

## RESELLER PARTNER AGREEMENT

THIS RESELLER PARTNER AGREEMENT (THIS “**AGREEMENT**”) SETS FORTH THE TERMS AND CONDITIONS ON WHICH HIDDENLAYER, INC. (“**HIDDENLAYER**”) IS WILLING TO ALLOW YOUR OR THE ENTITY YOU REPRESENT (THE “**RESELLER**”) (EACH, A “**PARTY**”, AND TOGETHER WITH HIDDENLAYER, THE “**PARTIES**”) TO RESELL CERTAIN SOFTWARE AND ASSOCIATED MEDIA, PRINTED MATERIALS, AND ONLINE OR ELECTRONIC DOCUMENTATION. BY REGISTERING WITH HIDDENLAYER, YOU (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. **READ THIS RESELLER CLICK-THROUGH AGREEMENT BEFORE REGISTERING AS A RESELLER WITH HIDDENLAYER. IF YOU DO NOT OR CANNOT AGREE TO THE TERMS CONTAINED HEREIN, THEN DO NOT REGISTER AS A RESELLER WITH HIDDENLAYER.**

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. **Affiliates** means all entities that control, are controlled by, or are under common control with the named entity, whether directly or through one or more intermediaries. For purposes of this definition, “controlled” and “control” shall mean ownership of more than fifty percent (50%) of the voting capital stock or other similar majority interest having voting rights with respect to the election of the board of directors or similar governing authority.
  - 1.2. **Confidential Information** means all information and materials furnished by one Party (the “**Disclosing Party**”) to the other Party (the “**Receiving Party**”) before, on or after the Effective Date, whether such is transmitted in writing, orally, visually (e.g. video terminal display) or on magnetic media, which (a) if in written format, is marked as confidential; (b) if disclosed verbally, is noted as confidential at the time of disclosure; or (c) is information which a reasonable person would understand to be non-public information or confidential in nature. Confidential Information includes, without limitation: the Resale Software; HIDDENLAYER reference designs; Documentation; the existence and contents of this Agreement; and all proprietary information, customer and prospect lists, trade secrets, or proposed trade names, know-how, ideas, concepts, designs, drawings, flow charts, diagrams and other intellectual property relating to the subject matter of this Agreement. Results of any tests or usages carried out by Licensee with the Licensed Software will also be considered HIDDENLAYER Confidential Information. Confidential Information does not include information that the Receiving Party can establish (i) is generally available to the public at the time of disclosure or thereafter becomes generally available to the public through no fault of the Receiving Party, (ii) is in the lawful possession of the Receiving Party prior to the time of disclosure without any

obligation of confidentiality to the Disclosing Party, (iii) is rightfully received by the Receiving Party from a third party without any obligation of confidentiality and not in breach of its obligations of confidentiality to the Disclosing Party hereunder, or (iv) is developed by the Receiving Party without reference to and independently of the Confidential Information of the Disclosing Party.

