

MANAGED SERVICES PROVIDER AGREEMENT v4.4

Read this Managed Services Provider Agreement (the “Agreement”) before registering as a managed service provider with ThreatDown. If you do not or cannot agree to these, then do not register as a managed service provider with ThreatDown. By registering with ThreatDown, you (as “MSP” and as a representative authorized to bind the managed service provider entity) consent and agree, on behalf of yourself and the MSP entity, to be bound by this Agreement. Further, MSP represents that it is a sophisticated entity, that it has read and understands this Agreement and has had sufficient opportunity to consult with counsel, prior to agreeing to these terms and submitting its registration. If MSP has any questions or concerns, or desires to suggest any modifications to this Agreement, please contact the local ThreatDown sales representative to be referred to ThreatDown Legal.

The parties to this Agreement are MSP and ThreatDown. “ThreatDown” means: (a) If MSP is acquiring ThreatDown software or utilizing ThreatDown services in the United States or Canada, ThreatDown Inc. a Delaware Corporation, located at 3979 Freedom Circle 12th Floor, Santa Clara, CA 95054; and (b) If MSP is acquiring ThreatDown software or utilizing ThreatDown services in any other country, ThreatDown Limited, a company incorporated in Ireland, located at 2nd Floor, One Albert Quay, Cork, Ireland T12 X8N6. The effective date of this Agreement shall commence upon MSP’s acceptance of this Agreement and completion of the MSP program registration process. Upon ThreatDown’s acceptance of MSP’s registration, MSP will be appointed a nonexclusive marketer and provider of ThreatDown managed service provider products and/or services, in the territory specified by ThreatDown (“Territory”).

The parties agree as follows:

1. SCOPE.

MSP is in the business of providing managed computer services (the “MSP Services”). ThreatDown and MSP desire that ThreatDown appoint MSP as an authorized ThreatDown managed services provider to enable MSP to provide to its customers certain ThreatDown software products or ThreatDown services, as stand-alone services or bundled with MSP’s other MSP Services, subject to and in accordance with the terms and conditions of this Agreement. “Customer” means a customer of MSP for whom MSP uses the Software (defined below) or Managed Services (defined below) as part of the MSP Services.

2. SOFTWARE.

2.1 Grant of License. Subject to MSP’s compliance with the terms and conditions of this Agreement, including payment of Fees as and when they become due, ThreatDown grants to MSP a non-exclusive, non-transferable license: (i) to use the Software in the Territory, solely for the purpose of (a) provisioning the Software on a stand-alone basis as MSP Services or bundling the Software with the MSP’s existing MSP Services, (b) demonstrating and marketing the Software to potential Customers in Territory, (including through the usage of trials as described in Section 4.5) and (c) providing training and maintenance and support services to Customers in the Territory; (ii) to distribute and sublicense the Software as part of an MSP Services, whether on a stand-alone basis or bundled with other MSP Services, to its Customers in the Territory; and (iii) to reproduce the Software, solely as necessary to exercise the license rights granted in the preceding sub-clauses (i) and (ii). “Software” means ThreatDown’ computer software products, in executable code form, or the “Software-as-a-Service” delivery services (“SaaS Services”) that may be used to provide access to such software, as specified in the ThreatDown online partner portal (“Partner Portal”), and related Documentation and license key information, including any error corrections and updates that ThreatDown provides to MSP under this Agreement. MSP may not use load, provision, and/or run the Software as part of the MSP Services to protect a device(s) running a server operating system unless the Software is a ThreatDown server product as reflected in its official product name or detailed in its official product documentation. Each instance of an operating system on a partitioned or virtualized machine shall count as a device. ThreatDown licenses the Software to Customers pursuant to the ThreatDown software

license agreement as found at www.ThreatDown.com/eula (“EULA”). “Documentation” shall mean the applicable data sheets, usage guides, and policies regarding the MSP Program, as updated from time to time, online at <http://www.ThreatDown.com/partner-program/msp> and the MSP Portal. ThreatDown is an intended third-party beneficiary to the EULA and as such may assert any applicable rights set forth therein as may be necessary to protect its Intellectual Property Rights (as defined in Section 10.1, below) or other confidential or proprietary material the MSP has provided to Customer in connection with the provision of MSP Services. MSP will promptly notify ThreatDown of any breach of the ThreatDown EULA and will assist ThreatDown to enforce its terms and conditions.

2.2 License Restrictions. Except as expressly set forth in Section 2.1, MSP may not resell, distribute, sublicense, or otherwise transfer the Software unless MSP and ThreatDown have entered into a separate reseller agreement. MSP acknowledges that the Software contains trade secrets of ThreatDown and its licensors, and, in order to protect such trade secrets and other interests that ThreatDown and its licensors may have in the Software, MSP agrees not to disassemble, decompile or reverse engineer the Software, or permit any third party to do so, except, and solely to the extent, if any, that applicable local law requires that such activities be permitted. Except as expressly authorized by this Agreement, MSP will not: (i) copy or reproduce the Software, in whole or in part; (ii) modify the Software; or (iii) provide the Software or make its functionality available to third parties as an application services provider or service bureau, or by hosting, time sharing or providing any other type of services.

