



## RESELLER PROGRAM - TERMS & CONDITIONS

*Last Updated – September 2019*

The following terms and conditions (these "*Terms & Conditions*," these "*Terms*" or this "*Agreement*") shall apply with respect to participation by authorized resellers (each, a "*Reseller*") in the OpenVPN Reseller Program (the "*Program*"). Under the Program, OpenVPN, Inc. ("*OpenVPN*") may, in its sole discretion provide marketing, sales, and training support to Reseller as specified in and subject to the terms and conditions in this Agreement.

To register as a reseller (a "*Reseller*") for the OpenVPN Inc. Reseller Program (defined below), you must accept and agree to be bound by this OpenVPN Reseller Agreement (this "*Agreement*"). Please read this Agreement carefully as it governs your relationship with OpenVPN as a Reseller. By registering as a Reseller, you consent to be bound by this Agreement. If you do not or cannot agree to this Agreement, then do not accept this Agreement or register as a Reseller with OpenVPN. If you are accepting this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity and its affiliates to this Agreement, and in such case the terms "*Reseller*," "*you*" or "*your*" shall refer to such entity and its affiliates. The term "*Party*" means either you or OpenVPN, and the term "*Parties*" means both Reseller and OpenVPN together.

**Authorization to become an OpenVPN Reseller is Subject to OpenVPN's acceptance of Reseller's application to join the Program.**

### ***1. Reseller Qualification and Conduct***

Subject to OpenVPN's acceptance of Reseller's application to join the Program, the provision by Reseller of any and all documents, certificates, licenses and/or approvals required by OpenVPN from time to time, and its compliance at all times with these Terms & Conditions (as amended from time to time by OpenVPN), as well as all other OpenVPN instructions and guidelines, Reseller may resell OpenVPN Products and Services (collectively the "*Products*"), which it purchases directly from OpenVPN or a third party authorized by OpenVPN to distribute its Products (an "*Authorized Distributor*"). For the avoidance of doubt, Reseller shall not purchase or sell any OpenVPN Products from any source other than OpenVPN or OpenVPN authorized Distributor(s).

Reseller is a non-exclusive reseller of the Products, and OpenVPN may sell its Products directly to end users and/or may engage other resellers to sell its Products.

Reseller may resell the Products only to end user customers (collectively, "*Customers*") pursuant to these Terms and while an authorized Reseller in the Program. OpenVPN reserves the right, at its sole option and at any time (i) to add, change, modify or discontinue any Product and (ii) to amend or modify the Program and/or these Terms.

Reseller may appoint sub-resellers to sell the Products only if each such sub-reseller is bound in writing for OpenVPN's benefit to an agreement containing provisions at least as protective of OpenVPN and the Products as set forth herein. Reseller shall be responsible for ensuring compliance by sub-resellers with this Agreement, and noncompliance by a sub-reseller shall be deemed noncompliance by Reseller.

Reseller (or any sub-reseller) shall sell Products only to Customers who accept the terms of OpenVPN's then-current standard End User License Agreement for the Products ("*EULA*"), and Privacy Policy, each as amended from time to time.

In order to ensure adequate technical and marketing support to Resellers, Program participation is subject to Reseller's compliance with the requirements described in this Agreement, or as otherwise designated by OpenVPN from time to time. System integrators, service providers, value added resellers, and independent software vendors may not represent themselves as OpenVPN authorized resellers without the prior written consent of OpenVPN which entails, among others, joining the OpenVPN Reseller Program by acknowledging, accepting in writing, and complying fully at all times with these Terms & Conditions.

Reseller may request test products issued by OpenVPN Sales and Support in its sole and absolute discretion. Reseller may use such test products for the following non-production purposes: internal testing, demonstration, evaluation and training. Reseller shall not resell test products to end user customers.

## ***2. Independent Contractor***

Reseller is an independent business entity engaged in purchasing and/or deploying Products for its Customers strictly as permitted hereunder. Reseller is not an agent or legal representative of OpenVPN for any purpose and has no authority to act for, bind, or commit OpenVPN in any matter. Reseller shall not represent itself in any way that implies Reseller is an employee, agent or branch of OpenVPN or any of its partners and affiliates. Reseller shall immediately change or discontinue any representation or business practice found to be misleading or deceptive by OpenVPN, in its sole discretion upon notice from OpenVPN.

