



## PROSTORES SUBLICENSE AGREEMENT

This **SUBLICENSE AGREEMENT** (this “**Agreement**”) is entered between Dynamic Concepts, Inc. (“**Reseller**”), with its principal licenses at 18-B Journey, Aliso Viejo, CA 92656 and [**Company name**], with its principal offices at \_\_\_\_\_ (“**Sublicensee**”) as of \_\_\_\_\_, 2006. **Reseller and Sublicensee may each be referred to herein as a “Party” and collectively as the “Parties”.**

### RECITALS

- A. Whereas, Reseller is a party to that certain Master Reseller Agreement (the “**Reseller Agreement**”) by and between Reseller and ProStores, Inc. (“**ProStores**”) pursuant to which Reseller was granted a non-exclusive, non-transferable, revocable license to market, promote and sublicense the use of ProStores’ proprietary software to sublicensees for limited purposes;
- B. Sublicensee desires to market, sublicense and host such ProStores’ proprietary software and to operate such software on behalf of Sublicensee’s merchant customers; and
- C. Reseller is willing to grant Sublicensee the non-exclusive right to market, sublicense, host and operate the ProStores’ proprietary software on servers operated by or for Reseller or Sublicensee for Sublicensee’s merchant customers subject to the terms and conditions of this Agreement.

### AGREEMENT

#### 1. APPOINTMENT.

Subject to the terms and conditions of this Agreement and payment of applicable fees, Reseller hereby appoints Sublicensee, and Sublicensee hereby accepts such appointment, as non-exclusive sublicensor of the ProStores software identified in Exhibit A, including future releases of such software programs as may be made available by Reseller to Sublicensee (collectively “**Software**”). In connection with the Software, Sublicensee hereby agrees to provide hosting services and certain other value added services to its merchant customers (collectively, “**Services**”).

#### 2. LICENSES AND OBLIGATIONS.

- 2.1 (a) **SOFTWARE LICENSE.** Subject to the terms and conditions of this Agreement, Reseller grants to Sublicensee a non-exclusive, non-transferable, non-assignable, revocable (in accordance with Sections 10.1 and 10.2), and limited license to use, reproduce, install, execute and integrate the Software, in object code only, on servers operated by or for Sublicensee or Reseller (“**Reseller Servers**”) that are physically located in the U.S. or Canada, solely for the purpose of:
- (i) training Sublicensee’s employees, and contractors in the use of the Software in accordance with the terms and conditions of this Agreement;
  - (ii) conducting demonstrations of the Software for Sublicensee’s potential customers;
  - (iii) sublicensing the use of the Software to Sublicensee’s merchant customers who have executed Merchant User Agreements (defined in Section 2.4(a) below) with Sublicensee, satisfying the requirements of Section 2.4 (“**Merchant Customers**”) for building and maintaining each such Merchant Customer’s online interactive store (“**Store**”) solely on Reseller Servers; and
  - (iv) supporting Merchant Customers in accordance with Section 3.2.
- (b) **SOFTWARE MODIFICATION LICENSE.** Subject to the terms and conditions of this Agreement, Reseller grants to Sublicensee a non-exclusive, non-transferable, non-assignable, revocable (in accordance with Sections 10.1 and 10.2), and limited license to modify and create derivative works of the Software solely as reasonably required to

implement a version of the Software for sublicensing to Merchant Customers that includes Sublicensee's font and color selections and a display of Sublicensee's logo.

- (c) **DOCUMENTATION LICENSE.** Subject to the terms and conditions of this Agreement, Reseller grants to Sublicensee a non-exclusive, non-transferable, non-assignable, revocable (in accordance with Sections 10.1 and 10.2), and limited license: (i) to reproduce and sublicense Software-related user documentation provided by ProStores ("**Documentation**") to Merchant Customers pursuant to Merchant User Agreements and solely in conjunction with the sublicensing of the Software to Merchant Customers, and (ii) to modify and create derivative works of such Documentation solely as are reasonably required to permit Sublicensee-implementable branding of the Documentation in the form of Sublicensee's font and color selection and a display of Sublicensee's logo.

**2.2 LICENSE RESTRICTIONS.** Sublicensee acknowledges that the Software and its structure, organization, and source code constitute valuable trade secrets of ProStores. Accordingly, except as expressly allowed under Section 2.1 (if at all) and this Agreement, Sublicensee agrees not to (a) modify, adapt, alter, translate, or create derivative works from the Software; (b) merge the Software with other software; (c) distribute, sublicense, lease, rent, loan, or otherwise transfer the Software to any third party except as explicitly set forth in this Agreement or (d) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Software. Sublicensee must not remove, alter, or obscure in any way all proprietary rights notices (including copyright notices) of ProStores on or within the copies of the Software, Documentation, or related materials.

**2.3 TRADEMARK LICENSE.**

Subject to the terms and conditions of this Agreement, and upon Sublicensee's election to sublicense the Software and Documentation branded with the ProStores Marks (defined below in this Section), pursuant to Section 4.3 below, Reseller, on behalf of ProStores, grants to Sublicensee a non-exclusive, non-transferable, non-assignable, revocable, royalty-free license (without the right to grant sublicenses) to use and reproduce the ProStores trademarks and trade names of ProStores as notified by Reseller or ProStores ("**ProStores Marks**"), solely in connection with marketing Software and in accordance with ProStores' Reseller Trademark Usage Policy, which is attached as Exhibit D and incorporated herein by reference. Sublicensee is granted no rights in the ProStores Marks other than those expressly granted in this Section 2.3. Sublicensee acknowledges ProStores' exclusive ownership of the ProStores Marks. Sublicensee agrees not to take any action inconsistent with such ownership and to cooperate, at Reseller's or ProStores' request, in any action (including the conduct of legal proceedings) which Reseller or ProStores deems necessary or desirable to establish or preserve ProStores' exclusive rights in and to the ProStores Marks. Sublicensee will not adopt, use, or attempt to register any trademarks or trade names that are confusingly similar to the ProStores Marks or in such a way as to create combination marks with the ProStores Marks. Upon ProStores' or Reseller's request, Sublicensee will provide ProStores with samples of all materials that contain the ProStores Marks prior to their public use, distribution, or display for ProStores' quality assurance purposes and will obtain Reseller's or ProStores' written approval before such use, distribution, or display. At Reseller's or ProStores' request, Sublicensee will modify or discontinue any use of the ProStores Marks if Reseller or ProStores determines that such use does not comply with ProStores' Reseller Trademark Usage Policy. Sublicensee acknowledges and agrees that, except with respect to the trademark license granted herein in and to the ProStores Marks, no licenses are granted to any other trademarks, service marks, or trade names owned by ProStores or its affiliates.