3. SERVICES.

3.1 Subject to MSP’s compliance with the terms and conditions of this Agreement, including payment of Fees as and when they become due, and to the ThreatDown Managed Services Agreement as found at www.ThreatDown.com/legal/managed-services-agreement (“ThreatDown Managed Services Agreement”), ThreatDown agrees to make available to MSP and Customers certain ThreatDown managed services (including any notification, documentation or work products provided as part of the managed services, “Managed Services”).

3.2 Through the MSPs, ThreatDown offers Managed Services to Customers pursuant to the ThreatDown Managed Services Agreement. ThreatDown is an intended third-party beneficiary to the ThreatDown Managed Services Agreement and as such may assert any applicable rights set forth therein as may be necessary to protect its Intellectual Property Rights (as defined in Section 10.1, below) or other confidential or proprietary material the MSP has provided to Customer in connection with the provision of MSP Services. MSP will promptly notify ThreatDown of any breach of the ThreatDown Managed Services Agreement and will assist ThreatDown to enforce its terms and conditions.

4. GENERAL TERMS

4.1 Limited Rights. MSP’s rights in the Software are limited to those expressly granted in Section 2.1. ThreatDown reserves all other rights, title and interest in and to the Software not expressly granted to MSP under this Agreement.

4.2 Orders and Delivery.

4.2.1 All MSP orders for Software and/or Managed Services must be placed directly with ThreatDown or a ThreatDown authorized partner. MSPs shall not be permitted to provide any MSP Services using any ThreatDown Software or products not purchased directly by MSP from ThreatDown or a ThreatDown authorized partner. ThreatDown or a ThreatDown authorized partner (where applicable) will make the Software available to MSP within a reasonable time following execution of this Agreement.

4.3 SaaS Delivery. ThreatDown shall use commercially reasonable efforts to make such SaaS Services available to MSP, subject to downtime for scheduled or emergency maintenance. MSP may only use the SaaS Services in furtherance of this Agreement.

4.4 Lifecycle Policy. MSP's usage of the Software and applicable Managed Services shall be subject to ThreatDown' Lifecycle policy as further described here <https://www.ThreatDown.com/support/lifecycle/>.

4.5 Customer Trials.

4.5.1 Software. MSP shall be allowed to offer trials of the Software to Customers, provided that the trials do not exceed 30 days term lengths, unless otherwise approved by ThreatDown, and each Software trial shall only be made available one-time per Customer.

4.5.2 Managed Services. MSP shall not be allowed to offer trials of the Managed Services unless a prior written approval from ThreatDown has been obtained.

4.6 Bundling Software or Managed Services into MSP Services. If MSP wishes to offer the Software or Managed Services as part of its other MSP Services and not on a stand-alone basis, then MSP shall provide ThreatDown with a preview of its intended bundled offering for review and approval before proceeding with offering such MSP Services to Customers. ThreatDown shall not be responsible for any expenses that MSP incurs in preparing such preview bundled offering for ThreatDown review.

4.7 Non-ThreatDown Products. The Software may contain features designed to interoperate with software provided by MSP or a third party ("Non-ThreatDown Products"). Obtaining access from the providers of such Non-ThreatDown Products may be necessary in order to use such features. ThreatDown may cease to provide such features without entitling MSP to any refund, credit, or other compensation.

4.8 Beta Features and Beta Releases. ThreatDown, at its sole discretion, may make available optional Software or optional features to its Managed Services, including but not limited to utilities for supporting the usage of the Software, beta features that can be enabled within the Software, beta releases, pilots, limited releases, previews, or evaluations of Software (collectively "Beta Releases"). Unless a particular Beta Release includes its own separate and specific terms and conditions, this Agreement shall govern the usage of Beta Release. MSP is not required to use Beta Release and such BETA RELEASE IS PROVIDED "AS-IS" WITHOUT ANY INDEMNIFICATION, WARRANTY, MAINTENANCE, OR SUPPORT OF ANY KIND. FURTHERMORE, THREATDOWN SHALL HAVE NO LIABILITY OF ANY TYPE WITH RESPECT TO THE BETA RELEASE UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW, IN WHICH CASE ITS LIABILITY WITH RESPECT TO THE FREE TRIAL SHALL NOT EXCEED \$1,000.00. Beta Release is not fully tested and may have significant issues posing risks associated with its usage. ThreatDown strongly recommends MSP back up any data. MSP agrees that where it elects to use Beta Release, ThreatDown shall not be liable for any damage arising from such use. Where MSP decides to use the Beta Release in compliance with this Agreement, in the case of Software, ThreatDown grants a non-exclusive and non-transferable license to execute the Beta Release in accordance with its Documentation solely as allowed under Sections 2.1-2.2. The license term of the Beta Release shall be designated by ThreatDown, in the event no term is designated, the license shall be valid for thirty (30) days. ThreatDown may terminate the Beta Release license with or without cause upon 10 days' notice, or immediately in the event of MSP's breach of this Agreement.