## ***3. Term, Limitations, Termination***

By purchasing and/or selling any of OpenVPN's Products or services, Reseller agrees to bound by the Terms & Conditions set forth herein, as amended from time to time by OpenVPN in its sole discretion, with or without prior written notice to Reseller. For the removal of doubt, Reseller is strictly forbidden to sell any of OpenVPN's Products without OpenVPN's prior confirmation of Reseller's approved status as a reseller. OpenVPN may terminate Reseller's approved status, in its sole discretion, at any time, upon thirty (30) days written notice to Reseller, or immediately, with or without notice upon Reseller's material breach of the terms hereunder. Reseller hereby irrevocably and unconditionally waives and releases OpenVPN, its employees, directors, partners, agents and affiliates from any claims and/or other demands which Reseller may have in connection with such termination.

Any right or legal obligation of Reseller that by its express term or nature would reasonably extend for a period beyond the term of these Terms & Conditions, shall so survive the termination thereof for any reason.

Upon expiration or termination of Reseller's approved status: (i) any interests in assistance, rebates, or similar benefits to Reseller shall automatically lapse, and (ii) all rights and licenses granted to Reseller shall terminate upon the effective date of the termination or expiration.

#### **4. Reseller Program**

The Reseller Program consists of one participation level providing access to the available Marketing, Sales and Training resources ("*Promotional Materials*"). OpenVPN reserves the right, in its sole and absolute discretion, to modify or terminate the Reseller Program upon thirty (30) days written notice at any time.

Reseller shall market the Products and may use Promotional Materials supplied by OpenVPN or an OpenVPN Authorized Distributor to do so only for such purpose, and within any applicable guidelines for such use.

Reseller shall maintain sufficient technical knowledge of OpenVPN's Products within Reseller's organization and shall ensure that any employee dealing with OpenVPN's Product is adequately trained to do so accurately and/or support end users. To this end, OpenVPN may provide technical and sales training and Product information to Reseller.

OpenVPN does not represent that it shall continue to maintain any of its Products or services. OpenVPN specifically reserves the right to modify any of the specifications or characteristics of its Products, to remove any Product from the market, and/or to cease manufacturing or supporting it. OpenVPN shall use commercially reasonable efforts to provide notification of any such changes.

Reseller shall have access to OpenVPN resources for training, sales enablement, Promotional Materials and marketing resources. Reseller is expected and encouraged to advertise and promote the sales of Products through all appropriate media including trade show exhibits, webinars, direct mailings, space and online advertising, educational meetings, sales aids and so forth. OpenVPN must approve, in advance in writing, all original materials that use or incorporate the OpenVPN name or the OpenVPN Marks (as defined below), aside from authorized use of existing OpenVPN-supplied Promotional Materials.

Reseller shall (i) obtain and maintain all necessary governmental and regulatory approvals and licenses to perform its obligations hereunder, (ii) comply with good business practices and all applicable laws and regulations, including without limitation (to the extent applicable) the U.S. Foreign Corrupt Practices Act and all applicable United States export and international trade laws (including sanctions, denied parties lists and prohibited transactions), restrictions and regulations and (iii) bear all expenses relating to any necessary licenses and/or exemptions with respect to the export of the Products to any location in compliance with all applicable laws and regulations prior to delivery thereof by OpenVPN. Reseller agrees not to remove or export or re-export Product, except in compliance with, and with all licenses and approvals required under applicable export laws and regulations.

Reseller represents and warrants that neither this Agreement nor the performance of or exercise of rights hereunder is restricted by, in conflict with, requires registration or approval, affects OpenVPN's proprietary rights under, or shall require any payment, indemnification or compulsory licensing under, any applicable law or regulation.