**2.4 MERCHANT CUSTOMERS**

- (a) **Merchant User Agreements.** Before providing access to the Software or Documentation to any Merchant Customer, Sublicensee must ensure that each such Merchant Customer enters into a binding written or click-through agreement with Sublicensee in a form at least as protective of Reseller and ProStores as ProStores' standard merchant agreement for its services available at [www.prostores.com](http://www.prostores.com) and as amended from time to time ("**Merchant User Agreement**"). Each Merchant User Agreement shall be consistent with the requirements set forth in this Agreement and require the following: (i) Merchant Customer's acknowledgement that ProStores' reserves

the right to limit the functionality of the Software or terminate the installation of the Software based on Reseller's breach of its payment obligations, (ii) Merchant Customer's agreement to be contacted by ProStores directly in the event of impending termination of the installation of Software as provided in sub-clause "(i)" above, and (iii) Merchant Customer's agreement that ProStores shall not be liable in any manner whatsoever to the Merchant Customer or Merchant Customer's Store users on account of the exercise of the right by ProStores in sub-clause "(i)" above. Upon Reseller's or ProStores' request, Sublicensee shall make the form of the Merchant User Agreement available to Reseller and ProStores for review and provide Reseller and ProStores with documentation in the form of logs or other materials substantiating that individual merchants have entered into the Merchant User Agreement with Sublicensee and agreed to be bound by the terms of such Merchant User Agreement. Sublicensee agrees to notify Reseller and ProStores within thirty (30) days of any changes to such agreements and thereafter promptly provide information regarding such changes to Reseller or ProStores upon request. Sublicensee will enforce each such Merchant User Agreement with at least the same degree of diligence that Sublicensee uses to enforce similar agreements for its own products or other software products that it distributes or makes available, but in no event less than reasonable efforts.

- (b) **Merchant Customer Information.** Sublicensee acknowledges that certain personal, confidential and/or proprietary information relating to Merchant Customers and Merchant Customers' Store users' information will be disclosed to or collected by Sublicensee and/or Reseller in connection with administration of the Software and performance of Services (collectively, "**Merchant Customer Information**"). Sublicensee agrees to maintain all Merchant Customer Information in trust and confidence and to use the Merchant Customer Information solely in accordance with Sublicensee's privacy policy, which policy must be at least as restrictive and protective of Merchant Customer Information as ProStores' privacy policy available at [www.ProStores.com](http://www.ProStores.com) and as amended from time to time. Sublicensee further agrees to require each Merchant Customer to comply with all applicable laws with respect to Merchant Customer's Stores users' information. In addition, Sublicensee acknowledges that such Merchant Customer Information may also be disclosed to Reseller and ProStores in connection with this Agreement and Reseller and ProStores agree to maintain all such Merchant Customer Information in trust and confidence and to use the Merchant Customer Information solely for the purpose of providing support services and general administration of the Software.
  - (c) During the Term and continuing after termination of this Agreement for any reason, either Reseller nor ProStores shall disclose or otherwise use any information received from Sublicensee in connection with this Agreement to contact, or to assist or allow others to contact Merchant Customers in any manner (including but not limited to e-mail, telephone, direct mail, through the Software, or through any other means or channel) except as reasonably required in accordance with the terms and conditions set forth in this Agreement, nor shall either Reseller or ProStores disclose or use any such information to contact Merchant Customers to solicit the purchase of any software or services, for the general marketing and promotion of software and services without Sublicensee's prior written consent.
- 2.5 SUBCONTRACTING.** Sublicensee may subcontract or otherwise delegate the performance of Services under this Agreement, provided that before allowing any contractor to begin performing Services, Sublicensee will enter into a binding written agreement with such contractor that (a) protects Reseller's and ProStores' rights and interests to at least the same degree as this Agreement, including Sections 2.2 (License Restrictions) and 6 (Confidential Information), and (b) performs the Services in accordance with the terms, standards, and policies and procedures established under this Agreement. Notwithstanding the foregoing, Sublicensee will, at all times, be responsible for the direction and coordination of the Services of each contractor. Sublicensee will, in all cases, be responsible for all sublicensing and marketing of the Software and Services to third parties. No contractor will offer or provide the Software or Services directly to any Merchant Customer or enter into any agreements with Merchant Customers and neither Reseller nor ProStores will have an obligation to pay any such contractor.
- 2.6 OWNERSHIP.** The Software and Documentation, and all worldwide intellectual property rights therein, are the exclusive property of ProStores. All rights in and to the Software and Documentation not expressly granted to Sublicensee in this Agreement are reserved by ProStores. Nothing in this Agreement will be deemed to grant, by implication, estoppel, or

otherwise, a license under any of ProStores' existing or future patents based upon the use and sublicensing by Sublicensee of the Software as permitted by this Agreement. In addition, Sublicensee acknowledges and agrees that any derivative work developed from the Software or Documentation pursuant to Section 2.1(b) or Section 4.3 is the sole and exclusive property of ProStores, exclusive of any content provided by Sublicensee ("**Sublicensee's Content**"), and Sublicensee agrees not to take any actions inconsistent with ProStores ownership in such derivative works. Sublicensee hereby irrevocably and unconditionally assigns all right, title, and interest worldwide in and to such derivative works to ProStores and agrees that Sublicensee obtains no rights, whether express or implied, in such modified Software or Documentation (except with respect to Sublicensee's Content). If any intellectual property rights, including moral rights, in the derivative works, cannot (as a matter of law) be assigned by Sublicensee to ProStores as provided hereinabove, then (a) Sublicensee unconditionally and irrevocably waives the enforcement of such rights and all claims and causes of action of any kind against ProStores with respect to such rights, and (b) to the extent Sublicensee cannot (as a matter of law) make such waiver, Sublicensee unconditionally grants to ProStores an exclusive, perpetual, irrevocable, worldwide, fully-paid license, with the right to sublicense through multiple levels of sublicensees, under any and all such rights (i) to reproduce, create derivative works of, distribute, publicly perform, publicly display, digitally transmit, and otherwise use the derivative works (exclusive of Sublicensee's Content) in any medium or format, whether now known or hereafter discovered, (ii) to use, make, have made, sell, offer to sell, import, and otherwise exploit any product or service based on, embodying, incorporating, or derived from the derivative work (exclusive of Sublicensee's Content), and (iii) to exercise any and all other present or future rights in the derivative works (exclusive of Sublicensee's Content). Sublicensee and its suppliers retain all rights, title and interest in and to all intellectual property rights embodied in or associated with Sublicensee's Content, including but not limited to Sublicensee's logos.

### **3. PROVISION OF SERVICES.**

- 3.1 HOSTING SERVICES.** Upon activation of a Merchant Customer's account with Sublicensee, Sublicensee will host the Software licensed by each such Merchant Customer on Reseller Servers in accordance with ProStores' Service Level Agreement as set forth in Exhibit B and incorporated herein by reference. Sublicensee will be solely responsible for all billing of such Merchant Customers. Sublicensee acknowledges that ProStores shall not be responsible for hosting Software sublicensed to Sublicensee or Customer Merchants, nor shall it be responsible for billing of Merchant Customers.
- 3.2 SUPPORT SERVICES.** Sublicensee will be solely responsible for performing, in a manner consistent with good industry practice, all Tier 1 and Tier 2 support Services requested or required by Merchant Customers that are related to the Software and Services. Sublicensee will provide all direct communications and Services to and from Merchant Customers with respect to all support Services. Sublicensee may not refer any Merchant to ProStores for such support. Sublicensee acknowledges that ProStores has no obligation under this Agreement to provide any services to, or respond to any requests from, Sublicensee or Merchant Customers.