4.9 Free Trial. ThreatDown may make available certain Software or Managed Services on a trial basis free of charge ("Free Trial"). Additional trial terms and conditions may appear on the trial registration web page or as part of the registration process. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding. Where MSP requests a Free Trial, its use shall be in compliance with this Agreement, and in the case of Software, ThreatDown grants a non-exclusive and non-transferable license to execute the Software for the Free Trial in accordance with its Documentation solely as allowed under Sections 2.1-2.2. The license term of the Free Trial shall be designated by ThreatDown, in the event no term is designated, the license shall be valid for thirty (30) days. ThreatDown may terminate the Free Trial with or without cause upon 10 days' notice, or immediately in the event of MSP's breach of this Agreement

ANY FREE TRIAL IS PROVIDED “AS-IS” WITHOUT ANY INDEMNIFICATION, WARRANTY, MAINTENANCE, OR SUPPORT OF ANY KIND. FURTHERMORE, THREATDOWN SHALL HAVE NO LIABILITY OF ANY TYPE WITH RESPECT TO THE FREE TRIAL UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW, IN WHICH CASE ITS LIABILITY WITH RESPECT TO THE FREE TRIAL SHALL NOT EXCEED \$1,000.00.

5. MSP OBLIGATIONS.

5.1 Business Practices. MSP will: (i) conduct business in a manner that reflects favorably at all times on the Software and Managed Services and the good name, goodwill and reputation of ThreatDown; (ii) make no false or misleading representations with regard to ThreatDown, the Software or the Managed Services; and (iii) make no representations, warranties or guarantees with respect to the specifications, features or functionality of the Software or the Managed Services that are inconsistent with the EULA, the ThreatDown Managed Services Agreement, and official product or service release notes documentation distributed by ThreatDown, including all liability limitations and disclaimers contained in such materials.

5.2 Marketing. MSP will actively market and promote the Software and Managed Services, as part of MSP Services, to Customers in the Territory.

5.3 Customer Agreements. MSP will be solely responsible for providing its products and services to its Customers. ThreatDown will have no liability to any Customer with respect to MSP’s use of the Software or the Managed Services whether such use is on such Customer’s behalf or otherwise. Without limiting the foregoing, MSP may not distribute the Software or offer the Managed Services to any Customer unless MSP has entered into a written agreement with such Customer that contains, at a minimum, terms and conditions substantially similar to the following: (i) MSP or its licensors retain all of their Intellectual Property Rights in the MSP Services (including the Software and Managed Services), and no title to such Intellectual Property Rights are transferred to the Customer; (ii) the Customer agrees not to reverse assemble, reverse engineer, reverse compile, or otherwise translate or modify any portion of the Software or the Managed Services; and (iii) that otherwise contains terms that are equally protective of ThreatDown’s rights in the Software and Managed Services as those contained in this Agreement and in ThreatDown EULA and ThreatDown Managed Services Agreement. MSP will use its best efforts to enforce the terms of each such Customer agreement.

6. MAINTENANCE AND SUPPORT

6.1 MSP Support of Customers. With respect to Software, MSP will provide Customers with direct first-level maintenance and support services for the Software, in accordance with the applicable terms specified in Exhibit A. Except as expressly specified in this Agreement or as otherwise agreed to in writing by the parties, ThreatDown will have no obligation to provide maintenance or support services to Customers. With respect to Managed Service, MSP will provide Customer with direct maintenance and support services unless otherwise agreed to in writing by the parties.

6.2 ThreatDown Support of MSP With Respect to Software. ThreatDown will provide MSP with second-level maintenance and support services for the Software, in accordance with the applicable terms specified in Exhibit A. ThreatDown is not obligated to provide any maintenance and support services beyond those set forth in Exhibit A. The parties may enter into a separate agreement for additional maintenance and support services which shall be subject to the payment of additional fees. Any maintenance and support services ordered by MSP, whether under this Agreement or a separate agreement for additional maintenance and support services, shall only be performed by ThreatDown to the MSP itself, and not to any Customers.

6.3 Contacts. Each party will designate one or more technical contacts as set forth in Exhibit A, who will be the other party’s primary contact for all technical matters relating this Agreement, and a business

contact, who will be the other party's primary contact for all other day-to-day matters arising under this Agreement.

7. RECORDS AND REPORTING.

7.1 Records; Audit. During the term of this Agreement and for a period of three (3) years thereafter, MSP will maintain complete and accurate books and records regarding MSP's use of the Software and Managed Services. During such period, ThreatDown will have the right to inspect and audit such books and records for the purpose of confirming MSP's compliance with the terms of this Agreement, including its payment obligations. Any such inspection and audit will be conducted during regular business hours and in a manner that minimizes interference with MSP's normal business activities. If such an inspection and audit reveals an underpayment of any amounts payable to ThreatDown, as applicable, then MSP will promptly remit the full amount of such underpayment to ThreatDown, including interest calculated in accordance with the terms of Section 8.4. If the underpaid amount exceeds 5% of the amounts payable to ThreatDown, for the period audited, then MSP will also pay ThreatDown' reasonable costs of conducting the inspection and audit.

7.2 Reporting. MSP understands and agrees that the Software or Managed Services may include automated reporting functionality allowing ThreatDown to have visibility to usage and licensing of the Software or usage of Managed Services and may, depending on the billing model agreed, use such reporting for invoicing MSP. ThreatDown shall endeavor to use such automated reporting for invoicing, however, ThreatDown reserves the right to request MSP to submit usage and licensing reports. Within 15 days of ThreatDown' request, MSP shall submit such reports to ThreatDown that include reasonable licensing and usage details as determined by ThreatDown that can be used to support the invoicing of fees.