- 1.3. **Documentation** means any and all user documentation and other reference materials, in any form and on any media, that may be provided by HIDDENLAYER in connection with or in reference to the Licensed Software from time to time, including, without limitation, user guides, installation documents and specifications for the Licensed Software. For the avoidance of doubt, “Documentation” shall not include any sales or marketing materials.
- 1.4. **Effective Date** means the date that HIDDENLAYER accepts Reseller’s application.
- 1.5. **End User** shall mean any person or entity that purchases any Resale Materials for its own personal or internal use.
- 1.6. **Force Majeure Event** means any of the following: (i) fire, explosion storm, earthquake, hurricane, tornado, drought, flood, typhoon, tsunami or other act of God; (ii) war, act of terrorism, sabotage, bombing, insurrection, rebellion, revolution, riot or other civil commotion or unrest; (iii) epidemics, quarantine restrictions or other public health restrictions or advisories; (iv) strikes or lockouts or other labor interruptions; (v) disruption to local, national or international transport services; (vi) events which threaten public safety or create substantial disruption in commercial activity; or (vii) any other event that is beyond the reasonable control of either Party.
- 1.7. **Intellectual Property Rights** means all intellectual property rights of any kind or nature in any jurisdiction throughout the world, including all right, title and interest in or to the following: (a) patents, (b) Trademarks, (c) copyrights, including copyrights in computer software, (d) registrations and applications for registration for any of the foregoing under clauses (a) through (c) of this definition, including any extensions, continuations, continuations-in-part, reissues, divisions and reexaminations, (e) confidential and proprietary information, including trade secrets and rights in know-how, (f) intellectual property rights in computer software, design, data and databases and (g) all rights to sue and recover damages and obtain equitable relief for past, present and future infringement, misappropriation or other violations of any of the foregoing under clauses (a) through (f) of this definition.
- 1.8. **Notice** means any notice or other communication required or permitted under this Agreement.
- 1.9. **Representatives** means, with respect to a Party, that Party's employees, officers, directors, consultants, agents, independent contractors, service providers, subcontractors, and legal advisors.
- 1.10. **Resale Materials** means the Resale Software and Documentation.
- 1.11. **Resale Software** means HIDDENLAYER’s AI Sec Platform owned by HIDDENLAYER or which HIDDENLAYER otherwise has the right to use, including the AI Detection and Response, HL Model Scanner, and patches, updates, upgrades, modifications or new releases thereof that may be provided by HIDDENLAYER to the Reseller from time to time during the Term.

- 1.12. **Territory** means 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 HIDDENLAYER. The Territory, within which the license granted hereunder shall be operative, will be communicated to Reseller upon completion of the Reseller registration process.
- 1.13. **Third-Party Material** means materials and information, in any form or medium, that are not proprietary to HIDDENLAYER and that are distributed with or incorporated into the Resale Software.
- 1.14. **Trademarks** means all trademarks, service marks, trade names, trade dress and Internet domain names, together with the goodwill associated exclusively therewith.

**2. OWNERSHIP AND RETENTION OF RIGHTS.** Except for the limited rights granted to the Reseller herein with respect to the Resale Materials, all Intellectual Property Rights in and to the Resale Materials and all other software and technology of HIDDENLAYER or any of its Affiliates shall at all times, as between the Parties, remain the sole and exclusive property of HIDDENLAYER or its Affiliates. In no event shall the Reseller or any of its Affiliates acquire any Intellectual Property Rights in or to any of the Resale Materials or any other software or technology of HIDDENLAYER or any of its Affiliates and nothing in this Agreement shall be read as to sell, assign or otherwise transfer to the Reseller or its Affiliates any such Intellectual Property Rights. For the avoidance of doubt, nothing in this Agreement grants to the Reseller or any of its Affiliates any access to or any right, title or interest in or to any source code embedded or otherwise incorporated in, or forming any part of, any Resale Software or any other software of HIDDENLAYER or any of its Affiliates. To the extent the Reseller or any of its Affiliates acquires any right, title or interest in or to any Resale Materials or any other software or technology (including any Intellectual Property Rights related to the foregoing) of HIDDENLAYER or any of its Affiliates, the Reseller hereby assigns, and shall cause its Affiliates to assign, to HIDDENLAYER or its Affiliates all right, title and interest in and to the same and the Reseller shall, and shall cause its Affiliates to, execute any and all documents necessary to execute such assignment.

