

## ThreatDown

### Worldwide Reseller Agreement v 8.0

**READ THIS RESELLER CLICK-THROUGH AGREEMENT BEFORE REGISTERING AS A RESELLER WITH THREATDOWN. IF YOU DO NOT OR CANNOT AGREE TO THE TERMS CONTAINED HEREIN, THEN DO NOT REGISTER AS A RESELLER WITH THREATDOWN.** BY REGISTERING WITH THREATDOWN, YOU (AS "RESELLER" AND AS A REPRESENTATIVE AUTHORIZED TO BIND THE RESELLER ENTITY) CONSENT AND AGREE, ON BEHALF OF YOURSELF AND THE RESELLER ENTITY, TO BE BOUND BY THIS AGREEMENT. FURTHER, RESELLER 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 THE TERMS HEREIN AND SUBMITTING ITS REGISTRATION. IF RESELLER 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 Reseller and (i) where the Reseller is applying within the United States or Canada, Malwarebytes Corporate Holdco Inc., or (ii) where the Reseller is applying outside of the United States and Canada, MWB Software Enterprises Ltd. (each referred to herein as "ThreatDown"). The effective date of this Agreement shall commence upon Reseller's acceptance of this Agreement and completion of the Reseller Program registration process. Upon ThreatDown's acceptance of Reseller's registration, Reseller will be appointed a nonexclusive marketer and reseller of ThreatDown Products and Services, in the Territory specified by ThreatDown.

**1. DEFINITIONS:** The following definitions apply to capitalized terms in this Agreement. All other capitalized terms are defined in the body of the Agreement.

1.1. **"Confidential Information"** shall mean all proprietary or confidential information disclosed by one party to the other party including, without limitation: (i) proprietary product, software or services information, or related design, technology, ideas and algorithms (note the design, technology, ideas, and algorithms in ThreatDown' Products and Services, and Software and components therein and related thereto, shall be deemed ThreatDown "Confidential Information"); (ii) trade secrets; (iii) either party's technical, business or financial information and plans; (iv) the terms of this Agreement; and (v) any item marked as confidential by the disclosing party. Confidential Information shall not include information that the receiving party can show (a) is or becomes generally known or publicly available through no fault of the receiving party; (b) is known by, or is in the possession of, the receiving party prior to its disclosure, as evidenced by business records, and is not subject to restriction; (c) is lawfully obtained without restriction from a third party who has the right to make such disclosure, or (e) is independently developed by the receiving party, without use of, or reference to, the disclosing party's Confidential Information.

1.2. **"Documentation"** means any then-current user documentation, on any media, provided by ThreatDown for use with the Products and/or Services, available at ThreatDown Partner Portal or otherwise provided by ThreatDown.

1.3. **"Effective Date"** shall mean the date that ThreatDown accepts Reseller's application.

1.4. **"End User"** shall mean any person or entity that purchases Product(s) or Service(s) for its own personal or internal use.

1.5. **"Reseller"** shall mean the legal entity and its representative that accepts this Agreement and registers with a ThreatDown Authorized Distributor or ThreatDown to purchase Products and Services from ThreatDown (as described in Section 12.4), as applicable, for resale to End Users.

1.6. **"ThreatDown Authorized Distributor"** shall mean any distributor expressly authorized by ThreatDown in a written agreement to distribute Products or Services to Resellers.

1.7. **"Reseller Program" or "TPP"** shall mean ThreatDown's Partner Program, which shall include all requirements, guidelines and benefits thereof, as further specified in TPP materials (as they may be changed from time to time by ThreatDown in its sole discretion), available after the registration process at the ThreatDown Partner Portal, which are incorporated herein by reference.

1.8. **"ThreatDown Partner Portal"** shall mean the website designated by ThreatDown for providing information, communications, updates, guidelines, and Documentation to Reseller. ThreatDown may update the website from time to time in its discretion.

1.9. **"Partner Program Guide"** shall mean the guidelines describing the Reseller Program, including the operational elements, details on becoming a partner, associated requirements, and describing how the program works.

1.10. **"Product(s)"** shall mean any Software product or cloud-based or managed services which Reseller is licensed to sell.

1.11. **"Service(s)"** means services provided in connection with the Software, which shall be provided solely pursuant to ThreatDown's then-current policies.

1.12. **"Software"** shall mean the ThreatDown machine-readable object code, whether incorporated in the Hardware or delivered separately, identified in the applicable then-current price list as "available to Reseller," including any error corrections and bug fixes provided by ThreatDown.

1.13. **"Territory"** shall mean the geographic area where Reseller focuses its sales efforts and where Reseller expects to procure and resell at least 90% of its total business volume with ThreatDown. The Territory, within which the license granted hereunder shall be operative, will be communicated to Reseller upon completion of the Reseller registration process.

## **2. OWNERSHIP AND RETENTION OF RIGHTS**

Reseller hereby agrees and acknowledges that ThreatDown, its suppliers, and its licensors (if any), own and shall retain all right, title and interest in and to, and Reseller shall have no right, title or interest in and to the following other than the limited license rights expressly set forth in Section 3 of this Agreement: (i) the Products, Software and Services, (ii) the manufacture and/or production of Product (including all copies and derivative works of the Product, by whomever produced), and associated Documentation, including all intellectual property rights embodied therein, including, among others, all patent and trade secret and trademark rights and all copyrights; (iii) all of the service marks, trademarks, trade names or any other designations, and (iv) all copyrights, patent rights, trade secret rights, and other proprietary rights in the Products, Software and Services.