8. FEES AND PAYMENTS.

8.1 Fees. If MSP is purchasing Software and/or Managed Services through a ThreatDown authorized partner, then the commercial terms, including the payment terms, agreed to between MSP and such partner shall apply for such purchase, and MSP would pay such authorized partner directly. ThreatDown offers two pricing models: term-based and usage-based. ThreatDown authorized partners may offer different pricing models where MSP purchases through an authorized partner. Fees are non-refundable under either pricing model. The Software and Managed Services are priced differently for each model and only one of the pricing models may be agreed to. Usage-based pricing is only available where MSP meets certain pre-requisites, including, but not limited to, technical requirements.

8.2 Payment Terms. MSP shall pay ThreatDown all amounts due under this Agreement ("Fees") in the currency stated in the order form to which this Agreement relates ("Order Form"), free of any currency controls or other restrictions, within thirty (30) days of invoice date in accordance with the pricing model chosen.

8.2.1 Term-based Model. MSP agrees to pay the applicable subscription fees for the amount of term-based Device (as defined in the EULA) licenses, as designated in the applicable Order Form(s). After purchasing such term-based Device licenses, MSP shall be granted access to the purchased number of Devices licenses which it can allocate and reallocate to its Customers as it sees fit (i.e. floating license). Unless otherwise agreed in the Order Form, term-based Fees are invoiced annually in advance and MSP shall pay ThreatDown the applicable Fees within 30 days of the invoice date. For the avoidance of doubt, if MSP does not use all of its licenses or does not wish to use the Software through the purchased subscription term, MSP is still obligated to fulfill its payment obligations.

8.2.2 Usage Model. MSP agrees to pay the applicable monthly usage Fees, as calculated based on the usage-based tier ("Usage Based Program Tier") designated in the Order Form, which shall be the greater of the (i) Fees calculated per Device for all Customer Devices that the Software has been made available (regardless of usage) at any time during that month, or (ii) the

applicable Usage Based Program Tier minimum. Unless otherwise agreed in the applicable Order Form, ThreatDown shall invoice MSP the applicable Fees at the end of each calendar month and MSP shall pay such Fees within 30 days from the date of invoice.

MSP acknowledges that as part of committing to the usage based billing model, it commits to a certain Usage Based Program Tier which requires MSP commit to a certain minimum monthly payment regardless of actual usage. Accordingly, if MSP makes the Software available to less than that minimum number of Devices in a calendar month, then MSP's payment obligations for such month shall still require the payment of monthly usage Fees calculated based on the minimum number of Devices associated with the Usage Based Program Tier it has committed to.

8.3 Taxes. All amounts payable by MSP under this Agreement are net amounts and are payable in full, without deduction for taxes or duties of any kind. MSP will be responsible for, and will promptly pay, all taxes and duties of any kind (including, but not limited to, sales, GST, VAT, use and withholding taxes) associated with this Agreement or MSP's receipt or use of the Software, except for taxes based on ThreatDown's net income. If ThreatDown is required to collect, or pays on MSP's behalf, any taxes or duties for which MSP is responsible, MSP will pay or reimburse ThreatDown, as the case may be, for all such amounts. If MSP pays any withholding taxes based on the payments made by MSP to ThreatDown hereunder, MSP will furnish ThreatDown with written documentation of all such tax payments, including receipts and other customary documentation.

8.4 Interest. All amounts not paid when due will accrue interest (without the requirement of a notice) at the lower of 1.5% per month or the highest rate permissible by law until the unpaid amounts are paid in full. MSP will promptly reimburse ThreatDown for all reasonable costs and expenses (including reasonable attorneys' fees) incurred by ThreatDown in connection with collecting any overdue amounts.

8.5 Modification of Fees Upon Renewal. ThreatDown reserves the right to modify the Fees for its Software or Managed Services under one or more Order Forms, effective upon commencement of the next Renewal Term of the relevant Order Form(s), by notifying MSP of such change in writing at least sixty (60) days before the end of the then-current Service Term, unless MSP notifies ThreatDown in writing, at least thirty (30) days prior to the end of the then-current Service Term, that MSP chooses not to renew such Order Form(s).

8.6 Migration Services. ThreatDown offers migration services. Such migration services are necessary where MSP transitions from purchasing the Software and/or Managed Services directly from ThreatDown to an authorized partner, or vice versa. Migration services shall be billed at ThreatDown then current rates.

9. CONFIDENTIALITY.

9.1 Definition. "Confidential Information" means: (i) the Software, the Managed Services and other related information disclosed by ThreatDown; (ii) any business or technical information of ThreatDown or MSP that, if disclosed in writing, is marked "confidential" or "proprietary" at the time of disclosure, or, if disclosed orally, is identified as "confidential" or "proprietary" at the time of disclosure, and is summarized in a writing sent by the disclosing party to the other party within 30 days of such disclosure; (iii) any such information that would be reasonably considered to be confidential or proprietary in nature given the circumstances of disclosure regardless of whether it is marked, identified or summarized or such; and (iv) the specific terms and pricing set forth in this Agreement.