#### **5. Limitation of Liability.**

NOTWITHSTANDING ANY PROVISION HEREIN OR OTHERWISE TO THE CONTRARY, NEITHER OPENVPN NOR ANY OF OPENVPN'S SUBSIDIARIES, PARENT COMPANIES AND AFFILIATES SHALL BE LIABLE OR OBLIGATED WITH RESPECT TO THE SUBJECT MATTER HEREOF OR UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY: (A) FOR ANY AMOUNTS IN EXCESS IN THE AGGREGATE OF THE FEES PAID TO OPENVPN IN THE SIX (6) MONTHS PRECEDING THE INCIDENT; (B) FOR ANY COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY, SERVICES OR RIGHTS; (C) FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, MORAL, EXEMPLARY OR SPECIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR COST SAVINGS) EVEN IF RESELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (D) FOR INTERRUPTION OF USE OR LOSS OR CORRUPTION OF DATA; (E) BETWEEN RESELLER AND ITS CUSTOMERS, OR (F) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## **6. Use of OpenVPN Trademarks**

Subject to the Terms & Conditions hereunder, OpenVPN hereby grants to Reseller, and Reseller hereby accepts a revocable, limited, nonexclusive term license to use the designations, trade names, trademarks, and logos related to the Products and designated by OpenVPN (collectively, the "*OpenVPN Marks*"), only to the extent set forth below, and OpenVPN's instructions from time to time. Reseller acknowledges the following:

OpenVPN owns all rights, titles and interests in and to the OpenVPN Marks. Reseller shall acquire no interest in the OpenVPN Marks by virtue of these Terms & Conditions, its activities under it, or any relationship with OpenVPN, including but not limited to any reputation rights thereto and/or in connection thereby, and Reseller hereby irrevocably and unconditionally waives any claim (now or in the future) against OPENVPN in respect thereof.

During the term of this Agreement and subject to Reseller's compliance with the Terms & Conditions herein in full, Reseller may indicate to the public that it is a recognized OpenVPN Reseller.

Reseller may use the OpenVPN Marks, only (a) during the period in which it is deemed by OpenVPN as an approved Reseller, (b) solely to promote and solicit sales of the Products and (c) only in strict accordance with applicable OpenVPN guidelines and requirements, including, without limitation, the trademark use protocols listed in the OpenVPN Terms as posted at <https://openvpn.net/terms/> (and which are incorporated herein by reference) and any other trademark usage and quality control guidelines promulgated by OpenVPN from time to time. OpenVPN may withdraw the right to use the OpenVPN Marks at any time for any reason. Reseller shall not adopt or use OpenVPN Marks, or any confusingly similar words or symbols, as part of its company name or in promotional materials or allow such marks or names to be used by others.

Reseller shall not otherwise use or register (or make any filing with respect to) any trademark, name or other designation (including domain name registrations) relevant to the OpenVPN Marks or the subject matter of this Agreement anywhere in the world, whether during or after the term of this Agreement.

Reseller shall not contest anywhere in the world the use by or authorization by OpenVPN of the OpenVPN Marks or any trademark, name or other designation relevant to the subject matter of this Agreement or application or registration therefor, whether during or after the term of this Agreement.

Reseller shall comply with all applicable laws, rules and regulations of any competent authority in connection with its use of the OpenVPN Marks and the performance its other obligations under this Agreement.

Reseller may not use the OpenVPN logo in any materials that have not been approved by OpenVPN. All such materials shall be submitted to OpenVPN's for approval before use by Reseller. Reseller may use the OpenVPN name only when explaining or describing its Products, and only in accordance with these guidelines; it may not be used in any way that states or implies that Reseller is an official employee or representative of OpenVPN or is authorized to make commitments on behalf of OpenVPN.

At the expiration or termination of Reseller's approved status by OpenVPN for any reason, Reseller shall immediately discontinue any use of the OpenVPN Marks or any other combination of words, designs, trademarks or trade names that would indicate that it is or was a Reseller.

The Reseller understands and agrees that (a) all goodwill associated with any of the OpenVPN Marks Products and services shall inure exclusively to the benefit of OpenVPN, (b) Reseller shall not take any action, and/or shall cease taking any action, that would reasonably be expected to disparage or diminish the value of the OpenVPN Marks and (c) upon any expiration or termination of this Agreement, no monetary value shall be attributable to any goodwill associated with the use by Reseller of the OpenVPN Marks, and/or any goodwill associated with its OpenVPN Marks, Products or services.

