

## **APAC and Japan PartnerEdge Program Agreement – v. 8.30.10**

As part of the Aruba APAC and Japan PartnerEdge Program registration process, all companies are required to review and accept the Aruba APAC and Japan PartnerEdge Program Agreement (the “Agreement”). This Agreement applies to all resellers of Aruba products and services, and sets forth the requirements for participating in the Aruba APAC and Japan PartnerEdge Program (“Program”). To register as an Aruba Partner, your company must execute this Agreement and Aruba must approve your registration. Aruba may reject an applicant for any reason, including Partner’s ability to add value to the sale of Products by facilitating face-to-face interactions with end users. This Agreement is entered into between Aruba and the company you identified in the applicable application (“Partner”). By accepting this Agreement, Partner agrees to terminate any pre-existing contractual relationship in place to purchase directly from Aruba.

### **Distributor Agreement**

Partner’s access to the rights and benefits of the Program is contingent on Partner’s execution and maintenance of a valid agreement with a value-added distributor (“VAD”) that is authorized by Aruba to distribute Aruba products (excluding Aruba’s Wireless Mesh products) (the “Products”) to Partner in Partner’s territory (“VAD Agreement”). A separate written authorization from Aruba is required before Partner will be permitted to distribute Aruba’s Wireless Mesh products. All Partners participating in the Program must purchase Products from a VAD only and acquire such Products solely for resale to end users. Partners may not resell, license, sublicense or distribute Products to other Aruba resellers. If a VAD Agreement is no longer in force, is cancelled, or otherwise becomes invalid, Partner will no longer be eligible to participate in the Program. Partner agrees to abide by the terms and conditions of the VAD Agreement. Partner further agrees to comply with the U.S. Foreign Corrupt Practices Act and all applicable export laws, restrictions, and regulations of any United States or foreign agency or authority.

### **Confidentiality**

Other than in the course of its performance of this Agreement, Partner will hold in confidence and not use or disclose any Aruba proprietary and confidential information, including without limitation code, inventions, algorithms, know-how, ideas, and all business, technical and financial information (“Confidential Information”), to any third parties or to any employees; provided however, that Partner may disclose Confidential Information to employees who have a strict need to know such information and who have signed written agreements that are at least as protective of the Confidential Information as this provision. To the extent that such disclosure is required by valid government or court order, Partner must first give notice to Aruba and make a reasonable effort to obtain a protective order requiring that the Confidential Information so disclosed be used only for the purposes for which the order was issued. Because of the unique and proprietary nature of the Confidential Information, it is understood and agreed that any remedy at law for a breach by Partner of its obligations under this provision will be inadequate and that such breach would cause irreparable harm to Aruba; therefore Aruba will be entitled to seek immediate injunctive relief in addition to any other remedies.

### **Access to Benefits**

Partner's eligibility for and/or receipt of the benefits of the Program associated with its particular program level is contingent on Partner's continuing compliance with all requirements of this level and compliance with this Agreement. In the event that Partner receives benefits to which Partner is not entitled due to non-compliance with such requirements, provision of misleading or false information, or any other reason, Aruba reserves the right to revoke Partner's program level.

All benefits shall be measured and provided on a quarterly and annual basis, aligned with Aruba's fiscal calendar.

Admission into the Program, and continued access to benefits under the Program, are at Aruba's sole discretion and may be revoked at any time. Partner is not automatically entitled to any such benefits solely by virtue of meeting or maintaining the Program requirements.

### **Changes to Program**

Aruba may change the Program as it deems appropriate, and shall notify Partner of any such changes through the Aruba Partner website. Unless stated in the notice, such changes shall not generally affect the benefits Partner receives in the quarter that notification is given.

The continued availability of the Program is at Aruba's sole discretion. If the Program is cancelled without replacement by an alternate program, Aruba will use reasonable efforts to provide advance notice to Partner.

### **Noncompliance with Program**

Partner agrees to notify Aruba promptly if it no longer meets the requirements for its awarded program level, and in no event more than thirty (30) days after first becoming aware of non-compliance. If Partner provides appropriate notice, Aruba may, at its sole discretion, grant Partner an extension of time to renew compliance.

Partner agrees that Aruba may monitor Partner's compliance with the Program requirements at any time. If Aruba believes that Partner is no longer in compliance with Program requirements, Aruba may revoke Partner's program level.

### **Term**

Unless otherwise specified in writing by Aruba, the term of this agreement and Partner's participation in the Program shall be for one year commencing with the date of acceptance. As long as Partner continues to meet the requirements of the Program and remains a Partner in good standing, as determined by Aruba, participation in the Program shall continue to auto-renew at the end of each annual period for one additional year. Either party may cancel Partner's participation in the Program at any time. Partner's benefits shall terminate upon receipt of written notice of cancellation and upon cancellation Partner will no longer be authorized to purchase Products or services from VAD.