## **3. LICENSES**

Subject to the terms of this Agreement and solely for the term of this Agreement, ThreatDown hereby grants to Reseller a non-exclusive, non-transferable, revocable, limited license, actively in the Territory, to market, sell, and distribute properly purchased Product, Services and associated Documentation, and provide properly purchased support Services in accordance with ThreatDown's policies and the TPP, only to End Users in the Territory (collectively "Licensed Activities"). Where Reseller has been assigned the status of an MSSP and complies with program requirements for such an assignment, Reseller is granted a license to use products for the provision of services as described in section 1.13 and in accordance with ThreatDown's End User License Agreement, located at <https://www.threatdown.com/legal/eula>. Additionally, ThreatDown hereby grants Reseller, solely for the term of this Agreement, a non-exclusive, non-transferable, non-sublicensable, revocable license to use the Documentation and to make a reasonable number of copies of the Documentation solely for its own business purposes and any pre-sales activities to support Reseller's marketing of the Product and Services, provided that Reseller must reproduce and include the original Documentation copyright notice and any other notices upon any copies made by Reseller regardless of type of media. Except as expressly stated in this Section 3, Reseller shall have no license rights under this Agreement.

## **4. RESTRICTIONS ON USE**

Reseller hereby agrees not to: (i) create or copy or attempt to create or copy by reverse engineering, disassembly, decompilation or otherwise, the source code, internal structure, hardware design or organization of the Product, or any

part thereof, or to aid or to permit others to do so, except and only to the extent expressly permitted by applicable law; (ii) remove any Product identification or notices of any proprietary or copyright restrictions from any Product or any Product support material; (iii) copy the software, modify, translate or, unless otherwise agreed, develop any derivative works thereof or include any portion of the Software in any other software program; and (iv) separate the Product into component parts for distribution or transfer to a third party.

## **5. RESELLER RESPONSIBILITIES**

5.1. Qualifications. In addition to the responsibilities set forth elsewhere in this Agreement, Reseller agrees to comply with the policies and criteria (corresponding to its assigned partner level) established by ThreatDown for the Reseller Program, as set forth at in the Partner Program Guide ThreatDown may change such policies and criteria from time to time as it sees fit. It shall be the sole responsibility of Reseller to check this site for updates and to follow and abide by all requirements.

5.2. Sales Efforts. Reseller shall use its diligent efforts to: (i) sell the Products and Services contracts in the Territory, (ii) unless prohibited by law, prevent the export of the Products and Services from the Territory for resale outside the Territory, (iii) perform its obligations under this Agreement, and (iv) further preserve the goodwill and reputation of ThreatDown and the Products and Services. As part of these efforts, Reseller may put a ThreatDown logo on Reseller's web site according to the relevant specifications in ThreatDown' latest Reseller guidelines available at the ThreatDown Partner Portal and according to ThreatDown's applicable policies and guidelines. For clarity, notwithstanding anything to the contrary, Reseller is solely responsible to sell any Products and Services that it purchases from ThreatDown, and ThreatDown has no responsibility to assist with that sale and in no way assumes any responsibility to assist with that sale or to ensure any sale is consummated. Reseller is free to set the prices it charges on its discretion, provided it is responsible to ensure full compliance with all laws.

5.3. Not for Resale. Not for resale Product or Service will only be used for Resellers internal demonstration. Such Products or Services shall not be offered for resale unless otherwise agreed to in writing signed by an authorized representative of ThreatDown.

5.4. Internet Auction Sales Restriction. Reseller hereby acknowledges and agrees that, due to the complexity of ThreatDown's Products and Services, online auction or third-party marketplace sales do not provide adequate presales support. Therefore, Reseller hereby agrees and warrants that it shall not sell or otherwise make available Products or Services via any online auction websites or third-party marketplace on the world wide web (for example but not limited to e-Bay or Amazon), service, or similar bidding medium or marketplace throughout the duration of this Agreement. For the avoidance of doubt, where a corporate end user utilizes the Internet for an online based tender bidding-system this provision shall not apply. In addition, Reseller acknowledges and agrees that because inadequate presales support reflects poorly upon and tarnishes the ThreatDown name a breach of this Section 5.4 is a material breach of this Agreement.

5.5. Intentionally left blank.

5.6. Condition on Service Agreement Sales. Each purchase of a ThreatDown Services contract is valid only for the time period designated on ThreatDown' order form and/or invoice to the ThreatDown Authorized Distributor, as applicable, and must be timely and properly registered at ThreatDown as described in the Documentation and agrees that the support and warranty terms are as stated at <https://www.ThreatDown.com/legal/support-services-agreement> or such other website or as otherwise designated by ThreatDown, and the support and warranty periods will automatically start and run according to ThreatDown' policies.

5.6.1. Duty to Pass Down Notice and Terms. Reseller is responsible for ensuring that it obtains and documents the date of the initial shipment from ThreatDown and/or the ThreatDown Authorized Distributor, as applicable, at the time of purchasing Product and/or a Service contract. In addition, prior to re-selling a Product and/or a Services contract, the Reseller must clearly explain to any End User and clearly document that it has explained, the following: (i) the date of the initial shipment from ThreatDown, (ii) the terms for Products that are managed services will be governed by ThreatDown' Managed Services Agreement, as currently stated at <https://www.ThreatDown.com/legal/managed-services-agreement>, or such other website or as otherwise designated by ThreatDown and (iii) that the term for all Services and warranties will be governed by ThreatDown' policies, as currently stated at <https://www.ThreatDown.com/legal/eula/>, or such other website or as otherwise designated by ThreatDown. Reseller is responsible to contractually bind End Users to the terms stated in this Section, and Reseller agrees to indemnify ThreatDown for any failure to comply with this provision.

**5.6.2. Failure to Comply with this Section.** If a Reseller sells a Services contract or Product with a warranty, for which the service or warranty period starts prior to registration, or if it fails to comply with the aforementioned pass-down requirements, it shall be subject to remedial action, including but not limited to, the cost of a new Services contract, the cost of a Services or warranty extension, and/or termination of its partner status. Both parties to this Agreement agree that failure to comply with the section shall be considered a material breach of this Agreement.