9.2 Exclusions. The obligations in Section 9.3 will not apply to the extent any information: (i) is or becomes generally known to the public through no fault of or breach of this Agreement by the receiving party; (ii) is rightfully known by the receiving party at the time of disclosure without an obligation of confidentiality; (iii) is independently developed by the receiving party without use of the disclosing party's Confidential Information; or (iv) is rightfully obtained by the receiving party from a third party without restriction on use or disclosure.

9.3 Use and Disclosure Restrictions. Each party will not use the other party's Confidential Information, except as necessary for the performance of this Agreement, and will not disclose such Confidential Information to any third party, except to those of its employees and subcontractors that need to know such Confidential Information for the performance of this Agreement, provided that each such employee and subcontractor is subject to a written agreement that includes binding use and disclosure restrictions that are at least as protective as those set forth herein. Each party will use all reasonable efforts to maintain the confidentiality of all of the other party's Confidential Information in its possession or control, but in no event less than the efforts that it ordinarily uses with respect to its own confidential information of similar nature and importance. The foregoing obligations will not restrict either party from disclosing the other party's Confidential Information or the terms and conditions of this Agreement: (i) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the party required to make such a disclosure gives reasonable notice to the other party to enable it to contest such order or requirement; (ii) on a confidential basis to its legal or professional financial advisors; (iii) as required under applicable securities regulations; or (iv) on a confidential basis to present or future providers of venture capital and/or potential private investors in or acquirers of such party.

10. PROPRIETARY RIGHTS.

10.1 Ownership of Software. The Software and all the Intellectual Property Rights therein are and will remain the sole and exclusive property of ThreatDown and its licensors. MSP will reproduce on each copy it makes of the Software, and not alter, remove or obscure, the Intellectual Property Rights notices of ThreatDown and its licensors that may appear on the Software as delivered to MSP. "Intellectual Property Rights" means patent rights, copyrights, trade secrets, trademarks, know-how and any other intellectual property rights recognized in any country or jurisdiction in the world.

10.2 MSP's Duties. MSP will use its reasonable efforts to protect ThreatDown' Intellectual Property Rights in the Software and the Managed Services and will promptly report to ThreatDown any infringement or other violation of such rights of which MSP becomes aware. For applicable Managed Services offerings, MSP will be responsible for performing services as set forth in the applicable service description or other related documentation (for example: helping Customers implement actions recommended by ThreatDown as part of the Managed Services).

10.3 Trademark License. Subject to MSP's compliance with the terms and conditions of this Agreement, ThreatDown grants to MSP a non-exclusive, non-transferable license, during the term of this Agreement, to use the ThreatDown trademarks, trade names, service marks, and service names (collectively "ThreatDown Marks") solely in connection with MSP's marketing, promotion, and use of the Software pursuant to this Agreement. Any use of a ThreatDown Mark by MSP must correctly attribute ownership of such mark to ThreatDown and must be in accordance with applicable law and ThreatDown' then-current trademark usage guidelines. MSP will not remove or obscure any ThreatDown Mark on or in the Software or Managed Services as delivered to MSP, and will not attach any additional trademarks, logos or trade designations on or to the Software or the Managed Services. MSP acknowledges and agrees that ThreatDown owns the ThreatDown Marks and that any and all goodwill and other proprietary rights that are created by or that result from MSP's use of a ThreatDown Mark hereunder inure solely to the benefit of ThreatDown. MSP will at no time contest or aid in contesting the validity or ownership of any ThreatDown Mark or take any action in derogation of ThreatDown' rights therein, including, without limitation, applying to register any trademark, trade name or other designation that is confusingly similar to any ThreatDown Mark.

11. DISCLAIMER OF WARRANTY. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE SOFTWARE AND MANAGED SERVICES IS PROVIDED "AS IS," AND THREATDOWN DISCLAIMS ANY AND ALL WARRANTIES AND REPRESENTATIONS REGARDING THE SOFTWARE OR MANAGED SERVICES AND ANY SERVICES PROVIDED BY THREATDOWN, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR

NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM THREATDOWN OR ELSEWHERE, WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. THREATDOWN DISCLAIMS ALL WARRANTIES OF ANY KIND, INDEMNITIES, OBLIGATIONS, AND OTHER LIABILITIES IN CONNECTION WITH ANY INTEGRATION WITH THE SOFTWARE OR MANAGED SERVICES. WITHOUT LIMITING ANY OTHER PROVISION OF THIS SECTION 11, THREATDOWN DOES NOT WARRANT THAT: (A) THE SOFTWARE OR MANAGED SERVICES WILL OPERATE IN AN ERROR-FREE AND/OR UNINTERRUPTED MANNER; AND/OR (B) THE SOFTWARE OR MANAGED SERVICES WILL ELIMINATE OR MITIGATE ANY PARTICULAR MALWARE. MSP WILL MAKE NO WARRANTIES OR REPRESENTATIONS IN THREATDOWN' NAME OR ON THREATDOWN' BEHALF.

12. INDEMNITIES.

12.1 Indemnification. ThreatDown shall defend MSP, and MSP's officers, directors, employees, affiliates and authorized agents, and their respective heirs, successors, and assigns (collectively, "MSP's Indemnified Parties"), from and against any and all third party losses, damages, injuries, awards, judgments, claims, and expenses (including without limitation reasonable attorneys' fees actually incurred) arising from or alleging that the Software, the Managed Services and/or Documentation infringes or misappropriates any United States patent, trademark, copyright and/or trade secret of a third party.