#### ***7. Purchase Orders Terms and Conditions***

In the event that the Reseller purchases Products by using a Purchase Order which contains any general terms and conditions which are inconsistent with the terms herein and/or not previously and explicitly approved in writing by OpenVPN, then such terms shall be deemed null and void and superseded by these Terms & Conditions which shall govern any such Purchase Order exclusively.

#### ***8. Reseller Obligations and Restrictions.***

Reseller shall use its best efforts to promote, sell and support Products to a standard comparable to other similar products sold by Reseller. Reseller shall devote sufficient resources, including support and competent and informed sales staff, to fulfill its obligation under these Terms & Conditions. Reseller shall, among other things, demonstrate the use and application of the Products and provide post-sale support, in accordance with the terms hereunder. Reseller shall make commercially reasonable efforts to include the Product in marketing and promotional programs that Reseller designs and manages either through their own marketing teams or through programs its Customers manage.

Reseller will at all times perform hereunder in a professional manner and in accordance with any guidelines issued by OpenVPN. Reseller will: (a) conduct business in a manner that reflects favorably at all times on the Products and the good name, goodwill and reputation of OpenVPN; (b) avoid deceptive, misleading or unethical practices that are or might be detrimental to OpenVPN, the Products or the Customers, including but not limited to disparagement of OpenVPN or the Products; (c) make no false or misleading representation with respect to OpenVPN or the Products; and (d) make no representations with respect to OpenVPN or the Products that are inconsistent with OpenVPN's EULA for the Products, promotional materials and other literature distributed by OpenVPN, including all liability limitations and disclaimers contained in such materials.

Any software that is sold separately or any software or patented technology incorporated into or provided for use in a Product, is not sold, but is licensed solely for the Customer's use and strictly in accordance with the associated OpenVPN EULA, documentation and any other applicable use restrictions.

Reseller shall (i) obtain and maintain all necessary governmental and regulatory approvals and licenses to perform its obligations hereunder, (ii) comply with good business practices and all applicable laws and regulations, including without limitation to the extent applicable the U.S. Foreign Corrupt Business Practices Act and any similar Israeli laws, and any and all applicable export laws, restrictions and regulations and (iii) bear all expenses relating to any necessary licenses and/or exemptions with respect to the export of the Products to any location in compliance with all applicable laws and regulations prior to delivery thereof by OpenVPN.

Reseller shall handle and be responsible for all warranty claims and returns from its Customers in accordance with the warranty claims procedures designated by OpenVPN from time to time. Reseller shall be liable for satisfaction of its Customers and for all claims, damages, settlements, expenses and attorneys' fees incurred by OpenVPN with respect to Reseller's sub-resellers or any claims made by a Reseller sub-reseller beyond the warranty made by OpenVPN to Reseller.

Reseller shall not, and shall not assist or permit any third party to: (i) disassemble, decompile or otherwise reverse engineer any Product or software, or otherwise attempt to learn the source code, structure, algorithms or ideas underlying any Product or software (except and only to the extent this clause is expressly prohibited by applicable law), (ii) provide, lend, rent, lease or otherwise provide temporary access to a Product, or use any Product for timesharing or service bureau purposes, (iii) take any action contrary to these Terms & Conditions, (iv) copy, modify or make derivative works of any Products or software, or combine any Product or software with any other software or product, (v) alter, obscure or remove any trademark, copyright or other proprietary designation or notice from any Product, (vi) export or re-export any part of the Product or software (or any direct product thereof) in violation of OpenVPN's ABC policy and any applicable restrictions, laws or regulations of the U.S. Department of Commerce or any other U.S., Israeli or foreign agency or authority, (vii) modify, use or distribute the Product, software or any part thereof, except as expressly permitted in this Agreement or (viii) authorize, allow, or assist others (including, without limitation any customer) to do any of the foregoing. Reseller further agrees not to sublicense any of its rights under this Agreement.

Reseller has no authority to and shall not make any commitment or warranty on behalf of OpenVPN including without limitation warranties with respect to Product characteristics, features, quality, performance, timelines, delivery, quantities, modifications, interfacing capabilities or suitability in specific applications. Reseller shall indemnify OpenVPN from liability for any commitment or warranty made by Reseller not specifically authorized by OpenVPN in writing.