**5.7. End User License Agreement, Warranties.** Reseller may distribute the Products and Services only with all warranties, disclaimers, license agreements, including ThreatDown's then-current End User License Agreement ("EULA"), ThreatDown's then-current Managed Services Agreement ("Managed Services Agreement") and Documentation as shipped from ThreatDown, and Reseller is responsible to ensure all End Users are provided such End User License Agreement, Managed Services Agreement and Documentation and are subject to such terms and agreements. Reseller shall take all steps reasonably requested by ThreatDown to inform End Users of all applicable restrictions and limitations regarding the use of Products and Services. Any guaranties, warranties, promises or commitments given or made by the Reseller which go beyond the ThreatDown standard terms provided by ThreatDown with the Product are not binding for ThreatDown and are at the sole responsibility of Reseller, and Reseller hereby agrees to indemnify and hold harmless in full ThreatDown related to any such guaranties, warranties, promise or commitments.

**5.8. Intentionally left blank.**

**5.9. Records and Reports; Audit Rights.** Reseller shall maintain accurate and complete records of its marketing, sales, support, and maintenance Services activities under this Agreement and/or related to sales of ThreatDown Products and Services. Reseller shall maintain accurate and complete records relating to import and export compliance for the number of years required by each Territory, and in no event less than 5 years. During the term of this Agreement, Reseller shall provide information as reasonably requested by ThreatDown to ensure compliance by Reseller with the terms of this Agreement and the TPP guidelines, and ThreatDown or its representatives may, upon reasonable notice to Reseller and during normal working hours, inspect the business records of Reseller as reasonable to verify Reseller's compliance. Reseller shall promptly provide ThreatDown full access to any records requested by ThreatDown.

**5.10. Indemnification by Reseller.** Reseller shall indemnify and hold ThreatDown harmless from and against any and all claims, liabilities, losses, damages or judgments, including all reasonable legal fees and expenses related thereto that arise from or are related to: (i) Reseller's modification, use or distribution of the Product and Services not in strict accordance with this Agreement and the TPP guidelines; (ii) any misrepresentation or any breach of any warranty, covenant or agreement of Reseller; (iii) any infringement or misappropriation of any of ThreatDown's intellectual property rights, including, among others, patents, copyrights, and trade secrets, or (iv) any action against ThreatDown for injuries or damage to persons or property caused or claimed to have been caused by the negligent or intentional acts or omissions of Reseller personnel while in the course of performing work under this Agreement. Reseller's obligations under this Section are contingent upon ThreatDown: (a) giving prompt written notice to Reseller of any such claim; (b) allowing Reseller to control the defense and any related settlement of any such claim; and (c) furnishing Reseller with reasonable assistance in the defense of any such claim, so long as Reseller pays ThreatDown's out-of-pocket expenses.

**5.11. Ethical Business Practices.** Reseller will ensure compliance in full by all of its employees and contractors with the entirety of all of the provisions of Section 11 below. Reseller will conduct business in a manner that reflects favorably at all times on the Products and Services and the good name, goodwill and reputation of ThreatDown.

**5.12. Reseller Partner Portal.** Reseller's use of the Reseller Partner Portal is conditioned on your compliance with the terms of this Agreement and any additional terms located with the Reseller Partner Portal. Reseller shall be responsible for all information and transactions associated with its account and the accounts of its employees, contractors, and representatives. Reseller agrees that all information provided in its account is accurate, true, and complete. Reseller will not grant any third-party access to the Reseller Partner Portal without prior written approval by an authorized representative of ThreatDown. Reseller acknowledges and agrees that ThreatDown may use any data received from Reseller in accordance with its Privacy Policy located at [www.ThreatDown.com/legal/privacy-policy/](http://www.ThreatDown.com/legal/privacy-policy/). Reseller agrees that the information contained in the Reseller Partner Portal may be confidential information and Reseller shall treat any and all such confidential information in accordance with the confidentiality provisions contained in this Agreement. ThreatDown reserves and retains ownership of all proprietary and intellectual property rights in the Reseller Partner Portal.

## **6. THREATDOWN RESPONSIBILITIES**

6.1. ThreatDown Support. ThreatDown shall provide support Services according to the obligations in a properly purchased, registered, and fully paid End User, as pursuant to its policies and procedures. ThreatDown shall provide support, maintenance and updates only if the Reseller or the End User has purchased a valid, fully paid up and correctly registered support contract, and, notwithstanding anything to the contrary, ThreatDown shall have no support, maintenance or update responsibility unless ThreatDown has been fully paid and unless pursuant to the terms of a ThreatDown support contract, appropriately registered and entered into with ThreatDown. Furthermore, ThreatDown shall have no support obligations related to Product purchased or shipped in breach of any of the terms in this Agreement.

6.2. Collateral. ThreatDown will make available to Reseller various marketing materials (for use in advertising the ThreatDown Products and Services) and training in the installation, use, operation and support of the Products and Services in accordance with ThreatDown's then-current guidelines and policies.

## **7. TERM AND TERMINATION**

7.1. Term. This Agreement shall become effective as of the Effective Date and shall remain in effect until terminated in accordance with this Agreement.

7.2. Termination at Will. This Agreement may be terminated by either party at will, for any reason or for no reason, upon no less than thirty (30) calendar days' prior written notice to the other party hereto. The parties acknowledge and agree that, due the complex nature of their commercial relationship and each party's need to manage its supplier/partner relationships, this Section 7.2 is a material inducement for each party to enter into this Agreement, and this provision shall be enforceable by the other party in all circumstances.

7.3. Termination for Cause. Either party may terminate this Agreement for material breach with immediate effect if such a breach has not been cured within fifteen (15) calendar days after written notice by the non-defaulting party to the defaulting party or immediately upon notice of termination in the event of a material breach that by its nature cannot be remedied within fifteen (15) calendar days.