### **3. SCOPE OF APPOINTMENT.**

- 3.1. Appointment as Authorized Reseller. Upon the terms and subject to the conditions set forth in this Agreement, HIDDENLAYER hereby appoints, and shall cause its Affiliates to appoint, the Reseller as a non-exclusive reseller of the Resale Materials; provided that, the Reseller may only resell any Documentation (a) in connection with the sale to an End User, by the Reseller, of the Resale Software or (b) to an End User that has, prior to the date of such resale, already purchased or otherwise licensed, from either the Reseller or HIDDENLAYER or any of its Affiliates, and currently uses, the Resale Software. For the avoidance of doubt, the Reseller may not resell any Resale Materials with any other software, product or service or by the resale of any Resale Material on its own other than pursuant to Section 3.1(b). In all cases where the Reseller resells any Resale Materials, such Resale Materials must be resold in its entirety, and in no event may the Reseller resell any part, portion or component of any particular Resale Material less than the entirety of such particular Resale Material. For the avoidance of doubt, the rights granted to the Reseller under this

Agreement are non-exclusive, and nothing herein shall restrict HIDDENLAYER or any of its Affiliates, or any person authorized by HIDDENLAYER or any of its Affiliates, from marketing, selling or providing any of its products or services, including any Resale Materials, directly or indirectly to any person, including any End User.

- 3.2. Acceptance of Appointment. The Reseller hereby accepts the appointment as a non-exclusive reseller of the Resale Materials upon the terms and subject to the conditions set forth in this Agreement. The appointment commences as of the Effective Date.
- 3.3. Independent Contractor; No Relationship. The Reseller undertakes to carry out this Agreement as an independent contractor. All offers and quotations made by the Reseller to potential and actual End Users shall be issued in the Reseller's name only. The Reseller shall not make any offers or quotations, execute any agreements or documents or make any commitments of any nature in the name of or on behalf of HIDDENLAYER or any of its Affiliates without the prior written consent of HIDDENLAYER or such Affiliate, as applicable. Nothing contained in this Agreement nor the relationship hereunder creates any franchise, dealership, partnership, agency, business opportunity, employment or other similar relationship between the Parties. Neither Party is granted the right or authority to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of the other Party. The Reseller hereby acknowledges that it does not and will not sell or offer to sell any Resale Materials under a business or marketing plan or system prescribed by HIDDENLAYER or its Affiliates.

#### 4. LICENSES.

- 4.1. Right to Access and Use the Resale Materials. Upon the terms and subject to the conditions set forth in this Agreement, HIDDENLAYER hereby grants, and shall cause its Affiliates to grant, to the Reseller, a non-exclusive, worldwide, non-transferable (except as provided in Section 12.7), non-assignable (except as provided in Section 12.7), non-sublicensable right to access and use the Resale Materials during the Term solely for the Reseller's resale of the Resale Materials, including to market, sell and distribute the Resale Materials, to End Users in the Territory. The Reseller shall not (a) decompile, disassemble, copy, reverse engineer or otherwise attempt to reconstruct, or create derivative works or products from any Resale Materials, or (b) otherwise use any Resale Materials in any manner that exceeds the scope of use permitted under this Agreement.
- 4.2. Trademarks.
  - (a) Acknowledgment. The Reseller hereby acknowledges that any and all Trademarks owned by HIDDENLAYER or its Affiliates, including the Product Trademarks, are, as between the Parties, owned exclusively by, as applicable, HIDDENLAYER or one of its Affiliates. The Reseller undertakes not to challenge the validity of such Trademarks or take any action inconsistent with such ownership. All permitted uses by the Reseller of HIDDENLAYER's and its Affiliates' Trademarks pursuant to Section 4.2(c) shall inure to the benefit of HIDDENLAYER and its Affiliates.