### **4. OTHER RESELLER OBLIGATIONS**

- 4.1 TRAINING.** Training may be made available by Reseller upon execution of a written statement of work to be governed by the terms and conditions of this Agreement. Sublicensee acknowledges that ProStores will not be responsible for providing training to Sublicensee, its employees or contractors or Merchant Customers.
- 4.2 MARKETING.** Sublicensee agrees that the Software will be the preferred e-commerce solution included in all e-commerce packages offered or distributed by Sublicensee directly to merchants. Subject to the terms and conditions of this Agreement, Sublicensee will use commercially reasonable efforts to market and promote the Software to Merchant Customers. Sublicensee shall also meet the additional requirements as agreed to by the parties.
- 4.3 PROSTORES BRANDING.** The Software and Documentation will be branded with ProStores Marks as included in the Software and Documentation.
- 4.4 EQUIPMENT.** Except as provided in this Agreement, Sublicensee will be solely responsible, at its own expense, for acquiring, installing, maintaining and updating all connectivity, load balancing, network components, servers, and other hardware, software, and other equipment or services for effective deployment of the Software and performance of the Services in accordance with the terms of this Agreement.

- 4.5 STAFFING.** Sublicensee will dedicate the necessary skilled and trained technical personnel sufficient to meet the needs of Merchant Customers and potential Merchant Customers in relation to the use and performance of the Software and Services under this Agreement.
- 4.6 NO REPRESENTATIONS.** Sublicensee shall make no representations, warranties, or guarantees concerning the Software or its functionality or performance characteristics, or the Services, to any third party, including but not limited to Merchant Customers. Sublicensee is not authorized to make any representations, warranties, or guarantees on Reseller's or ProStores' behalf, and neither will have any liability with respect to representations, warranties, or guarantees made by Sublicensee, its employees, contractors, sublicensees, agents or Merchant Customers.
- 4.7 COMPLIANCE WITH LAWS.** Sublicensee will maintain high standards of professionalism and will at all times comply with all applicable laws and regulations (including any export and import laws) in its performance of this Agreement and refrain from any unethical conduct or any other conduct that tends to damage the reputation of ProStores or the Software in marketing and sublicensing the Software and performing the Services. Sublicensee shall be responsible for ensuring that all its contractors comply with all applicable laws and regulations (including any export and import laws) related to the Services and Software. Sublicensee shall also be responsible for ensuring that Merchant Customers comply with all applicable laws and regulations (including any export and import laws) in their use of the Services and Software as licensed and used under such the applicable Merchant User Agreements, and the listing and sale of products and services on such Merchant Customers' Stores.
- 4.8 MERCHANT CUSTOMER INFORMATION LICENSE.** Sublicensee hereby agrees to obtain from Merchant Customers and hereby grants to Reseller and ProStores a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sublicensable (through multiple tiers) right to (a) access and use Merchant Customer Information solely for Reseller's and ProStores' administration of services under this Agreement (including without limitation for the purposes of Sections 5.2(c)(ii) and 10.3(b)), and (b) access and use information concerning Merchant Customer's and Merchant Customer's Store users' feature usage of the Software to enable ProStores to improve the Software. Sublicensee represents and warrants that it has the necessary licenses to grant Reseller and ProStores the licenses under this Section 4.8.

## **5. MONTHLY FEES AND PAYMENT.**

- 5.1 MONTHLY FEES.** Sublicensee will pay Reseller mutually agreed upon monthly fees based on the number of Stores created, administered, or stored by Sublicensee or on its behalf on Reseller Servers during each month of the Term as reported to the Channel Manager (defined below in this Section) as set forth in the attached Exhibit C, which is incorporated by reference ("**Monthly Fees**"). Notwithstanding the foregoing, Sublicensee will be permitted to generate test Stores on internal test servers at no charge, so long as such test Stores are not made available to Merchant Customers and are limited in functionality at the discretion of Reseller or ProStores.

The "**Channel Manager**" is a tool incorporated in the Software that has the ability to among, other things, (a) collect billing information, obtain store counts, and calculate billing, (b) collect Merchant Customer Information and determine Store feature usage by Merchant Customers and Merchant Customers' end users, and (c) limit the functionality of the Software or terminate the installation status of the Software depending on Sublicensee's payment standing under the Agreement and in accordance with Section 5.2(b). Channel Manager will collect such information from the Resellers Servers at the end of each month during the Term on a schedule to be specified by Resellers and ProStores in their sole discretion in order to generate a monthly billing report detailing Software licensing and Stores activities during the previous month and the Monthly Fees to be paid by Sublicensee to Reseller. The parties acknowledge that Reseller shall be entitled to increase or decrease the Monthly Fees for any Software license type upon Reseller providing thirty (30) days written notice to Sublicensee.

### **5.2 PAYMENT.**

- (a) Reseller will invoice Sublicensee on a monthly basis for the Monthly Fees accrued in the previous month, such Monthly Fees to be due net thirty (30) calendar days from Sublicensee's receipt of invoice.

- (b) All fees stated in this Agreement are, and all payments must be made, in U.S. dollars. Any amount that is not paid when due will accrue interest at one and one half percent (1½ %) per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid.
- (c) Without limiting any other remedies, in the event either Reseller or Sublicensee fails to enable ProStores to obtain timely remote access to Reseller Servers through Channel Manager in accordance with Section 5.6 below or if Reseller fails to pay fees to ProStores in accordance with the Reseller Agreement or Sublicensee fails to otherwise pay any fees to Reseller in accordance with this Section 5, Sublicensee acknowledges that ProStores may, in its sole discretion, do the following in the order set forth below:
  - (i) suspend Reseller's and Sublicensee's ability to add Stores by limiting the functionality of the Software installed on Reseller Servers if such breach is not cured within thirty (30) calendar days of the receipt of a written notice ("**Initial Notice**"),
  - (ii) terminate Reseller's and Sublicensee's access to and license to use Software if Reseller or Sublicensee fails to cure such breach within one calendar month and sixty-two (62) calendar days following the receipt of the Initial Notice, and
  - (iii) remotely send a certificate to Reseller Servers terminating Software installation on Reseller Servers and terminate the Reseller Agreement and/or this Agreement if such breach is not cured within ninety (90) calendar days of the receipt of the Initial Notice.

**5.3 TAXES.** Sublicensee will be responsible for and will indemnify and hold Reseller and ProStores harmless from payment of all taxes (other than taxes based on Reseller's or ProStores' income), fees, duties, and other governmental charges, and any related penalties and interest, arising from the payment of fees under this Agreement or the delivery or license of the Software to Sublicensee. Sublicensee will make all payments of fees free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments of fees to Reseller or ProStores will be Sublicensee's sole responsibility, and Sublicensee will provide official receipts issued by the appropriate taxing authority, or such other evidence as Reseller or ProStores may reasonably request, to establish that such taxes have been paid.

**5.4 RECORDS.** At all times during the term of this Agreement, and for at least three (3) years after the termination of this Agreement, Sublicensee will maintain complete and accurate records with respect to Sublicensee's activities pursuant to this Agreement, including a complete list of: (a) all copies of the Software and Documentation made by Sublicensee; (b) all Reseller Servers on which the Software has been installed along with a description including unique identifiers (e.g., vendor name, serial number, and operating system) and the location of each such Reseller Server; (c) all Merchant Customers along with the applicable Merchant User Agreements and/or click-through documentation, as well as a description including Merchant Customer names, addresses, electronic mail addresses, and primary contacts; and (d) all data, without any deletions thereof, to enable Channel Manager to deliver accurate and complete reports based on such data and as needed for verification of amounts to be paid under this Agreement.