7.4. Termination for Insolvency. Either party may terminate this Agreement, without notice, upon learning the following information in good faith: (i) the institution by or against the other party of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of the other party's debts, (ii) the other party's making an assignment for the benefit of creditors, or (iii) the other party's dissolution or ceasing to do business.

7.5. Effects of Termination. Upon termination or expiration of this Agreement for any reason whatsoever, all licenses to Reseller shall immediately terminate and Reseller shall immediately (i) cease all use of Product and Documentation; (ii) discontinue any use of the name, logo, Trademarks, servicemarks or slogans of ThreatDown and the trade names of any Product; (iii) discontinue all representation or statements from which it might be inferred that any relationship exists between Reseller and ThreatDown; (iv) cease to promote, solicit orders for or procure orders for Product (but Reseller shall not act in any way to damage the reputation or goodwill of ThreatDown or any Product); and (v) promptly return or destroy all Confidential Information of ThreatDown and related materials. Notwithstanding anything to the contrary, all sales are final and, in no event will termination of this Agreement result in rights of Reseller to return Product to ThreatDown or to the ThreatDown Authorized Distributor, as applicable or to any refund.

7.6. Survival of Terms. The terms contained within the following sections shall survive any expiration or termination of this Agreement: Section 2, relating to Ownership and Retention of Rights; Section 4, relating to Restrictions on Use; Section 5.10, Indemnification by Reseller; Section 7, relating to Term and Termination; Section 8, relating to Confidential Information; Section 9, relating to Trademarks, Servicemarks and Domain Names; Section 10, relating to Warranty and Liability Disclaimers; and Section 12, relating to General Provisions.

## **8. CONFIDENTIAL INFORMATION**

8.1. Protection of Confidential Information. Each party shall protect the other's Confidential Information from unauthorized dissemination and use the same degree of care that such party uses to protect its own like information. Neither party shall disclose to third parties the other's Confidential Information without the prior written consent of the other party. Neither party shall use the other's Confidential Information for purposes other than those necessary to directly further the purposes of this Agreement. Each employee or agent of Reseller, performing duties hereunder, shall be made aware of this Agreement and shall execute a document that binds said employee or agent of Reseller to the same level of confidentiality contained herein.

8.2. Disposition Upon Termination. Upon the termination of this Agreement for any reason whatsoever, or in the event that ThreatDown reasonably determines that Reseller no longer requires access to the Confidential Information in order to perform its obligations, Reseller shall return to ThreatDown, or shall destroy, as ThreatDown shall specify, all copies of all the Confidential Information in Reseller's possession. Within five (5) calendar days thereafter, Reseller shall provide ThreatDown with a certificate, executed by an officer of Reseller, confirming that all copies of all such Confidential Information have been returned to ThreatDown or destroyed, as the case may be.

8.3. Permitted Disclosure. Notwithstanding any provision in this Agreement to the contrary, each party may disclose portions of the other's Confidential Information (i) to its lawyers and accountants who have a need to know such information and who are under the same protection and use obligations as in Section 8.1 above and (ii) pursuant to an order of a governmental agency or court of competent jurisdiction compelling disclosure, provided that the owner of the Confidential Information shall be given reasonable advance notice of such intended disclosure.

8.4. No Publicity. Reseller will not release information about the existence of this Agreement, its value, or its terms and conditions, through any media including but not limited to, the issuance of any news release, announcement, denial, or confirmation. Reseller shall not refer to ThreatDown in connection with any product or service, offering, advertising, promotion, web site, press release or publication of Reseller or a third party on behalf of either, except with the prior express written authorization of ThreatDown. Reseller must obtain prior written authorization from the ThreatDown corporate communications department for any exceptions to this Section. Nothing in this Agreement implies that ThreatDown will agree to any publicity.

## **9. TRADEMARKS; SERVICEMARKS AND DOMAIN NAMES**

9.1. Trademark Ownership and Authorized Use. Reseller acknowledges and agrees that ThreatDown owns all ThreatDown trademarks, servicemarks and logos ("Marks"), including, but not limited to, those at [www.ThreatDown.com](http://www.ThreatDown.com) and that any and all goodwill derived from the use of the Marks by Reseller hereunder inures solely to the benefit of ThreatDown. During the Term, ThreatDown grants Reseller a nonexclusive, nontransferable limited right to use and display Marks claimed or provided by ThreatDown solely in connection with and to the extent reasonably necessary for the resale, marketing, and distribution of ThreatDown Products. Reseller's use of the Marks shall be subject to the terms and conditions contained in ThreatDown's trademark guidelines to which Reseller hereby agrees to be bound. ThreatDown's trademark guidelines are available at the ThreatDown Partner Portal and may be modified from time to time by ThreatDown, in its sole discretion. Reseller may not remove or alter copyright notices, Marks or packaging found on Product or in Documentation. Use of the Marks does not create in Reseller's favor any right, title, or interest in the Marks or in continuing rights to market or distribute the Product.

9.2. Domain Names. Reseller agrees and acknowledges that it may not use or register or attempt to register the name "ThreatDown" or any of ThreatDown's other Marks, or any derivative thereof, for any Internet domain name, without ThreatDown's express prior written consent, which ThreatDown may withhold in its sole and absolute discretion. Reseller further agrees not to: (i) register a domain name or URL that contains any of the ThreatDown Marks (for example, ThreatDown.com, ThreatDown.fr); or (ii) register a domain name or URL that contains a misspelled version of any of any ThreatDown Marks, or a domain name that is confusingly similar to any of ThreatDown's Marks (e.g., ThreatDown.com). To the extent Reseller has registered, or in the future registers, a domain name or URL which contains any ThreatDown Marks, or any term that is confusingly similar to any ThreatDown Marks, Reseller agrees to assign and hereby assigns and transfers all rights in, and title to, such domain name to ThreatDown without further consideration, and, upon request by ThreatDown, Reseller shall cease its use of such domain name. In such event, Reseller shall cooperate, at its cost, to effect such assignment and transfer to ThreatDown.