- (b) No Trademark License. Subject to the permitted uses set forth in Section 4.2(c), nothing in this Agreement grants to the Reseller or any of its Affiliates any license to use, or any other right to access or use, any Trademarks owned by HIDDENLAYER or any of its Affiliates. The Reseller shall not use any Trademarks owned by HIDDENLAYER or any of its Affiliates or any imitations, variances or marks confusingly similar thereof as part of any corporate name or trade name. The Reseller shall not remove any Trademarks or other identifying marks included on or in the Resale Materials or rebrand the Resale Materials unless prior written approval is obtained from HIDDENLAYER, which shall be subject to HIDDENLAYER's sole discretion.
- (c) Permitted Use. Subject to HIDDENLAYER's prior written approval (which shall be at HIDDENLAYER's sole discretion), during the Term, the Reseller shall be permitted to use the Trademarks incorporated in the Resale Materials (the "**Product Trademarks**") solely in connection with the resale of the respective Resale Materials in publications, presentations, promotional materials or sales materials in a manner that ensures that they are used in direct connection with identifying the respective Resale Materials or in direct connection with the respective Resale Material itself; provided that, the Reseller shall:
- (i) comply at all times with any and all rules, regulations or other guidelines provided to the Reseller by HIDDENLAYER in respect of the use of the Product Trademarks;
  - (ii) ensure that no false identifications about the origin of the Resale Materials will occur and that the "Authorized Reseller" relationship with HIDDENLAYER shall always be recognizable;
  - (iii) not make any advertisement or other promotions or take any action or cause or approve any advertising or other promotions to be made or any action to be taken which are detrimental to the Product Trademarks; and
  - (iv) refrain from any advertising or other promotion or action upon request of HIDDENLAYER, which in the sole discretion of HIDDENLAYER is deemed to have such a detrimental effect.

## 5. RESELLER RESPONSIBILITIES.

5.1. Reseller Agreements. Upon the terms and subject to the conditions in this Agreement, the Reseller shall be permitted to enter into contracts with End Users for the resale of the Resale Materials; provided that, (a) the term of any such contracts, including any renewal period thereof, may not extend beyond the Term, and (b) in entering into contracts with End Users for the resale of the Resale Materials, the Reseller must resell all Resale Materials upon the terms and conditions set forth in the End User License Agreement.

5.1.1. End User License Agreement, Warranties. The Reseller may distribute the Resale Materials only with all applicable warranties, disclaimers and license agreements, including HIDDENLAYER's then-current End User License

Agreement, and Reseller is responsible to ensure all End Users are provided such End User License Agreement. The Reseller shall take all steps reasonably requested by HIDDENLAYER to inform End Users of all applicable restrictions and limitations regarding the use of the Resale Materials. Any guaranties, warranties, promises or commitments given or made by the Reseller which go beyond the HIDDENLAYER standard terms provided by HIDDENLAYER with the Resale Software (including in Documentation and the End User License Agreement) are not binding for HIDDENLAYER and are at the sole responsibility of Reseller.

- 5.2. Sales Efforts. The Reseller shall use its diligent efforts to: (a) sell the Resale Materials in the Territory, and (b) unless prohibited by law, prevent the export of the Resale Materials from the Territory for resale outside the Territory. For the avoidance of doubt, notwithstanding anything to the contrary, the Reseller is solely responsible for selling any and all Resale Materials that it purchases from HIDDENLAYER, and HIDDENLAYER 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. The Reseller is free to set the prices it charges in its discretion, provided it is responsible to ensure full compliance with all laws.
- 5.3. Internet Auction Sales Restriction. The Reseller hereby acknowledges and agrees that, due to the complexity of the Resale Materials, online auction or third-party marketplace sales do not provide adequate presales support. Therefore, the Reseller hereby agrees and warrants that it shall not sell or otherwise make available the Resale Materials 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. 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, the Reseller acknowledges and agrees that because inadequate presales support reflects poorly upon and tarnishes the HIDDENLAYER name a breach of this Section 5.3 is a material breach of this Agreement.
- 5.4. Records and Reports; Audit Rights. The Reseller shall maintain accurate and complete records of its marketing, sales, support, and maintenance activities under this Agreement and/or related to sales of the Resale Materials. The 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 five (5) years. During the term of this Agreement, the Reseller shall provide information as reasonably requested by HIDDENLAYER to ensure compliance by the Reseller with the terms of this Agreement, and HIDDENLAYER or its Representatives may, upon reasonable notice to the Reseller and during regular business hours, inspect the business records of the Reseller as reasonably necessary to verify the Reseller's compliance. The Reseller shall promptly provide HIDDENLAYER full access to any records requested by HIDDENLAYER.
- 5.5. Ethical Business Practices. The Reseller will ensure compliance in full by all of its Representatives with the entirety of all of the provisions of Section 10.1(c). The Reseller will conduct business in a manner that reflects favorably at all times on the Resale Materials and the good name, goodwill and reputation of HIDDENLAYER.