**5.5 AUDIT RIGHTS.** ProStores and Reseller will have the right, during normal business hours and upon at least ten (10) business days prior notice, to have an independent audit firm selected by Reseller or ProStores inspect the Reseller Servers and Sublicensee's premises and audit Sublicensee's records relating to the administration of the Software under this Agreement in order to verify that Sublicensee has paid the correct amounts owed under this Agreement and otherwise complied with the terms of this Agreement. Such audits will be conducted no more than once in any period of six consecutive months. The audit will be conducted at Reseller's or ProStores' expense, unless the audit reveals that Sublicensee has underpaid the amounts owed by more than five percent (5%) or failed in some other material respect to comply with the terms of this Agreement, in which case Sublicensee will reimburse all reasonable costs and expenses incurred by Reseller or ProStores in connection with such audit. This right will survive termination or expiration of this Agreement for two (2) years. Notwithstanding the foregoing, Reseller or ProStores will be entitled to remotely audit the Reseller Servers, at any time, to determine the number of Stores and Software licenses administered, existing or stored on Reseller Servers through the Channel Manager to verify that Sublicensee has complied with the terms of this Agreement. Sublicensee will promptly pay any amounts shown by any audit to be due and owing.

**5.6 REMOTE ACCESS.** During the term of this Agreement, Sublicensee will permit Reseller and ProStores to use Channel Manager to access all Reseller Servers necessary to enable Reseller and ProStores to remotely (a) monitor and audit the number of Stores and Software licenses administered, existing or stored on Reseller Servers through the use of Channel Manager in accordance with Sections 5.1 and 5.5, (b) collect information concerning Merchant Customer's and Merchant Customer's Store users' usage of the Software's features in accordance with Section 4.8(b), and (c) have a certificate sent to terminate Software installation on Reseller Servers in accordance with Section 5.2(b).

## **6. CONFIDENTIAL INFORMATION.**

**6.1 CONFIDENTIAL INFORMATION.** Each Party (the "**Disclosing Party**") may from time to time during the term of this Agreement disclose to the other Party (the "**Receiving Party**") certain information regarding the Disclosing Party's business, including technical, marketing, financial, employee, planning, and other confidential or proprietary information ("**Confidential Information**"). The Disclosing Party will mark all Confidential Information in tangible form as "confidential" or "proprietary". The Disclosing Party will identify all Confidential Information disclosed orally as confidential at the time of disclosure and provide a written summary of such Confidential Information to the Receiving Party within thirty (30) days after such oral disclosure. Regardless of whether so marked or identified, however, any information that the Receiving Party knew or should have known, under the circumstances, was considered confidential or proprietary by the Disclosing Party, will be considered Confidential Information of the Disclosing Party. For purposes of clarity, individually identifiable Merchant Customer Information will be considered Confidential Information of the Reseller.

**6.2 PROTECTION OF CONFIDENTIAL INFORMATION.** The Receiving Party will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement, and will disclose the Confidential Information of the Disclosing Party only to the employees or contractors of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder. The Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

**6.3 EXCEPTIONS.** The Receiving Party's obligations under Section 6.2 with respect to any Confidential Information of the Disclosing Party will terminate if and when the Receiving Party can document that such information: (a) was already lawfully known to the Receiving Party at the time of disclosure by the Disclosing Party; (b) was disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) was independently developed by the Receiving Party without access to, or use of, the Disclosing Party's Confidential Information.

**6.4 PERMITTED DISCLOSURES.** Notwithstanding anything contained to the contrary in this Section 6, the Receiving Party may disclose Confidential Information of the Disclosing Party to the extent that such disclosure is (i) approved in writing by the Disclosing Party, (ii) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court of similar judicial or administrative body, provided that the Receiving Party notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party's request and expense, in any lawful action to contest or limit the scope of such required disclosure.

**6.5 RETURN OF CONFIDENTIAL INFORMATION.** The Receiving Party will return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party's possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the written request of the Disclosing Party or the expiration or termination of this Agreement, whichever comes first. The Receiving Party will certify in writing signed by an officer of the Receiving Party that it has fully complied with its obligations under this Section 6.5.

**6.6 CONFIDENTIALITY OF AGREEMENT.** Neither Party will disclose any terms of this Agreement to anyone other than its attorneys, accountants, and other professional advisors under a duty of confidentiality except (a) as required by law or (b) pursuant to a mutually agreeable press release or (c) in connection with a proposed merger, financing, or sale of such Party's business (provided that any third party to whom the terms of this Agreement are to be disclosed signs a confidentiality agreement reasonably satisfactory to the other Party to this Agreement). Notwithstanding the foregoing, Sublicensee acknowledges and agrees that Reseller and ProStores may identify Sublicensee as a reseller of ProStores' Software and use Reseller's name [and/or logo] on Reseller's and ProStores' websites.

**7. REPRESENTATIONS AND WARRANTIES.**

**7.1 POWER AND AUTHORITY; NO CONFLICTS.** Each Party to this Agreement represents and warrants that it has the full right, power and authority to enter into this Agreement and to discharge its obligations hereunder, and that the person signing this Agreement on such Party's behalf has been duly authorized and empowered to enter into this Agreement.

**7.2 DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS AGREEMENT, RESELLER AND PROSTORES DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SOFTWARE, DOCUMENTATION, OR ANY SERVICES (INCLUDING ANY CUSTOMIZATION SERVICES) PROVIDED BY RESELLER, PROSTORES, THEIR SUPPLIERS, OR SERVICE PROVIDERS, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, QUIET ENJOYMENT, TITLE, AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. THE SOFTWARE, DOCUMENTATION, AND ANY SERVICES PROVIDED BY RESELLER OR PROSTORES ARE PROVIDED "AS IS" WITH ALL FAULTS, AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, ACCURACY, AND EFFORT LIE WITH SUBLICENSEE. NEITHER RESELLER NOR PROSTORES WARRANTS THAT USE OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE AND EACH EXPRESSLY DISCLAIMS LIABILITY FOR THE CONTENT OR LOSS OF ANY DATA TRANSFERRED EITHER TO OR FROM SUBLICENSEE, RESELLER OR MERCHANT CUSTOMER, OR STORED BY SUBLICENSEE, RESELLER OR MERCHANT CUSTOMER OR ANY OF RESELLER'S, SUBLICENSEE'S OR MERCHANT CUSTOMERS' END USERS OR OTHER THIRD PARTIES WHICH MAY BE AFFECTED BY THE SOFTWARE. SUBLICENSEE ACKNOWLEDGES AND AGREES THAT IT HAS NOT RELIED ON ANY ORAL OR WRITTEN INFORMATION OR ADVICE, WHETHER GIVEN BY RESELLER, PROSTORES, THEIR SUPPLIERS, OR SERVICE PROVIDERS, OR THEIR EMPLOYEES, CONTRACTORS OR AGENTS. RESELLER'S AND PROSTORES' SUPPLIERS AND SERVICE PROVIDERS MAKE NO REPRESENTATIONS OR WARRANTIES UNDER OR IN CONNECTION WITH THIS AGREEMENT.