## **10. WARRANTY AND LIABILITY DISCLAIMERS**

10.1. Disclaimer. EXCEPT FOR ANY APPLICABLE EXPRESS WRITTEN WARRANTY SET FORTH IN THREATDOWN'S THEN-CURRENT END USER LICENSE AGREEMENT AS PROVIDED BY THREATDOWN WITH THREATDOWN'S PRODUCT, WHICH MAY BE FORFEITED IF NOT REGISTERED IN A TIMELY FASHION AND WHICH MAY NOT BE APPLICABLE, THREATDOWN PROVIDES ITS PRODUCTS AND SERVICES "AS IS" AND MAKES NO WARRANTIES WITH RESPECT TO ANY PRODUCT, LICENSE OR SERVICE AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF THIRD PARTY RIGHTS, EFFECTIVENESS, USEFULNESS, RELIABILITY OR ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE AND ANY WARRANTIES OF NONINFRINGEMENT. AS BETWEEN

THREATDOWN AND RESELLER, ALL SALES ARE FINAL AND IN NO EVENT WILL RESELLER BE ENTITLED TO ANY RETURN RIGHT, REFUND, OR CANCELLATION RIGHT VERSUS THREATDOWN.

10.2. Limitation of Liability. EXCEPT FOR RESELLER'S INDEMNIFICATION OBLIGATIONS IN THIS AGREEMENT AND INFRINGEMENT OR MISAPPROPRIATION BY RESELLER OF THREATDOWN INTELLECTUAL PROPERTY OR CONFIDENTIAL INFORMATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR RELATED TO THIS AGREEMENT, UNDER ANY CONTRACT, NEGLIGENCE, INDEMNIFICATION, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR: (I) ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED; OR (II) DAMAGES FOR LOST PROFITS OR LOST DATA; OR (III) COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES. IN NO EVENT SHALL THREATDOWN'S TOTAL LIABILITY UNDER THIS AGREEMENT OR RELATED TO THIS AGREEMENT, UNDER ANY CONTRACT, NEGLIGENCE, INDEMNIFICATION, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE AMOUNT ACTUALLY RECEIVED BY THREATDOWN AS A RESULT OF ORDERS PLACED BY RESELLER DURING THE THREE (3) MONTHS PRECEDING THE EVENT WHICH GAVE RISE TO SUCH THREATDOWN LIABILITY.

## **11. COMPLIANCE WITH APPLICABLE LAWS**

11.1. Compliance with Laws. Reseller will comply with, and shall be solely responsible for complying with, all applicable laws and regulations, including but not limited to environmental laws and regulations, applicable in the Territory, or any nation, or political subdivision thereof, in which it engages in business while performing its responsibilities hereunder as well as those applicable to the distribution and sale of the Product, or performance of services by Reseller. Reseller shall bear all expenses and costs related to compliance with any laws and/or regulations.

11.2. Export and Import Controls. Reseller acknowledges and agrees that ThreatDown is a US-headquartered company, and that the Product, Software, Documentation, Confidential Information, technical data, and performance of the Services are subject to export and import control laws and regulations of various countries. Such laws and regulations include, without limitation U.S. Export Administration Regulations, and in the performance of its obligations, Reseller shall at all times strictly comply with, and shall cause its agents, end-users, customers, representatives and suppliers to comply with, all laws, regulations and orders, and agrees to commit no act which, directly or indirectly, would violate any law, regulation or order, including, without limitation, tax, export and foreign exchange laws, import controls, export controls, anti-boycott, banking or ITAR regulations. Reseller expressly agrees that Reseller shall not, and shall cause its representatives, agents, end-users, and customers (if any) not to (a) export, re-export, divert or transfer ThreatDown's Product or any direct product thereof to any destination, company or person restricted or prohibited by the United States export controls, or (b) disclose any data derived from ThreatDown's Product or any direct product thereof to any national of any country when such disclosure is restricted or prohibited by the United States or host country's export controls, and shall obtain required U.S and foreign export and import licenses, as applicable. As part of its compliance efforts, Reseller agrees to include provisions at least as restrictive as the provisions in this Section in any of its contracts with partners, agents, suppliers, end-users, customers, or representatives. Additionally, Reseller agrees that none of the Products, Software, Services, Documentation, ThreatDown technology, materials, tools or technical data is being, or will be acquired for, shipped, transferred, or re-exported, directly or indirectly, to any US or foreign proscribed or embargoed or terrorist countries or their nationals, nor be used for nuclear activities, chemical/biological weapons, or missile projects unless Reseller has received authorization by the US Government and/or the appropriate foreign government. Reseller further agrees not to process or incorporate ThreatDown's products and technology into secondary products which contribute to the design, development, production, stockpiling or use of nuclear, chemical/biological weapons or missiles. Proscribed countries are set forth in the U.S. Export Administration Regulations and any appropriate foreign regulations. Reseller hereby certifies that it and its Customers and End- Users are not on the U.S. Department of Commerce's Denied Persons List, Entity List, or affiliated lists or on the U.S. Department of Treasury's Specially Designated Nationals List and are not otherwise prohibited from receiving the Products or Service. Reseller agrees to comply strictly with all U.S. and host country import/export laws and assumes sole responsibility for obtaining licenses to import, export or re-export as may be required. Certain product with encryption functions may be subject to additional restrictions, including restrictions on distribution to government end-users outside the License Exception ENC Favorable Treatment Countries (Supplement No. 3 to Part 740 of the U.S. Export Administration Regulations). This provision shall survive the expiration or termination of this Agreement. Upon request by ThreatDown, Reseller shall provide certificates signed by an authorized representative of Reseller, certifying compliance with applicable laws in general and with specific laws, as requested by ThreatDown. The Reseller agrees that Reseller is responsible to pass down the requirements of this Section to any of its reseller partners, Integrators, MSSP's, and end users, or other entities to which Reseller sells any ThreatDown Products or Services and that ThreatDown is not responsible for Reseller's export or import into the applicable Territory.