## 6. DISCONTINUATION.

- 6.1. By HIDDENLAYER. At any time during the Term, HIDDENLAYER or any of its Affiliates may, in its sole discretion, discontinue the use, support and maintenance of all, any part of or any component of any Resale Materials; provided that, if HIDDENLAYER and its Affiliates so discontinue the use, support and maintenance of any Resale Materials, HIDDENLAYER must provide to the Reseller thirty (30) calendar days' prior written notice of such discontinuation. In the event HIDDENLAYER and its Affiliates discontinue the use, support and maintenance of any Resale Materials pursuant to this Section 6.1, then such discontinued Resale Materials shall be automatically excluded from the scope of, and no longer be subject to, this Agreement beyond such thirty (30) calendar day-period without any further action by the Parties.
- 6.2. Due to Infringement or Loss of Rights. If (1) HIDDENLAYER or any of its Affiliates determines, in its sole discretion, that all, any part of or any component of any Resale Material is likely to infringe or otherwise violate, or all, any part of or any component of any Resale Material is held to actually infringe or otherwise violate, any Intellectual Property Rights of any third party, (2) with respect to any Third Party Material licensed by a third party to HIDDENLAYER or any of its Affiliates, or any part or any component thereof, HIDDENLAYER or any of its Affiliates no longer has the rights to such Third Party Material as contemplated by this Agreement, or (3) in respect of any claim of infringement or other violation of any Intellectual Property Rights of any third party, HIDDENLAYER or any of its Affiliates deems it advisable to do so, HIDDENLAYER shall, in its sole discretion, take one or more actions at no additional cost to the Reseller:
- (a) procure the right to continue the use of the same without material interruption for the Reseller or End Users;
  - (b) replace the same with a non-infringing or non-violating alternative;
  - (c) modify or otherwise alter the same so as to be non-infringing or non-violating;  
or
  - (d) take back the same from the Reseller and credit the Reseller with any fees paid by End Users to the Reseller for the use of the same and which the Reseller actually credits to such End Users in the event of such a take back; provided that, the Reseller must implement provisions in its agreements with End Users for the purchase of any Resale Materials that permit the Reseller to take back the same and, in the event of such take back, credits such End Users for any fees paid by such End Users for the use of the same.

The foregoing represents the sole and exclusive remedy of the Reseller with regard to any of the above infringements or violations, alleged infringements or violations, or loss of rights. The foregoing remedy shall not apply to the extent that the alleged infringement or violation was caused by (i) the combination or use of the Resale Materials with other products, processes or materials not supplied by HIDDENLAYER or its Affiliates or specified in any Documentation for such Resale Software as being necessary to use the Resale Software; (ii) the Reseller's failure to incorporate patches, updates, upgrades, modifications or new releases provided by

HIDDENLAYER or any of its Affiliates that would have avoided the alleged infringement or violation; or (iii) the Reseller's continued engagement in infringing or violating activities after the Reseller was notified of the infringement or violation or after HIDDENLAYER informed the Reseller of a modification or alteration that would have avoided the infringement or violation.

