Further, Dealer agrees that this agreement is the complete and exclusive statement which is the Agreement between the parties and supersedes all proposals and prior agreements, whether written or oral, and all other communications between the parties relating to the subject matter of this Agreement cannot be modified except by a writing signed by both Dealer and MICROLITE.

MICROLITE CORPORATION

By: _____
Signature

Print Name

Title

Date

Your Dealer Number (assigned by Microlite)

DEALER

By: _____
Signature
(Must be owner, partner or officer of company)

Print Name

Title

Date

Voice Phone Number

Fax Phone Number

State / Province Reseller ID Number

Dealer E-Mail Address