Furthermore, Reseller hereby agrees that, for any orders that Reseller places with ThreatDown whereby any unique legal or regulatory requirements may apply to ThreatDown (such as any requirements related to the International Traffic in Arms Regulations "ITAR", or Buy American Act "BAA", or any requirements related to the Trade Agreements Act "TAA"), Reseller is responsible to clearly describe in detail any of those requirements in writing on the Purchase Order submitted to ThreatDown.

11.3. Anti-Corruption Practices. Reseller hereby agrees that it and its employees, consultants, agents, and representatives will fully comply with, and fully abide by, the U.S. Foreign Corrupt Practices Act and United States and applicable local country or other anti-corruption and anti-bribery laws and regulations. Reseller hereby represents and warrants to ThreatDown and agrees that it will not, either directly or indirectly, offer any payment or other gift or promise, or authorize the giving of anything of value, for the purpose of influencing an act or decision of an official of any Government or of an employee of any company in order to assist ThreatDown or Reseller in obtaining, retaining, or directing any business or any sale. Reseller represents and warrants to ThreatDown that neither it nor any of its employees, officers or other agents is an official, employee, agent or active member of the armed services of the Territory government or active member or affiliate of a governmental entity, an official of the Territory government or other governmental entity, an official of a political party, or a candidate for political office. Reseller covenants that it will promptly notify ThreatDown in the event any of its employees, officers or other agents assumes the position of government official during the term of this Agreement. Reseller represents and warrants to ThreatDown that neither it, nor any of its employees or representatives, has been charged with, convicted of, or pleaded guilty to an offense involving fraud, corruption, moral turpitude, and that it is not now listed by any government agency as debarred, suspended, proposed for suspension or debarment, or otherwise is ineligible for government procurement programs. In conducting its obligations under this Section, Reseller warrants that it will, among other things, exercise diligence in selecting any employees or agents, provide appropriate training to them, and monitor their activities to ensure compliance. Reseller hereby agrees to give prompt written notice to ThreatDown in the event that Reseller has failed to comply with or has breached any of Reseller's representations, warranties, covenants or agreements herein, or in the event of any allegations of improper payments in connection with, or related to, this Agreement or the business contemplated hereunder. Reseller shall retain books and records to evidence its compliance with this Section 11.3, including, among others, a full record of all expenses incurred in connection with any business in connection with ThreatDown and written, detailed invoices to support all payments to third parties in connection therewith, and, upon reasonable notice by ThreatDown, will permit ThreatDown review or audit all of the books and records of Reseller related to the activities of Reseller under this Agreement. Reseller will fully assist ThreatDown in investigating any allegations of improper payments or other violations of the provisions of this Section, and will fully assist ThreatDown in investigating such allegations and remedying any such violations. Reseller agrees and is responsible to pass down the requirements of this Section to any resellers or other partners or entities through which Reseller sells ThreatDown Products or Services.

11.4. Conflicts of Interest; Gifts. Reseller certifies that, to the best of Reseller's knowledge and belief, after conducting a reasonable and appropriate review, no economic, ownership, beneficial interest, employment or managerial relationship exists, directly or indirectly, between Reseller and any employee or officer of ThreatDown or member of the Board of Directors of ThreatDown, or between Reseller and any relative of any such ThreatDown employee, officer or Board member. For reference to help Reseller make the above certification, ThreatDown's Board members and officers are listed on ThreatDown's website at [www.ThreatDown.com](http://www.ThreatDown.com). Reseller hereby certifies and agrees that, except for customary offerings that are appropriate under applicable laws and that are, in the aggregate, nominal in value and not in exchange for business, Reseller and its employees, agents and representatives have not and will not, directly or indirectly, offer, provide, or participate in providing, to ThreatDown or any ThreatDown employee, agent or representative any money (except for the proper payment by Reseller to ThreatDown through its finance department for Reseller's purchase of ThreatDown's products and services as contemplated by this Agreement), gift item, personal service, entertainment, reimbursement of expenses or payment of expenses, such as travel costs, unusual hospitality or other items of value. Reseller certifies that it and its employees, agents and representatives have not, directly or indirectly, offered, provided or participated in providing, and will not, directly or indirectly, offer, provide or participate in providing, any ThreatDown employee, agent, or representative, any money, improper payments, "kick-backs," improper profit sharing, or other improper items of value, and Reseller further certifies that it has not received, and will not accept, any of the foregoing from any ThreatDown employee, agent or representative, in exchange for entering into this Agreement or in connection with business under this Agreement. Further Reseller shall notify ThreatDown immediately in writing if it becomes aware that any of its officers, employees, representatives, or other agents has engaged in any conduct in violation of the above clauses or in violation of applicable laws. Any violation of the provisions of this Section constitutes a material breach of this Agreement.

## **12. GENERAL PROVISIONS**



12.1. Governing Law; Venue; Settlement of Controversies. Any action arising from or related to this Agreement will be governed by California law, excluding any choice of law rules (including the United Nations Convention on the Sale of Goods) that would require the application of laws other than those of California. Any controversy or claim arising out of or relating to this Agreement shall be determined by arbitration in accordance with the International Arbitration Rules of the International Centre for Dispute Resolution. The arbitration shall take place in Santa Clara County, California, the proceedings will be conducted in English and the arbitral award shall be final and binding on the parties. The parties hereby agree that any such arbitral award shall be automatically binding on the parties and automatically enforceable, and deemed enforced, in court in California and in any other jurisdiction, including jurisdictions outside of the United States. For any required enforcement of any such arbitral award, the parties hereby agree to exclusive jurisdiction in the courts in Santa Clara County, California. In the event, the a court of competent jurisdiction find the agreement to arbitrate as provided for in this Sub-section 12.1 to be unenforceable, the parties hereby agree to the exclusive jurisdiction in the courts in Santa Clara County, California and agree to waive any right to a trial by jury they may have.