## **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 for Convenience. 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 to the complex nature of their commercial relationship, 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 ten (10) 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 ten (10) calendar days.
- 7.4. Termination for Insolvency. This Agreement shall terminate automatically, without any further action by either Party, if: (i) a Party becomes insolvent or bankrupt or proceedings are instituted by a Party seeking relief, reorganization or rearrangement under any law relating to insolvency, or a Party assigns part or all of its assets for the benefit of creditors, or any arrangement or compromise is made by a Party with any of its creditors, or (ii) a receiver, liquidator or trustee of a Party's property or assets is appointed.
- 7.5. Suspension. HIDDENLAYER may in its sole discretion suspend the provision of any and all rights and services provided by HIDDENLAYER hereunder if the Reseller shall fail to pay when due any undisputed amount due under this Agreement. HIDDENLAYER shall give written notice to the Reseller of such suspension, which notice may be given no earlier than five (5) days following the amount becoming overdue. All or any portion of the rights and services provided by HIDDENLAYER hereunder shall upon the delivery of such notice be suspended once the Reseller is given at least five (5) days following the notice, so that the Reseller may inform its End Users.
- 7.6. Survival. Termination or expiration of this Agreement will not affect the provision of the Agreement which expressly or by their nature survive termination or expiry, including: Sections 1, 2, 3.3, 7, 8, 9 (solely to the extent any fees payable to a Party pursuant thereto have accrued as of the date of termination or expiration), 10, 11 and 12.

## **8. CONFIDENTIAL INFORMATION.**



- 8.1. The Reseller's Obligations. The Reseller shall, and shall cause its Affiliates to, keep confidential and not disclose to any third party any Confidential Information of HIDDENLAYER or its Affiliates which becomes known to the Reseller or its Affiliates in connection with this Agreement, its implementation or through other disclosure by HIDDENLAYER or its Affiliates. Without limiting the foregoing, the Reseller shall, and shall cause its Affiliates to, take at least those measures that it takes to protect its own Confidential Information of a similar nature, but in no event less than commercially reasonable measures.
- 8.2. HIDDENLAYER's Obligations. HIDDENLAYER shall, and shall cause its Affiliates to, keep confidential and not disclose to any third party any Confidential Information of the Reseller or its Affiliates which becomes known to HIDDENLAYER or its Affiliates in connection with this Agreement, its implementation or through other disclosure by the Reseller or its Affiliates. Without limiting the foregoing, HIDDENLAYER shall, and shall cause its Affiliates to, take at least those measures that it takes to protect its own Confidential Information of a similar nature, but in no event less than commercially reasonable measures.
- 8.3. Return; Destruction. Upon the termination or expiration of this Agreement, each Party shall return all Confidential Information (whether preserved in hard copy, magnetic or electronic media or otherwise) in its possession provided to it by the Disclosing Party pursuant to this Agreement within thirty (30) days of the termination or expiration of this Agreement and shall, at the Disclosing Party's written request, destroy each and every copy or other reproduction of such Confidential Information in the Receiving Party's possession. Each Party shall provide the Disclosing Party with a written certification that all Confidential Information of the Disclosing Party in the possession of the Receiving Party has been returned and, as applicable, destroyed.
- 8.4. Relief. The Parties hereby acknowledge and agree that a breach of this Section 8 would cause irreparable harm and that either Party shall be entitled to seek equitable relief from such breach without posting bond and without proving damages.
- 8.5. Survival. Each Party's obligations under this Section 8 shall survive the termination or expiration of this Agreement for the maximum period permitted under applicable law.

**9. RESALE FEES.** The Reseller may resell the Resale Materials under the terms and subject to the conditions of this Agreement at rates set by the Reseller, in the Reseller's sole discretion. The Reseller shall pay to HIDDENLAYER based on the then current published price listing from HIDDENLAYER.