12.2 Exceptions. ThreatDown shall have no indemnification obligations to any one or more of MSP's Indemnified Parties to the extent that the relevant Software or Managed Services was: (A) modified without the prior written consent of ThreatDown in each instance and such claim would not have arisen except for such modification; (B) operated other than in compliance with the Documentation applicable to such Software and such claim would not have arisen except for such operation outside of compliance with Documentation provided to MSP; (C) operated without implementing the recommended actions delivered as part of the Managed Service and such claim would not have arisen except for such operation (collectively the "Indemnity Exclusions").

12.3 Remedy. ThreatDown may, at its sole option and expense: (A) procure for MSP the right to continue using such Software or Managed Service under the terms of this Agreement; (B) replace or modify such Software or Managed Service so that it is non-infringing and substantially equivalent in function to the Software or Managed Service as originally licensed hereunder to MSP; or (C) if options (A) and (B), above, cannot be accomplished despite ThreatDown' reasonable efforts, then ThreatDown may terminate its obligations and MSP's rights hereunder with respect to the Software or the Managed Service. Any indemnification obligations of ThreatDown remaining after such action shall continue to be governed by this Section 12. This Section 10 states MSP sole and exclusive remedy with respect to indemnification.

12.4 MSP Indemnity. MSP shall defend ThreatDown, and ThreatDown' officers, directors, employees, affiliates and authorized agents, and their respective heirs, successors, and assigns (collectively, "ThreatDown' Indemnified Parties"), from and against any and all third party losses, damages, injuries, awards, judgments, claims, and expenses (including without limitation reasonable attorneys' fees actually incurred) arising from or alleging or otherwise attributable to: (i) MSP's gross negligence or intentional misconduct; (ii) any act or omission of MSP in connection with the Software, the Managed Services, the MSP Services, or MSP's activities under this Agreement, including any misrepresentations made by MSP with respect to ThreatDown, the Software, the Managed Services, the MSP Services; or (iii) an Indemnity Exclusion.

12.5 Conditions of Indemnification. Each indemnifying party's obligations as described in this Section 12 is conditioned upon that indemnified party (i) promptly notifying the indemnifying party in writing of the claim, provided, however, that any failure to provide such prompt notice will not relieve the indemnifying party of its indemnification obligations unless the indemnifying party is materially prejudiced

by such failure; (ii) granting the indemnifying party sole control of the defense and settlement of the claim, provided, however, that no such settlement shall be entered into by the indemnifying party if it does not relieve the Indemnified Parties of all liability and obligation pertaining to the claim unless the indemnified party consents to same in writing; and (iii) providing the indemnifying party, at the expense of the indemnifying party, with all assistance, information and authority reasonably requested by ThreatDown for the defense and/or settlement of the claim.

13. LIMITATION OF LIABILITY.

13.1 Total Liability. THREATDOWN' TOTAL LIABILITY TO MSP UNDER THIS AGREEMENT, FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, WILL BE LIMITED TO THE PAYMENTS ACTUALLY RECEIVED FROM MSP UNDER THIS AGREEMENT FOR THE SOFTWARE OR THE MANAGED SERVICE, AS APPLICABLE, GIVING RISE TO THE LIABILITY IN THE 12 MONTHS PRIOR TO THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY.

13.2 Exclusion of Damages. NEITHER PARTY SHALL HAVE ANY OBLIGATION TO THE OTHER PARTY OR TO ANY OTHER PERSON OR ENTITY ARISING WITH RESPECT TO THIS AGREEMENT AND/OR THE SOFTWARE OR MANAGED SERVICES FOR CONSEQUENTIAL DAMAGES, PUNITIVE DAMAGES, EXEMPLARY DAMAGES, SPECIAL DAMAGES, LOSS OF ACTUAL AND/OR POTENTIAL PROFITS, THE COST OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOSS OF DATA, AND/OR INCIDENTAL DAMAGES, WHETHER BASED UPON CONTRACT, TORT, OR OTHERWISE, AND REGARDLESS OF WHETHER SUCH PARTY WAS ADVISED OF, KNEW OF, AND/OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SAME.

13.3 Nothing in this Agreement shall limit or exclude any Party's liability for fraud or for death or personal injury resulting from negligence, or to the extent otherwise not permitted by law.

14. TERM AND TERMINATION.

14.1 Term and Termination.

14.1.1 Agreement. This Agreement will begin on the Effective Date and, unless terminated earlier in accordance with its terms, will remain in effect until terminated under Section 14.2.

14.1.2 Subscription Term: Term-based Model. If MSP has elected the term-based model, then each term-based Software or Managed Services subscription term shall commence on its designated subscription start date and last for a period of 12 months. At the end of the designated subscription term ("Initial Term"), the subscription shall automatically renew for additional 12 month successive terms (each a "Renewal Term") unless either party provides written notice of non-renewal to the other at least thirty (30) days before commencement of the Renewal Term. The Initial Term and all Renewal Terms (if any) are referred to in this Agreement collectively as the "Service Term."

14.1.3 Subscription Term: Usage Model. If MSP has elected the usage model then the Initial Term shall commence on the designated subscription start date and continue for a twelve (12) month period thereafter, with an automatic Renewal Term equal to the subscription term length of the current subscription term unless either party provides written notice of non-renewal to the other at least thirty (30) days before commencement of the Renewal Term.