12.2. English Language and Interpretation. This Agreement is in the English language only, and English shall be the controlling language in all respects. Any versions of this Agreement in any other language will be for accommodation purposes only and will not be binding upon either party. All communications and documentation for the Products and Services to be furnished under this Agreement shall be in the English language. The parties agree that this Agreement shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against either party and that ambiguities shall not be interpreted against the drafting Party.

12.3. Taxes. Reseller shall bear and be responsible for the payment of all taxes, fees, or duties, (excluding taxes based on ThreatDown's income) in the Territory, however designated, associated with the purchase or license of any Product and Services or Documentation based upon this agreement.

12.4. Orders, Payment, and Delivery. Reseller must purchase through ThreatDown Authorized Distributors unless otherwise agreed with ThreatDown in writing.

12.4.1. ThreatDown Direct Orders. If ThreatDown accepts an order directly from Reseller, then the terms and conditions in Exhibit A shall govern the purchasing, delivery, and payment terms for such order.

12.4.2. Distribution Orders. For orders placed by Reseller with a ThreatDown Authorized Distributor, delivery of the Products and Services, payment for the Products and Services, and terms governing each shall be negotiated between Reseller and Reseller's ThreatDown Authorized Distributor, and shall be governed by the definitive agreement(s) entered into by and between them.

12.5. Independent Contractors. The relationship between ThreatDown and Reseller established by this Agreement is that of independent contractors. Nothing contained in this Agreement or in a party's performance thereof shall be construed to constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking.

12.6. Assignment. Reseller may not assign, delegate, sub-contract or otherwise transfer this Agreement or any of its rights and obligations, whether voluntarily, by operation of law or otherwise, without ThreatDown's prior written approval. Notwithstanding anything to the contrary, ThreatDown may, without consent, assign, delegate, sub-contract or otherwise transfer this Agreement or any of its obligations hereunder upon notice to Reseller.

12.7. No Waiver; Severability. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. The exercise by either party of any remedy under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise. If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision of the Agreement shall be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect.

12.8. Notices. All notices or other communications required or permitted hereunder shall be in the English language, in writing, and shall be deemed to have been given if sent via electronic mail: (i) by Reseller, in hard copy writing mailed by registered air mail postage prepaid, to the attention of ThreatDown's General Counsel, with a second copy sent separately by Reseller to ThreatDown's Legal Department, at 2445 Augustine Drive, Ste 550, Santa Clara, CA 95054 USA, or to such other address as provided in writing by an authorized representative of ThreatDown, (ii) by ThreatDown to the e-mail address submitted by Reseller during the TPP registration process, or (iii) by ThreatDown if placed on its

Partner Portal webpages. Notices by ThreatDown shall be deemed received one (1) business day after being sent by electronic mail. Notwithstanding anything to the contrary, the hypertext links referred to in this Agreement may be changed by ThreatDown at any time in its sole and absolute discretion, without notice.

12.9. Force Majeure. Except for the obligation to make payments, neither party will be responsible for any failure to perform due to causes beyond its reasonable control (i.e., strike, fire, floods, government acts, orders or restrictions, failure of suppliers) nor due to negligence of the non-performing party. In the event of non-performance due to Force Majeure, the defaulting party shall have ninety (90) calendar days to cure the default, after which the non-defaulting party may elect to terminate this agreement and or cancel or suspend any Purchase Orders under the Agreement by written notice to the defaulting party.

12.10. Government Use. Software and Documentation delivered to an agency or instrumentality of the United States Government shall identify the Software and Documentation as "commercial computer software" and "commercial computer software documentation" and, as specified in FAR 12.212 or DFARS 227.7202, and their successors, as applicable, and shall restrict the Government's rights to use, reproduce or disclose such Software and accompanying Documentation in accordance with, and no more broad than, any licensing granted herein.

12.11. No Other Rights Conferred. Nothing contained in this Agreement shall be construed as conferring by implication, estoppel or otherwise upon either party hereunder any license or other right except the licenses, rights and uses expressly granted hereunder to a party hereto.

12.12. Click-through Version Governs. The click-through version of this agreement (which appears during the TPP registration process), or a version approved by ThreatDown Legal and signed by an authorized representative of ThreatDown, must be accepted by Reseller in order to complete the registration process and shall supersede all prior agreements, commitments or representations between the parties with respect to the subject matter herein, whether oral or written, as well as any downloaded version of the agreement, whether or not such downloaded version is signed by either party.

12.13. Counterparts; Section Headings. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument. The section headings contained herein are for convenience of reference only and shall not be considered as substantive parts of this Agreement.

12.14. Updates on ThreatDown Web Site. Notwithstanding anything to the contrary, this Agreement, along with other Reseller Program materials on the ThreatDown Website or ThreatDown's Partner Portal, may be updated by ThreatDown from time to time in its discretion, and Reseller 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 channel alerts and posted on ThreatDown's Partner Portal. Reseller shall be solely responsible to monitor the Partner Portal for updates and changes. Orders for the purchase of ThreatDown Products placed by Reseller 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.

12.15. Representation of Authority and Voluntary Nature of Agreement. By submitting this Registration Agreement and thereby agreeing to its terms, the submitting individual represents that he or she is authorized to bind Reseller in full to the terms in this Agreement. Reseller acknowledges and agrees that it has carefully read this Agreement and fully understands and agrees to its contents, including but not limited to the termination provisions in Section 7, the warranty disclaimer and limitations on ThreatDown's liability in Sections 10.1 and 10.2, and the consent to arbitrate and waiver of its right to a jury trial in Section 12.1. Reseller hereby acknowledges and agrees that it has had the opportunity to negotiate the terms of this Agreement and request modifications. Further, each party represents that it has entered into this Agreement without undue influence or unequal bargaining power, that each party is sophisticated and accepts responsibility for entering this Agreement, and that each party is sophisticated in commercial matters and has had the opportunity to seek the advice of counsel prior to executing this Agreement.