**8. INDEMNIFICATION.**

**8.1 BY SUBLICENSEE.** Sublicensee hereby agrees to indemnify, defend and hold harmless Reseller, ProStores, their suppliers, and service providers, and their directors, officers, employees, contractors and agents from and against any claims, suits, losses, damages, liabilities, costs, and expenses (including reasonable attorneys' fees) brought by a third party arising from or related to any of the following:

- (a)** Breach by Sublicensee of Sections 2.4 (Merchant Customers), 4.6 (No Representations), and 4.7 (Compliance with Laws) of this Agreement, or Section 4.2 (Covenants) of a Statement of Work;
- (b)** Infringement of any patent, copyright, trade secret, or other intellectual property rights by:
  - (i)** any hardware or software (other than the Software) utilized by Sublicensee or Merchant Customers in connection with the Software or Services, or
  - (ii)** any Sublicensee or Merchant Customer content or Merchant Customer Information made available to Sublicensee, or stored on Reseller Servers, or published on or distributed via Merchant Customers' Stores (excluding any ProStores data)
  - (iii)** any content contained on Sublicensee's website;
- (c)** Bodily injury or property damage caused by any negligence, willful act or omission or misrepresentation of Sublicensee, its employees, contractors, or agents (excluding any



bodily injury or property damage caused by Reseller, ProStores, their suppliers, or service providers, or their employees, contractors, or agents negligence, willful act or omission); and

- (d) Any claim by any Merchant Customer related to the provision of the Services under this Agreement.

**8.2 BY RESELLER.** Reseller will defend any claim against Sublicensee by a third party that the Software directly infringes such third party's U.S. copyrights or misappropriates any trade secrets recognized as such under the Uniform Trade Secret law, or that the ProStores Marks, when used in accordance with this Agreement, infringe such third party's U.S. trademark rights. Reseller will pay those costs and damages finally awarded by a court of competent jurisdiction that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such claim. If the Software becomes, or in Reseller's opinion is likely to become, the subject of an infringement claim, Reseller may, at its option and expense, either (i) procure for Sublicensee the right to continue using the Software, or (ii) replace or modify the Software so that it becomes non-infringing, or (iii) if neither of the foregoing alternatives is commercially feasible, terminate Sublicensee's license to the Software and, upon Sublicensee's return or destruction of all copies of the Software, refund the amounts paid by Sublicensee hereunder during the preceding twelve (12) months. Notwithstanding the foregoing, Reseller will have no obligation under this Section or otherwise with respect to any infringement claim based upon (a) any use of the Software not in accordance with this Agreement or for purposes not intended by Reseller, (b) any use of the Software in combination with other products, equipment, software, or data not supplied by Reseller where the claim arises from or is based on such combination, (c) any use of any release of the Software other than the most current release made available to Sublicensee, (d) any modification of the Software by any person other than Reseller, or (e) Sublicensee's inducement of infringement. This Section 8.2 states Reseller's entire liability and Sublicensee's sole and exclusive remedy for infringement of any intellectual proprietary rights by the Software.

**8.3 INDEMNIFICATION PROCEDURES.** The obligations set forth in Sections 8.1 and 8.2 are conditioned upon the Party entitled to a defense of a third party claim ("**Indemnified Party**") notifying the other Party ("**Indemnifying Party**") promptly in writing of any covered action, giving the Indemnifying Party sole control over the defense thereof and any related settlement negotiations, and cooperating and, at the Indemnifying Party's request and expense, assisting in such defense. The Indemnified Party may also participate in the defense at its own expense.

## **9. LIMITATION OF LIABILITY**

IN NO EVENT WILL RESELLER, PROSTORES, THEIR OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS OR AGENTS, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, SUFFERED BY RESELLER, ANY MERCHANT CUSTOMER, OR ANY END USER VISITING OR USING SUBLICONSEE'S OR RESELLER'S WEBSITES OR MERCHANT CUSTOMERS' STORES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OR CORRUPTION OF DATA, AND BUSINESS INTERRUPTIONS ARISING OUT OF RESELLER'S OR PROSTORES' PERFORMANCE OR NON-PERFORMANCE (INCLUDING WITH RESPECT TO ANY STATEMENTS OF WORK) OR ANY USE OF OR INABILITY TO USE THE SOFTWARE, OR WHETHER ARISING IN AN ACTION OF CONTRACT, TORT OR OTHER LEGAL THEORY, EVEN IF RESELLER OR PROSTORES IS OR SHOULD HAVE BEEN AWARE, OR ADVISED, OF THE POSSIBILITY THEREOF. RESELLER'S AND PROSTORES' TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE SOFTWARE AND DOCUMENTATION, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF LICENSE FEES PAID BY SUBLICONSEE UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM FIRST AROSE. SUBLICONSEE ACKNOWLEDGES THAT THE FEES SET FORTH IN THIS AGREEMENT REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT RESELLER WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY. THE FOREGOING LIMITATIONS OF LIABILITY ARE INDEPENDENT OF ANY EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY SET FORTH IN THIS AGREEMENT. RESELLER'S AND PROSTORES' SUPPLIERS AND SERVICE PROVIDERS SHALL HAVE NO LIABILITY WHATSOEVER UNDER OR IN CONNECTION WITH THIS AGREEMENT.

## 10. TERM AND TERMINATION.

### 10.1 TERM.

- (a) Unless earlier terminated pursuant to Section 10.2 below, the initial term of this Agreement will begin on the Effective Date and will continue for one (1) year (the “**Initial Term**”).
- (b) Unless terminated early in accordance with Section 10.2 below, this Agreement will automatically renew for a successive one (1) year period (“**Renewal Period**”) so long as the Reseller Agreement remains in effect unless either Party provides the other Party with notice of non-renewal no less than thirty (30) days prior to the expiration of the Initial Term (Initial Term and any successive Renewal Period to be considered the “**Basic Term**”).
- (c) Notwithstanding the foregoing, the Parties mutually agree to extend this Agreement for an additional three (3) month end-of-life period following the designated expiration or termination date of the Basic Term (the “**EOL Period**”) in the event that (i) this Agreement is terminated in accordance with Section 10.2(a) below or (ii) a Party provides the other with a notice of non-renewal in accordance with Section 10.1(b) above, so long as (x) Sublicensee is not otherwise in breach of its obligations under the Agreement and (y) Sublicensee does not offer Services or provide Software access to any New Customers (defined below) during the EOL Period. For purposes of this provision, “**New Customers**” are defined as end users that had not entered into Merchant User Agreements with Sublicensees prior to the commencement of the EOL Period. For purposes of clarity, the Initial Term, any successive Renewal Period and the EOL Period are to be considered the “**Term**” of this Agreement.

### 10.2 TERMINATION.

- (a) Reseller may terminate this Agreement prior to the expiration of the Term at any time, with or without cause, upon forty-five (45) days' prior written notice.
- (b) Either Party may terminate this Agreement prior to the expiration of the Term effective immediately upon written notice to the other Party in the event: (a) that the other Party breaches any material obligation under this Agreement and such breach is not cured within thirty (30) days after receiving written notice thereof from the non-breaching Party, or (b) of the insolvency of the other Party or the institution of voluntary or involuntary proceedings in bankruptcy or under any other insolvency law, or an arrangement with creditors, or corporate reorganization, receivership or dissolution, of the other Party. Notwithstanding the foregoing, Reseller may terminate this Agreement prior to the expiration of the Term effective (i) immediately upon written notice to Sublicensee if Sublicensee breaches any provision in Sections 2.2 (License Restrictions), 6 (Confidential Information) or 11.6 (Assignment) or (ii) after sixty (60) days of Sublicensee's receipt of Initial Notice of a failure to meet the requirements of timely remote access or payment of fees as set forth in Section 5.2(b).