14.1.4 Usage Model: Changing Use Based Program Tier. Where MSP has usage based billing and decides to move from one Usage Based Program Tier to another, such change shall become

effective on the first of the month following: (1) written notice when moving up to a higher Usage Based Program Tier, and (2) ninety (90) days written notice when moving down to a lower Usage Based Program Tier. The effect of such change shall be to amend the current subscription term of the applicable Order Form, thereby having the effect of extending the current term by twelve (12) months for the new Usage Based Program Tier. For the sake of clarity, such term shall continue to automatically renew as described above with each Renewal Term being an additional twelve (12) months.

14.2 Termination

14.2.1 Termination For Breach. Either party may terminate this Agreement (including all subscription terms), at any time, in the event that the other party breaches any material term of this Agreement and fails to cure such breach within 30 days following notice of such breach from the non-breaching party. In addition, ThreatDown may terminate this Agreement (including all subscription terms), at any time, in the event that MSP breaches any payment-related provision and fails to cure such breach within ten days following notice of such breach from ThreatDown.

14.2.2 Usage Billing Model: Termination for Convenience. MSP may terminate a usage based Order Form upon ninety (90) days written notice. In the event of such termination, MSP shall be responsible for all Fees due under the Order Form until the end of the month after the effective date of the termination. For example, if MSP terminated July 4, it shall be liable for fees until the end of October. All Fees paid are non-refundable.

14.3 Effect of Termination. For a maximum period of three (3) months after any termination of this Agreement (“Wind-down Period”), except where MSP is in breach of this Agreement, MSP will be permitted to continue to use the Software to support existing MSP Customers and this Agreement will be deemed extended for such period; provided that, (i) MSP shall not during such Wind-down Period use the Software in supporting any new customers, and (ii) MSP shall continue to pay all amounts due to ThreatDown under this Agreement with respect to its activities during such Wind-down Period. Upon any termination of this Agreement (or the Wind-down Period, as applicable): (a) all licenses granted by ThreatDown hereunder will automatically cease; (b) MSP will immediately stop using the ThreatDown Marks; and (c) each party will promptly return to the other (or at the other party’s option, destroy) all of the other party’s Confidential Information within its possession or control (and for the avoidance of doubt, the foregoing includes all copies of the Software and all portions thereof in MSP’s possession or control), and will certify in writing that it has complied with its obligations to return all such Confidential Information. Without limiting Section 14.3(c), upon any termination of this Agreement (or the Wind-down Period, as applicable), or upon any earlier termination or suspension of MSP’s agreement or relationship with any Customer, MSP will uninstall or otherwise remove and delete from each Customer computer or other device all copies of the Software that have been installed on such computers or other devices by MSP. In addition, upon any termination of this Agreement, the payment dates of all amounts due ThreatDown will automatically be accelerated so that they will become due and payable on the effective date of termination, even if longer terms had been provided previously.

14.4 No Damages Upon Termination; No Dealer Protection. MSP EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO RECEIVE ANY COMPENSATION, INDEMNITY, TERMINATION FEE(S) OR DAMAGES UPON TERMINATION OR EXPIRATION OF THIS AGREEMENT UNDER THE LAWS OF THE TERRITORY OR OTHERWISE, INCLUDING ANY DEALER OR DISTRIBUTOR PROTECTION LAWS IN ANY APPLICABLE JURISDICTION UNDER ANY THEORY, OTHER THAN AS EXPRESSLY PROVIDED IN THIS AGREEMENT.

14.5 Survival. Sections 7, 8, 9, 10.1, 11, 12, 13, 14.3, 14.4, 14.5 and 15 will survive termination of this Agreement for any reason.

15. GENERAL.

15.1 Data. By entering into this Agreement MSP agrees to the terms of ThreatDown' privacy policy, which can be found at <https://www.ThreatDown.com/legal/privacy-policy/> (as may be updated from time to time, the "Privacy Policy"). More information concerning what data is collected and used by ThreatDown and how it is used is available in the Privacy Policy. Without limiting the Privacy Policy, MSP agrees that, and represents it has obtained any necessary consents to allow, ThreatDown to track certain data it obtains from devices covered by the MSP Services, including data about any malicious software, exploits or other threats flagged by the Software or Managed Services (including but not limited to potential sources of such threats, such as payload files, file format and recent URL's visited), data about MSP license, data about what version of the Software MSP is using and what operating conditions it runs under and data concerning geographic location. This information is collected and used for the purpose of tracking malicious software, exploits and other threats, and evaluating and improving ThreatDown' products and services. ThreatDown may share data relating to malicious software, exploits or other threats flagged by the Software or Managed Services with third parties.

15.2 Governing Law and Jurisdiction. The law that will apply in any dispute or lawsuit arising out of or in connection with this Agreement, and the courts that have jurisdiction over any such dispute or lawsuit, depend on where MSP is domiciled.

If MSP is domiciled in:	Governing law is:	Courts with exclusive jurisdiction are:
The United States of America or Canada.	California and controlling United States federal law.	The state and federal courts located in Santa Clara county, California, USA.
A country in Asia or the Pacific region, including Japan, Australia and New Zealand.	Singapore.	Singapore.
Any country other than the above.	England and Wales.	London, England.