## Exhibit A

### ThreatDown Direct Purchasing Terms and Conditions

The follow terms and conditions apply to Resellers placing orders directly with ThreatDown.

1. Purchasing Process. ThreatDown will only accept an order where the parties have previously agreed in writing. Reseller shall submit the written purchase order to ThreatDown via ThreatDown's channel email ordering account (or such other method or email address as may be notified to Reseller by ThreatDown from time to time). Each such purchase order must refer to this Agreement and must, at a minimum, specify the product number, quantity, quote or transaction reference number and requested delivery date of the Products, and provide delivery contact information (including email address) (collectively, "**Ordering Information**"). Each purchase order for the Products shall be subject to ThreatDown's acceptance, at ThreatDown's sole discretion. Except for Ordering Information, any terms and conditions in any purchase order that are inconsistent with or in addition to the terms and conditions of this Agreement are hereby rejected by ThreatDown and will be deemed null and of no effect, even if ThreatDown accepts or acknowledges such purchase order.
2. Order Cancellation by ThreatDown. ThreatDown may cancel any purchase order accepted by ThreatDown, or refuse or delay delivery of any Products ordered under it, if Reseller: (i) fails to make any payment as provided in this Agreement or under the payment terms set forth in any invoice or otherwise agreed to by ThreatDown and Reseller; (ii) fails to meet reasonable credit or financial requirements established by ThreatDown, including any limitations on allowable credit; or (iii) otherwise fails to comply with the terms and conditions of this Agreement. Any such cancellation, refusal, or delay by ThreatDown does not constitute a termination of this Agreement (unless ThreatDown so advises Reseller) or breach of this Agreement by ThreatDown.
3. Delivery. Products are delivered in electronic/digital form only. A file will be provided that includes the quantity and type of license keys purchased by Reseller, along with a link to the current version of that Product's executable file that may be downloaded by Reseller. Reseller in turn agrees to make the executable file available for download to Resellers who purchase licenses to the Products for resale to End Users.
4. Pricing. The prices for the Products purchased by Reseller pursuant to the Agreement will be as set forth in ThreatDown's then-current Reseller price list as applicable to the Territory. ThreatDown may change its list prices for Products at any time in its sole direction; any such price changes will be effective 30 days after written notice is provided to Reseller. Reseller acknowledges that Reseller has prior to entering into this Agreement been provided with ThreatDown's current Reseller price list in effect as of the Effective Date, which will be updated from time to time as ThreatDown changes its prices in accordance with this Section. All payments shall be in United States dollars (unless otherwise agreed to by ThreatDown) and payable according to the terms as described in Section 5 of this Exhibit.
5. Payments. Reseller shall make all payments under this Agreement (i) in United States dollars (unless otherwise agreed to by ThreatDown and (ii) within 30 days following the date of the applicable ThreatDown invoice.
6. 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. Reseller will promptly reimburse ThreatDown for all reasonable costs and expenses (including reasonable attorneys' fees) incurred by ThreatDown in connection with collecting any overdue amounts.
7. Taxes. All amounts payable by Reseller under this Agreement are net amounts and are payable in full, without deduction for taxes or duties of any kind. Reseller will be responsible for, and will promptly pay, all taxes and duties of any kind (including, but not limited to, sales, use and withholding taxes) associated with this Agreement or Reseller's receipt, use, and distribution of the Products, except for taxes based on ThreatDown's net income. If ThreatDown is required to collect, or pays on Reseller's behalf, any taxes, or duties for which Reseller is responsible, Reseller will pay or reimburse ThreatDown, as the case may be, for all such amounts. If Reseller pays any withholding taxes based on the payments made by Reseller to ThreatDown hereunder, Reseller will furnish ThreatDown with written documentation of all such tax payments, including receipts and other customary documentation, including resale certificates.

8. Records; Audit. During the term of this Agreement and for a period of three years thereafter, Reseller will maintain complete and accurate books and records regarding Reseller's use and distribution of the Products. During such period, ThreatDown will have the right to inspect and audit such books and records for the purpose of confirming Reseller'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 Reseller's normal business activities and ThreatDown shall give 5 days' notice of any such proposed audit. If such an inspection and audit reveals an underpayment of any amounts payable to ThreatDown, then Reseller will promptly remit the full amount of such underpayment to ThreatDown, including interest calculated in accordance with the terms of Section 6 of this Exhibit. If the underpaid amount exceeds 5% of the amounts payable to ThreatDown for the period audited, then Reseller will also pay ThreatDown' reasonable costs of conducting the inspection and audit. Notwithstanding the above, ThreatDown or its authorized representative may conduct an audit at any time on 24 hours' notice if ThreatDown reasonably suspects Reseller is in breach of this Agreement.

9. Reports. Within 15 days after the end of each calendar month, Reseller will submit to ThreatDown electronically: (i) a monthly sales report showing each Product distributed by Reseller pursuant to this Agreement, including quantity sold, type of license and to which Reseller; and (ii) any other information reasonably requested by ThreatDown. Reseller's report will comply in form and substance with ThreatDown's reporting requirements, as they are determined by ThreatDown and communicated to Reseller from time to time. If a digital reporting method is provided by ThreatDown, Reseller agrees to use it in lieu of the above report. If Reseller fails to provide ThreatDown with the reports as required by this Section within the said period, it shall give adequate grounds for ThreatDown to terminate the Agreement for cause. If Reseller fails to provide ThreatDown with the reports as required by this Section within the said period on more than one occasion, it shall give adequate grounds for ThreatDown to terminate the Agreement for cause immediately upon notice without opportunity to cure.

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