### 10.3 EFFECT OF TERMINATION.

- (a) **Payment, Licenses, Software, and Services.** Upon termination or expiration of this Agreement for any reason, any amounts owed under this Agreement before such termination or expiration will be immediately due and payable, the appointment in Section 1 will terminate, all licensed rights granted under Sections 2.1 and 2.3 will immediately cease to exist, and Sublicensee must promptly discontinue all further use of the ProStores Marks and all further use, reproduction, and sublicensing of the Software and Documentation and provisioning of the Services in connection with the Software. Sublicensee must destroy or return to Reseller or ProStores all copies of the Software and Documentation and certify in writing signed by an officer of Sublicensee that it has fully complied with this requirement.
- (b) **Merchant User Agreements.** Upon early termination or expiration of this Agreement, at ProStores' option and request, Sublicensee will cooperate with ProStores in transferring and assigning any Merchant User Agreements granted by Sublicensee under this Agreement to a third party, as Reseller or ProStores may determine in their sole discretion, in connection with alternative provisioning of the Software and Services. Sublicensee hereby agrees that ProStores shall have the right to use Merchant Customer

Information to contact Merchant Customers directly concerning such alternative provisioning of the Software and Services to such Merchant Customers.

- (c) **Survival.** Sections 2.2 (License Restrictions), 2.6 (Ownership), 4.8 (Merchant Customer Information License), 5.4 (Records), 5.5 (Audit Rights) (to the extent stated in such provision), 6 (Confidential Information), 7 (Representations and Warranties), 8 (Indemnification), 9 (Limitation of Liability), 10.3 (Effects of Termination), 10.4 (No Damages Upon Expiration or Termination), and 11 (General) of this Agreement, and the provisions stated to survive any expiration or termination of a statement of work, if any, executed by the Parties pursuant to this Agreement, will survive the expiration or termination of this Agreement for any reason.

**10.4 NO DAMAGES UPON EXPIRATION OR TERMINATION.** NEITHER RESELLER NOR PROSTORES SHALL BE LIABLE TO SUBLICENSEE FOR EXPIRATION OR TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH SECTIONS 10.1 OR 10.2. In addition, Sublicensee shall not be entitled to any compensation, damages or payments with respect to goodwill that has been established or for any damages on account of prospective or anticipated profits, and shall not be entitled to reimbursement of any amount for any training, advertising, market development, investments, leases or other costs that shall have been expended by Sublicensee before the expiration or termination of this Agreement. Without limiting the foregoing, Sublicensee hereby waives any right it may have under applicable legislation to an indemnity, damages, or compensation on account of the expiration or termination of this Agreement in accordance with the terms of this Agreement.

## **11. GENERAL.**

- 11.1 GOVERNING LAW.** This Agreement shall be governed in all respects by the laws of the State of California without giving effect to any conflicts of law principles that would require the application of the laws of a different jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any action or proceeding arising from or relating to this Agreement must be brought in a federal court in the Northern District of California or in state court in Santa Clara County, California, and each Party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.
- 11.2 NO AGENCY.** The Parties to this Agreement are independent contractors, and no agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by this Agreement.
- 11.3 FORCE MAJEURE.** Except for the payment of any fees due and payable under this Agreement, neither Party's delay in the performance of any duties or obligations under this Agreement will be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, failures in electric power or telecommunications services, or any other event beyond the control of the Party, provided that the Party suffering such delay immediately notifies the other Party of the delay.
- 11.4 REMEDIES.** Except as provided in Section 7 (Representations and Warranties) and Section 8 (Indemnification), the Parties' rights and remedies under this Agreement are cumulative. Sublicensee acknowledges that the Software contains valuable trade secrets and proprietary information of ProStores, that any actual or threatened breach of Sections 2.2 (License Restrictions), 2.3 (Trademark License) or 6 (Confidential Information) will constitute immediate, irreparable harm to ProStores for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. If Sublicensee continues to access, use or sublicense Software, Documentation or ProStores Marks after this Agreement and its license to do so has terminated or expired, either Reseller or ProStores will be entitled to immediate injunctive relief without the requirement of posting bond. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.
- 11.5 NOTICES.** All notices, consents and approvals under this Agreement must be delivered in writing by courier, by facsimile (fax), or by certified or registered mail, (postage prepaid and return receipt requested) to Reseller with a copy to ProStores Attn: Legal Department, 2145 Hamilton Avenue, San Jose, CA 95125, (408) 376-7514 (in the case of Reseller), or to Sublicensee at the address set forth beneath Sublicensee's signature (in the case of Sublicensee), and will be effective upon receipt or when delivery is refused three (3) business days after being deposited in the mail as required above, whichever occurs sooner. Either Party may change its address by giving written

notice of the new address to the other Party in accordance with the requirements set forth in this Section.

- 11.6 ASSIGNMENT.** Sublicensee may not assign or transfer, by operation of law or otherwise, any of its rights under this Agreement (including its licenses with respect to the Software) to any third party. Any attempted assignment or transfer in violation of the foregoing will be void.
- 11.7 NO THIRD PARTY BENEFICIARY.** Reseller acknowledges and agrees that nothing herein, express or implied, is intended to nor shall be construed to confer upon or give to any person, other than the Parties, any interests, rights, remedies or other benefits with respect to or in connection with any agreement or provision contained herein or contemplated hereby.
- 11.8 SEVERABILITY; WAIVER.** If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.
- 11.9 CONSTRUCTION.** The headings of Sections of this Agreement are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section. When used in this Agreement, the term "including" means "including without limitation," unless expressly stated to the contrary. In the event of any conflict, ambiguity, or inconsistency among the terms of the Agreement, the Exhibits, or the Attachments to an Exhibit, the order of precedence shall be (1) the Agreement, (2) the Exhibits, and (3) the Attachments to an Exhibit, unless a term in an Exhibit or Attachment is expressly stated to take precedence over the order of precedence set forth herein.
- 11.10 AMENDMENTS.** This Agreement may be modified only by an instrument in writing duly executed by both Parties. Notwithstanding the foregoing, Sublicensee acknowledges and agrees that the terms and policies incorporated by reference into this Agreement may be unilaterally amended by Reseller from time to time and such amended policies shall be automatically binding on Sublicensee and effective thirty (30) days after they are initially posted on Reseller's website.
- 11.11 COUNTERPARTS.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.
- 11.12 ENTIRE AGREEMENT.** This Agreement sets forth the entire understanding and agreement between Sublicensee and Reseller with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral.

**In Witness Whereof**, the parties have executed this Reseller Agreement as of the Effective Date.

**[ ] ("RESELLER")**

**SUBLICENSEE**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name (*printed*): \_\_\_\_\_

Name (*printed*): \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address:

\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT A**  
**SOFTWARE**

ProStores Software is a web store building solution that enables small and medium sized businesses to sell products and services online through its own customizable virtual storefront. ProStores is available in four different store types:

Feature	Benefit	Starter	Standard	Pro	Pro Plus
Easy-to-use Setup Wizard with professionally designed templates. Add your own company logo.	Get your store up and running in minutes.	✓	✓	✓	✓
Context-sensitive wizards that guide you through the setup process.	Complex tasks are presented in easy-to-use wizards with online help.	✓	✓	✓	✓
Extensive online help and printed documentation.	Save time performing tasks.	✓	✓	✓	✓
Upgrade easily and automatically from within store administration.	When you are ready to do more you can quickly and easily move to a more robust store building on your previous work.	✓	✓	✓	✓
eBay® integration.	Post products from your store to eBay for auction.	✓	✓	✓	✓
PayPal – real time payment acceptance and verification.	Accept real-time PayPal payments without investing in an online merchant account.	✓ <sup>1</sup>	✓ <sup>1</sup>	✓ <sup>1</sup>	✓ <sup>1</sup>
Additional payment options: major credit cards with real-time processing, store card, checks and money orders.	Accept additional forms of payment.	✓ <sup>2</sup>	✓ <sup>2</sup>	✓ <sup>2</sup>	✓ <sup>2</sup>
Shipping calculations based on order amount, order weight or total item count.	Create shipping tables to match your shipping needs.	✓	✓	✓	✓
Sophisticated tax calculations, including GST and PST for Canadian merchants.	Create sales tax calculations to match your sales tax needs	✓	✓	✓	✓
Customer profiles saved for quicker, friendlier check-out.	Shoppers profile saved so that they need not type it in every time they return to your store to purchase goods – saving the shopper time.	✓	✓	✓	✓
Automated e-mail look up of lost passwords.	Shoppers can easily ask your store to provide them with their lost password – potentially reducing customer service calls.	✓	✓	✓	✓
Integrated shipping calculations: UPS®, FedEx®, United States Postal Service, and Canada Post.	Use UPS, FedEx, USPS or Canada Post shipping tables and tracking information similar to your retail business.	✓	✓	✓	✓
Intuitive, easy-to-use design tools that require no knowledge of HTML, allowing custom store design.	Customize your store design to match your corporate identity.		✓	✓	✓
Organize your catalog by category, product name, or manufacturer.	Categorize products in a fashion similar to your retail store – place products in multiple categories ensuring shoppers find the product they are looking for.		✓	✓	✓
Submit your products to multiple marketplaces including shopping search engines Yahoo! Shopping, Shopping.com, BizRate and Froogle. <sup>3</sup>	Display your products in several shopping search engines, producing highly qualified traffic and an efficient sales channel for you		✓	✓	✓

Feature	Benefit	Starter	Standard	Pro	Pro Plus
Manage email marketing campaigns and newsletters with Constant Contact. <sup>3</sup>	Create newsletters and email marketing campaigns to your shoppers.		✓	✓	✓
Share your product, order and customer information directly with QuickBooks®.	Easily share data with the most widely accepted accounting tool on the market – greatly reduces time spent on data entry		✓	✓	✓
Issue credits, partial credits and partial line item credits.	Easily credit a shopper for an incorrect order.		✓	✓	✓
Import & export of store data.	Easily import product and customer data, export customer and order data.		✓	✓	✓
Over a dozen reports to better manage your store.	.		✓	✓	✓
Advanced promotional capabilities including storewide sales, quantity discounts and promotion codes.	Increase traffic and return purchases by offering storewide sales, promotions for repeat shopping, etc.			✓	✓
Sophisticated inventory management tools.	Set inventory thresholds for reorders, display quantity in stock, hide out of stock inventory from storefront, allow shoppers to order backordered items.			✓	✓
Recurring billing lets you charge customers automatically at set intervals for products and services, such as monthly subscriptions.	Sell magazines, product of the month clubs, online subscriptions to content, etc and the store will automatically calculate the billing and charge at the intervals you define.			✓	✓
Allow customers to download electronic products from your store.	Sell and deliver electronic goods like books, music, etc from your store.			✓	✓
Resale option.	Allow shoppers to purchase products resale and the store will automatically ask for the shopper's resale number and not charge them sales tax.			✓	✓
Add invoices via store administration.	Merchant can add invoices generated outside of online store – offer services and other non-tangible goods and/or input orders from mail/phone.			✓	✓
Additional payment options: purchase orders, internal department orders.	If selling to businesses, you can accept more advanced forms of payment similar to your offline business.			✓	✓
Adjust all elements up or down of an invoice ready for shipping.	Easily correct an order if a shopper over/under ordered.			✓	✓
Supply chain management: view pending orders by supplier, even if the order spans multiple suppliers; notify suppliers of orders electronically; provide suppliers secure area to update shipping status	Easily manage your supply chain and virtual inventory.				✓
Assign customers to different "buyer groups"	Manage wholesale, retail and frequent buyer groups from the same site. Shoppers will be displayed different product prices based on their login to the store.				✓
Create your own affiliate program	Let other sites sell your products – affiliates can link to your site, products, or cart with full reporting, variable commissions and online sign-up				✓
Gather sales leads by product	Gather shopper information on products that aren't for sale from the site but shoppers express an interest in – the store will automatically forward the information to a sales rep for follow-up				✓

1. PayPal processing fees apply.
2. ProStores will allow for the collection of credit card and shopper data in conjunction with the shoppers purchase at your online store – in some instances you can process these transactions offline through your retail merchant account (as card not present transactions). Please consult your merchant account and payment gateway agreements for more information. Additional fees may apply.
3. These services are offered by third party vendors, additional fees may apply.

**EXHIBIT B**  
**SERVICE LEVEL AGREEMENT**

**1. Performance Standards:**

In accordance with the terms of the Agreement, Sublicensee agrees to comply with the performance standards set forth in this service level agreement. Sublicensee will provide the below service performance standards.

<b>System Availability Measure</b>	<b>Standards</b>
Sublicensee Services monthly uptime (availability)	99.95%

<b>Website Response Measure</b>	<b>Standards</b>
Minimum time to connect to Sublicensee website	2.0 seconds 90% of the time
	4.0 seconds 100% of the time

Sublicensee shall use its best efforts to exceed the above performance standards to meet Reseller's approval. In the event Reseller is not satisfied with the performance standards achieved by Sublicensee within six (6) months following the Agreement Date, Reseller may terminate this Agreement without penalty upon thirty (30) days written notice to Sublicensee notwithstanding any other provisions set forth in the Agreement, provided Reseller must base its decision to terminate on commercially reasonable grounds. Sublicensee shall not be responsible for any failure to meet performance standards resulting from any act or omission by Reseller.

**2. Technical Support and Problem Resolution:**

2.1 Technical Support. Sublicensee shall provide Reseller with Technical Support every day (7x24) with a telephone/pager number for submission of all Support Requests. An on-call support technician shall answer the telephone/pager number.

2.2 Problem Classification. The following Problem Classification Table definitions are used for classifying performance issues.

**Problem Classification Table**

<b>Classification</b>	<b>Criteria</b>
Severity 1 (Critical)	Sublicensee Services are non-operative or significantly impaired. XX cannot be conducted without significant delay, if at all. No known work around is currently available.
Severity 2 (Degraded)	Sublicensee Services do not function as designed.
Severity 3 (Minimal)	This group includes problems that have little or no impact on daily business process.



2.3 Response Expectation Table. The following Response Expectation table specifies the level of response that will be given to a problem at each step of the process based upon the assigned severity of the problem. The table specifies the maximum amount of time elapsed to complete each step.

**Escalation Response Expectation Table**

<b>Severity</b>	<b>Step 1 (Identify)</b>	<b>Step 2 (Temporary Fix)</b>	<b>Step 3 (Fix)</b>
1 (Critical)	30 minutes	Immediate and continuing best efforts	Immediate and continuing best efforts
2 (Degraded)	1 hour during normal business hours, 2 hours otherwise	5 calendar days	Within 15 calendar days
3 (Minimal)	1 business day	Worked on a time available basis	As appropriate

2.4 Escalation Process. All problems with a Severity Level of 1 to 2 will be escalated if a solution or plan of resolution cannot be achieved within the designated amount of time as described above. Escalations will occur in accordance with the following schedule:

Severity 1 and 2 Problem Escalation.