### **Compliance**

Company shall comply with all laws and obtain any necessary registrations, permits, and approvals required in (or to import the Products into) the Territory; and promptly notify Aruba in writing of any known or suspected infringement or misappropriation of Aruba's proprietary rights

## **Territory**

The territory in which Partner is authorized to resell Aruba products and services is \_\_\_\_\_ . Only sales within the Territory count towards Program requirements and benefits and Partner may not distribute Products outside of the Territory without written authorization from Aruba

## **Use of Aruba Marks and Logos**

Aruba grants Partner the right to use certain of its logos and marks during the course of Partner's participation in the Program, only within the Territory, and solely to promote the resale of Aruba's products and services. Partner agrees that it shall only use the Aruba marks and logos corresponding to its authorized Program level and in accordance with Aruba's then current branding guidelines and logo usage guidelines which may be found at <https://partners.arubanetworks.com/marketing-center/templates>. Partner acknowledges and agrees that Aruba may amend, modify, replace or supplement such guidelines or may discontinue the use of a logo or mark at any time in its sole discretion.

Partner may not use Aruba's name or trademarks in press releases without Aruba's prior approval. Partner acknowledges that Aruba shall have the right to publicly identify Partner as an Aruba Partner and to include Partner's name, logo and other relevant information in marketing and website collateral as Aruba reasonably deems appropriate from time to time.

## **Intellectual Property Rights**

Aruba and/or its suppliers have and retain all right, title and interest in and to the Products and in and to all intellectual property rights relating to the Products (including, without limitation, any trademark, service mark or trade name rights associated therewith), as well as to all copies and derivative works thereof. Partner will not delete or in any manner alter any proprietary notices of Aruba and its suppliers and licensors appearing on or in the Product(s) or any software component of the Products. Partner will not cause, permit or otherwise (i) disassemble, decompile, alter or reverse engineer the Products or otherwise attempt to derive the source code, structure, algorithms or ideas underlying the Products (except to the extent the provisions of this clause (i) are expressly prohibited by applicable law) , (ii) rent, lease or otherwise provide temporary access to a Product, (iii) copy or modify the Products, (iv) register as its own, or adopt, use or attempt to register any trademark or service that is confusingly similar to Aruba's trade names, trademarks or service marks or (v) allow others to do any of the foregoing.

Partner will distribute the software components of the Products for use solely in conjunction with and as embedded in the Products and solely in accordance with the then-current End User License Agreement, found at [www.arubanetworks.com/pdf/partners/channel/EULA\\_June2007.pdf](http://www.arubanetworks.com/pdf/partners/channel/EULA_June2007.pdf), and assist Aruba to enforce the Agreement of such End User License Agreement.

## **Limitation of Damages.**

IN NO EVENT SHALL ARUBA OR ITS SUPPLIERS BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST REVENUE, LOST PROFITS, OR LOST OR DAMAGED DATA, ARISING OUT OF

OR IN CONNECTION WITH THIS AGREEMENT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF ARUBA OR ITS SUPPLIERS HAVE BEEN INFORMED OF THE POSSIBILITY THEREOF.

**Relationship of the Parties**

Each party to this Agreement is an independent contractor. Notwithstanding the use of the term "Partner" in this Agreement and in the Program, the parties do not intend to create any legal relationship of partnership, agency, joint venture, employment or franchise relationship between them, and neither will assert to any third party or otherwise claim that such a legal relationship exists between them. This Agreement does not establish any exclusive rights to or obligations of either Party. Limitations are not placed on either Party in the design, development or sale of any products or services to any person or company in any territory as a result of these Agreement other than as explicitly set forth herein.

**Governing Law**

This Agreement shall by governed by the laws of the State of California, without giving effect to principles of conflict of laws. The parties hereby consent to the exclusive jurisdiction of the State and Federal courts of the State of California; provided, however, that either party may seek interim injunctive relief in any court of appropriate jurisdiction with respect to any claim of proprietary rights.

**Assignment**

Neither this Agreement, nor any rights under this Agreement may be assigned by Partner without the express prior written consent of Aruba. Any attempted assignment in violation hereof shall render this Agreement null and void and be without legal effect.

**Survival**

Any Agreement that by their nature or otherwise reasonably should survive the expiry or termination of this Agreement shall be deemed to survive.

**Other Agreements**

This Agreement contains the entire agreement between the Parties with respect to this subject matter, and supersedes all prior and contemporaneous discussions, communications and agreements, written or oral, with respect thereto.