## **10. REPRESENTATIONS, WARRANTIES.**

- 10.1. Representations and Warranties. Each Party represents and warrants to the other Party that:
  - (a) it has the authority to enter into this Agreement, and to grant the rights such Party grants herein and to perform its obligations hereunder;

- (b) it is not a party to any agreement or understanding and that there are no Laws, in each case, that would (i) prohibit it from entering into and performing its obligations under this Agreement, or (ii) conflict with this Agreement; and
  - (c) it shall comply with all applicable Laws and obtain any and all necessary approvals, consents and permits required or necessary to perform its obligations under this Agreement.
- 10.2. Disclaimer. EXCEPT FOR ANY APPLICABLE EXPRESS WRITTEN WARRANTY SET FORTH IN HIDDENLAYER'S THEN-CURRENT END USER LICENSE AGREEMENT AS PROVIDED BY HIDDENLAYER WITH HIDDENLAYER'S PRODUCT, WHICH MAY BE FORFEITED IF NOT REGISTERED IN A TIMELY FASHION AND WHICH MAY NOT BE APPLICABLE, HIDDENLAYER 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 HIDDENLAYER AND RESELLER, ALL SALES ARE FINAL AND IN NO EVENT WILL RESELLER BE ENTITLED TO ANY RETURN RIGHT, REFUND, OR CANCELLATION RIGHT VERSUS HIDDENLAYER.

## 11. INDEMNIFICATION; LIMITATION OF LIABILITY.

- 11.1. Indemnity. Each Party (the “**Indemnitor**”) shall indemnify, defend and hold harmless the other Party and its Affiliates, and their respective Representatives (collectively, the “**Indemnitees**”), from and against all third-party claims for damages, final judgments, settlements and court costs (the “**Indemnified Damages**”) brought against any of the Indemnitees to the extent based upon (i) a breach of this Agreement by the Indemnitor, (ii) fraud, gross negligence or willful misconduct by the Indemnitor or (iii) with respect to the Reseller as the Indemnitor, the resale of any and all Resale Materials resold pursuant to this Agreement (except to the extent relating to a breach of this Agreement by the Seller).
- 11.2. Limitation of Liability.
- (a) Damages Limitation. If the Reseller should become entitled to claim damages from HIDDENLAYER for any reason (including, without limitation, breach of contract, breach of warranty, negligence or other tort claim), HIDDENLAYER will be liable, in the aggregate for all claims, only for the amount of the Reseller’s direct damages up to the amount paid by the Reseller under this Agreement pursuant to Section 9 (Resale Fees) in the three (3) months preceding the date of the first event giving rise to the first such claim under this Agreement. HIDDENLAYER’s aggregate liability under this Agreement may, in no event, exceed the total fees paid by the Reseller under this Agreement pursuant to Section 9 (Resale Fees) in the twelve (12) months preceding the date of the first event giving rise to the first such claim under

this Agreement. These limits also apply to the HIDDENLAYER's Affiliates, and its and their Representatives and are the maximum collective liability for which any of them may be responsible.

- (b) No Liability for Certain Damages. In no event will either Party or its Affiliates, or its or their officers, directors, employees, suppliers and agents, be liable for any lost profits, loss of business, loss of data, loss of use, lost savings, loss of goodwill, business interruption or other consequential, special, incidental, indirect, exemplary or punitive damages, even if it has been advised of the possibility of such damages.
- (c) No Liability for HIDDENLAYER. Notwithstanding anything herein to the contrary, in no event will the Seller or its Affiliates, or its or their officers, directors, employees, suppliers and agents, be liable for any damages or expenses resulting from:
  - (i) the availability, performance or use of the Internet or World Wide Web; or
  - (ii) any patches, updates, upgrades, modifications or new releases of the Resale Materials by the Reseller or its Affiliates, the use of the Resale Materials in a manner not permitted by this Agreement or for a purpose not intended by HIDDENLAYER or from the unintended and unforeseen results obtained by the Reseller or its Affiliates (or End Users) resulting from such use.
- (d) Exclusions from Damages Limitations. The limitations on damages in this Section 11.2 do not apply to:
  - (i) the indemnification obligations set forth in Section 11.1(ii);
  - (ii) breaches of Section 8 (*Confidential Information*); and
  - (iii) the Reseller's payment of fees pursuant to Section 9 (*Resale Fees*).
- (e) Survival. The limitations of liability set forth in this Section 11.2 will survive expiration or termination of this Agreement and apply notwithstanding the failure of any limited or exclusive remedy for breach of warranty set forth in this Agreement. The Parties hereby agree that the limitations of liability set forth in this Section 11.2 will not be read so as to limit any liability to an extent that would not be permitted under applicable law.