- Hours 0 to 4: Sublicensee NAME AND CONTACT INFORMATION
- Hour 5: Sublicensee NAME AND CONTACT INFORMATION
- Hour 6: Sublicensee NAME AND CONTACT INFORMATION
- Hour 8: Sublicensee NAME AND CONTACT INFORMATION

Severity 3 Problem Escalation.

Hours 0 to 72: Sublicensee will work to resolve the problem and will attempt to provide a solution within 72 hours after problem identification. If problem identification has not occurred within the timeline outlined in the response expectation table, the problem will be considered Severity 1 and Sublicensee will follow the escalation procedures as outlined in Severity 1.

**3. *Unscheduled Outage/Error:***

Sublicensee will communicate any issues encountered with its services within 5 minutes of the incident occurring.

**4. *Reseller Error:***

In the event an error or outage is the direct result of Reseller or third party acts or omissions, any downtime and/or performance issues that result will not be counted against Sublicensee's performance and availability metrics.

## **5. *Post Mortem Reports***

Sublicensee will provide post mortem reports after each failure to meet any service obligations or performance standards. The report will explain the root cause of the problem, and provide the short-term solution implemented to mitigate the issue and a long-term solution for preventing the problem.

## **EXHIBIT C**

### **FEES**

Software is available in four editions: Starter, Standard, Professional, and Professional Plus with a minimum three store requirement per month. The number of stores license are reported by the ProStores Channel Manager system during the previous month. Prices are subject to change with a thirty (30) day written notice.

After six (6) months, a minimum payment equivalent to three (3) stores of the monthly software commitment may be imposed, unless sub licensee is reasonably increasing the number of hosted stores on a quarter to quarter basis.

Store editions are priced (monthly) as follows for sub licensee providing their own hosting:

Starter - \$ 10.00

Standard - \$30.00

Professional - \$80.00

Professional Plus - \$130.00 (one or more of the three add on modules)

Store editions are priced (monthly) as follows for sublicense with Dynamic Concepts, Inc., providing the hosting of their stores and the sub licensee providing support and billing:

Starter - \$ 46.00

Standard - \$90.00

Professional - \$125.00

Professional Plus - \$180.00 (one or more of the three add on modules)

**EXHIBIT D**  
**RESELLER TRADEMARK USAGE POLICY**

This Reseller Trademark Policy ("Policy") of ProStores, Inc. ("ProStores") is provided to you as a sublicensee of ProStores Logo trademarks ("ProStores Logos") owned by ProStores. This Policy is designed to provide you with the requirements for use of ProStores Logos. In order to be entitled to any other eBay or ProStores trademark, you must have a separate written agreement, which includes a trademark license. You are entitled to use only the ProStores Logos expressly licensed to you in the Reseller Agreement and only on the products or services described in that agreement. The requirements set forth in this Policy are in addition to all other terms and conditions of your written agreement with ProStores.

**ProStores Logos**

ProStores Logo consists of the name StoreSense and/or ProStores represented in the colors and style reflected on materials provided to you by ProStores. ProStores will provide you with the artwork for ProStores Logos and in reproducing the ProStores Logos you may only use the artwork provided by ProStores or its designee. You may not alter the ProStores Logo as provided to you in any manner, including proportions, colors, elements, and type or in any other respects. You may not animate morph or otherwise distort its perspective or dimensional appearance.

**Trademark Notices**

The artwork provided to you contains the <sup>TM</sup> symbol and that symbol should never be deleted from the artwork. All uses of the ProStores Logo must include a statement substantially similar to the following in a reasonably visible location: ProStores and the ProStores logo are trademarks of ProStores Inc.

**No Use of Identical or Similar Names; No Combination Marks**

You may not use any name or trademark confusingly similar to ProStores Logos or any ProStores trademark. You may not use the ProStores Logos in such proximity to any of your own trademarks or third party trademarks so as to create a combination or composite mark.

**Ownership Rights & Cooperation**

You agree that nothing herein or in your written agreement with ProStores shall give to you any right, title or interest in ProStores Logos, or any other trademarks of ProStores, except the right to use the ProStores Logo solely in accordance with the terms of your Reseller Agreement with ProStores. You also agree that ProStores Logos are the sole property of ProStores, and that any and all uses by you of ProStores Logos, and all goodwill derived therefrom, whether or not done pursuant to the written agreement, shall inure solely to the benefit of ProStores. At ProStores's request and expense, you shall provide ProStores with any specimens and execute all documents necessary to protect and confirm ProStores's rights to ProStores Logo including without limitation any act reasonably necessary for ProStores to secure or maintain rights for ProStores Logos.

**No Registration of Mark or Objections to Validity**

You may not (a) do anything that might harm the reputation or goodwill of ProStores, the ProStores name or ProStores Logos; (b) take any action inconsistent with ProStores's ownership of the ProStores name or ProStores Logos; (c) challenge, raise or cause to be raised any questions concerning ProStores's rights or interests in the ProStores name or ProStores Logos; or (d) attempt to register ProStores Logos or any other ProStores trademark or any trademark or logo substantially similar thereto; and you may take no other action which is harmful or adverse to ProStores's rights.

**Notification of Adverse Use**

You must promptly notify ProStores in writing of any adverse use by a third party of ProStores Logos or of a mark or name confusingly similar to ProStores Logo and will take no action of any kind with respect thereto except with the prior written authorization of ProStores. You will provide full cooperation with any legal or equitable action by ProStores to protect its right, title and interest in and to ProStores Logos.

## **Infringement Proceedings**

In the event of infringement of ProStores Logos by a third party, ProStores shall have the sole right in its discretion to initiate and conduct proceedings (including notifications to customs or other government officials objecting to the importation of infringing goods) against the infringing party, to initiate and conduct negotiations with respect thereto, including, but not limited to settlement discussions and to retain any damages recovered in such proceedings.

## **Review Process**

You must submit samples of any and all materials bearing ProStores Logos to ProStores for review and approval prior to the distribution of such materials. ProStores shall have the right to make reasonable objections to any such sample within ten (10) business days of its receipt thereof on the grounds that ProStores believes in good faith that the use and/or distribution of such materials by you will be damaging to the recognition value or reputation for quality associated with ProStores Logo, or the materials do not meet the requirements of this Policy or your written agreement with ProStores. In the event of such an objection, you shall modify the materials in accordance with the objection of ProStores prior to the distribution of the materials. Once you have received approval for any said materials, it shall be allowed to use the same in subsequent editions without obtaining prior approval.

## **Termination**

Should ProStores notify you that any of your uses of ProStores Logos do not meet the requirements set forth in this Policy or your written agreement with ProStores, you must correct all misuses of the ProStores Logo within forty-five (45) days of notice from ProStores. Attempts at a cure or partial cures shall not serve to stay the running of the forty-five (45) day cure period unless such stay is first agreed to in writing by ProStores. If the misuse of a ProStores Logo is not corrected within forty-five (45) days, your license to use such ProStores Logo shall terminate at the end of that forty-five day period. In the event of termination of the Reseller Agreement for any reason, you agree to discontinue immediately all use of ProStores Logos and to promptly destroy or return to the place designated by ProStores all materials that bear ProStores Logos.

## **Other Terms and Conditions**

ProStores disclaims any and all warranties whether express or implied by law regarding ProStores Logos, including without limitation warranties against infringement.

In the event of any breach of the terms and conditions set forth in this Policy or your written agreement with ProStores, you agree that ProStores shall be entitled to injunctive relief in addition to other available remedies.