The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

15.3 Notices. All notices under this Agreement shall be in writing and shall be deemed given upon receipt.

15.4 Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

15.5 Modifications, Waiver. No amendment to, or waiver of right under, this Agreement or any Order Form is effective unless in writing signed by authorized representatives of the parties. Any failure by a party to comply with any obligation, agreement or condition herein may be expressly waived in writing by each of the other parties, but such waiver or failure to insist upon strict compliance with such obligation, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any such subsequent or other failure.

15.6 Force Majeure. Neither party will be responsible for any failure or delay in its performance under this Agreement (except for any payment obligations) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain energy, raw materials or supplies, war, terrorism, riot, or acts of God.

15.7 Assignment. MSP party shall not assign this Agreement without the prior written consent of ThreatDown. Notwithstanding the foregoing, ThreatDown may, without consent, assign, delegate, sub-contract or otherwise transfer this Agreement or any of its obligations upon written notice to MSP. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors, and permitted assigns.

15.8 Independent Contractor. ThreatDown's relationship with MSP will be that of an independent contractor and nothing in this Agreement shall be construed to create a partnership, joint venture, or employer-employee relationship.

15.9 Foreign Corrupt Practices Act. Each party shall comply with all applicable anti-corruption laws, including, without limitation, the US Foreign Corrupt Practices Act 1977 and the UK Bribery Act 2010.

15.10 Export Control. MSP will comply fully with all applicable export laws and regulations of the United States ("Export Laws") to ensure that none of the Software, Managed Services, or any direct product of or related technical data is exported or re-exported directly or indirectly in violation of Export Laws; or used for any purposes prohibited by the Export Laws.

15.11 No Third-Party Beneficiaries. This Agreement is intended for the sole and exclusive benefit of the signatories and is not intended to benefit any third party. Only the parties to this Agreement may enforce it.

15.12 Entire Agreement. This Agreement, including the exhibit hereto, constitutes the complete and exclusive understanding and agreement between the parties regarding its subject matter and supercedes all prior or contemporaneous agreements or understandings, written or oral, relating to its subject matter. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of each party.

15.13 Updates on ThreatDown Web Site. Notwithstanding anything to the contrary, this Agreement, along with other MSP program materials on the Partner Portal, may be updated by ThreatDown from time to time in its discretion, and MSP shall be bound by such updates. ThreatDown reserves the right to modify this Agreement in its sole discretion by providing no less than thirty (30) calendar days notice of such changes. Notice shall be sent through ThreatDown's formal partner alerts and posted on the Partner Portal. MSP shall be solely responsible to monitor the Partner Portal for updates and changes. Orders for the purchase of or renewal of ThreatDown Software or Managed Services placed by MSP subsequent to notification period shall constitute acceptance of the updated or modified Agreement. Any purported changes to this Agreement that are not entered into by, or not issued by, an actual authorized representative of ThreatDown and that are not posted on the Partner Portal, shall be null and void and shall not be binding on ThreatDown. For clarity, notwithstanding anything to the contrary, in no event shall any sales executive, sales representative or other sales or systems or sales engineer employee of ThreatDown be authorized to bind ThreatDown, and any purported agreement by any such representative or employee, or any ThreatDown representative not in fact authorized to bind ThreatDown, shall be null and void and shall not be binding on ThreatDown.

15.14 English Language. It is the express wish of the parties that this Agreement and all related documents, including notices and other communications, be drawn up in the English language only.

Maintenance and Support

1. **MSP Support of Customers.** MSP shall perform the following obligations at its cost and expense:

1.1 Technical Contact. Within five days of the Effective Date, MSP shall appoint and notify ThreatDown of its technical contact(s). MSP’s technical contact(s) shall coordinate all technical issues on behalf of MSP which arise out of this Agreement. MSP may only make support requests through its designated technical contacts.

1.2 First Level Technical Support. MSP shall be solely responsible for providing First Level Technical Support directly to its Customers regarding the Software. “First Level Technical Support” shall mean telephone and email support provided in response to the initial inquiry placed by a Customer regarding product operation generally or which identifies, troubleshoots and documents an error in the MSP Service.

2. **ThreatDown Support of MSP.** ThreatDown shall perform the following obligations:

2.1 Technical Contact. ThreatDown shall appoint and notify MSP of its technical contact(s).

2.2 Second Level Technical Support. ThreatDown shall provide technical support only to MSP and not to MSP’s Customers. The second level technical support will consist of ThreatDown using its commercially reasonable efforts to diagnose problems and to create error corrections or avoidance (workarounds) with respect to suspected errors in the Software reported by Customers to MSP and reported by MSP to ThreatDown. Such service shall also include provision of any maintenance releases and updates for the Software made generally commercially available by ThreatDown during the term of the Agreement. ThreatDown will provide the support described herein to the designated MSP contacts during its business hours, 5 days per week Monday-Friday (excluding holidays) via email and/or web site ticket system. ThreatDown regular business hours vary by region as shown in the table below:

North America	9 a.m. – 8 p.m. EST
EMEA	7 a.m. – 5 p.m. GMT
APAC	9 a.m – 5 p.m. AEDT / AEST