## 12. GENERAL PROVISIONS.

- 12.1. Notices. All Notices will be in writing and will be deemed to have been duly given:
  - (a) when delivered by hand;
  - (b) three (3) days after being sent by registered or certified mail, return receipt requested and postage prepaid;
  - (c) one (1) day after deposit with a nationally recognized overnight delivery or express courier service; or
  - (d) when provided via email when the sender has received a delivery/read receipt.Notices for HIDDENLAYER should be sent to the following addresses: (i) for physical Notices, 14900 Avery Ranch Blvd Box 201 Suite C200 Austin, TX 78717; and; (ii) for electronic Notices, [legal@hiddenlayer.com](mailto:legal@hiddenlayer.com).
- 12.2. Force Majeure. In the event of the occurrence of a Force Majeure Event, the obligations of the Parties and the time period for the performance of such obligations

- shall be suspended to the extent such Parties are prevented, hindered or delayed in such performance during the period of such Force Majeure Event. Upon the occurrence of a Force Majeure Event, the affected Party shall give prompt, written notice of such Force Majeure Event to the other Party describing such Force Majeure Event and its cause (to the extent known to such Party) and a description of the condition delaying the performance of such Party's obligations.
- 12.3. Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and thereof and supersede all prior agreements and undertakings, both written and oral, between HIDDENLAYER and the Reseller with respect to the subject matter hereof and thereof.
  - 12.4. Amendments and Modifications. Any amendment or modification to this Agreement must be in writing and must be signed by each Party. No oral agreement, course of dealing or trade usage shall be deemed to modify this Agreement.
  - 12.5. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect for so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated by this Agreement are consummated as originally contemplated to the greatest extent possible.
  - 12.6. Waiver. The failure of a Party to enforce any provision of this Agreement will not constitute a present or future waiver of such provision or limit a Party's right to enforce such provision at a later time. All waivers must be in writing and signed by the Party issuing such waiver. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition of this Agreement.
  - 12.7. Assignment. HIDDENLAYER shall be free to assign, subcontract or otherwise transfer its rights and obligations under this Agreement. Any assignment of this Agreement or any part thereof by the Reseller requires HIDDENLAYER's prior written consent, which shall be at HIDDENLAYER's sole discretion; provided that, the Reseller may assign or transfer this Agreement to a purchaser of all or substantially all of the assets of the Reseller. Any purported assignment, delegation or transfer in violation of this Section 12.7 is void.
  - 12.8. No Third Party Beneficiaries. This Agreement shall be binding upon and inure solely to the benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied (including the provisions of Section 11 relating to indemnified parties), is intended to or shall confer upon any other third party any legal or equitable right, benefit or remedy of any nature whatsoever, including any rights of employment for any specified period, under or by reason of this Agreement.
  - 12.9. Governing Law; Jurisdiction. This Agreement will be governed and construed by and under the laws of the State of Texas without regard to its conflict of laws rules. The Parties expressly consent to the personal jurisdiction and venue in the state and

federal courts in Travis County, Texas for any lawsuit filed there arising from or related to this Agreement. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

- 12.10. Waiver of Jury Trial. EACH OF THE PARTIES HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH OF THE PARTIES HEREBY (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (b) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 12.10.
- 12.11. Counterparts. This Agreement may be executed and delivered (including by facsimile or other electronic transmission) in one or more counterparts, and by the different Parties in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.