Reseller represents and warrants that neither this Agreement nor the performance of or exercise of rights hereunder is restricted by, in conflict with, requires registration or approval, affects OpenVPN's proprietary rights under, or shall require any payment, indemnification or compulsory licensing under, any applicable law or regulation.

Reseller shall notify its Customers of software updates as they are made available by OpenVPN. Reseller agrees to inform (a) Customers that they must, prior to using the Product in any manner, download software for use in connection with the Products, and agree to the EULA in connection therewith and (b) inform Customers as to where and how to download the software and access the EULA. Reseller agrees

to provide documentation to OpenVPN, upon OpenVPN's request, of its Customers' affirmative acceptance of the EULA.

Reseller shall keep OpenVPN regularly informed as to its marketing plans and shall provide OpenVPN with such additional promotional and marketing information as OpenVPN may request from time to time.

### ***9. Customer Support and Services***

Reseller undertakes to provide Customers with Integration services of the Product with the Customer network environment and related 3rd party software, With: (i) Product Training that ensures proper use of the Products derived from Reseller training by OpenVPN and relevant materials provided to Reseller by OpenVPN, and (ii) Front-line Technical Support available 8 hours a day, 5 days a week during OpenVPN's normal business hours. Reseller will notify OpenVPN immediately in the event that it is unable to respond effectively to any Customer request.

Reseller undertakes to hold and operate, skilled manpower, equipment, technical and organizational measures, sufficient to render said services.

OpenVPN shall provide Ticketing Support for issues that cannot be resolved by Reseller, only to Customers who are in full compliance with the license terms and the Product's documentation. This support shall, in no way replace undertakings of Reseller as above-mentioned.

Reseller shall designate a technical contact person with the proper know-how and technical experience to be responsible for the Integration, technical support and training for the Products (the "Contact Person").

### ***10. Permits, License and Compliance***

Reseller will, at its sole cost and expense, obtain, secure and maintain at all times, all permits, licenses and approvals necessary in connection with its performance of his obligations hereunder, and will comply with all applicable laws, rules and regulations.

Reseller will at all times during the term of this Agreement maintain appropriate technical and organizational measures to protect any Customer data that it collects, accesses or processes in connection with this Agreement against unauthorized or unlawful use, disclosure, processing or alteration. Reseller will act only on OpenVPN's instructions in relation to the collection, use, disclosure and processing, and removal/destruction of any such Customer data.

### ***11. Proprietary and Confidential Information.***

OpenVPN retains full and exclusive title to its intellectual property rights in connection with the Products, Resellers activities hereunder, and any enhancements, improvements, derivatives and goodwill thereto, including without limitation any current patent applications, but other than in Reseller's preexisting property rights.

Reseller agrees that all code, inventions, algorithms, designs, know-how, ideas, and all business, technical and financial information it obtains or otherwise learn in connection with OpenVPN, its products, services

and partners are the confidential property of OpenVPN and/or its suppliers (“Proprietary Information”). For clarity, all Products are deemed to be OpenVPN’s Proprietary Information. Reseller agrees (i) to hold the OpenVPN's Proprietary Information in strict confidence and take reasonable precautions to protect such Proprietary Information (including, without limitation, all precautions the Reseller employs with respect to its own confidential materials), (ii) not to divulge any such Proprietary Information or any information derived therefrom to any third person (iii) not to make any use whatsoever at any time of such Proprietary Information except as necessary to perform its obligations or exercise its rights under these Terms & Conditions, (iv) not to remove or export from the United States, or Israel or re-export any such Proprietary Information or any direct product thereof, except in compliance with, and with all licenses and approvals required under applicable export laws and regulations, and (v) not to copy or reverse engineer any such Proprietary Information. Any Reseller employee given access to any such Proprietary Information must have a legitimate “need to know” and shall be similarly bound in writing. Without granting any right or license, OpenVPN agrees that the foregoing clauses (i), (ii), (iii), and (v) shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Reseller can document (i) is or (through no improper action or inaction by Reseller or any affiliate, agent, consultant or employee) becomes generally known to the public, or (ii) was properly in its possession or known by it without restriction prior to receipt from OpenVPN, (iii) was rightfully disclosed to it by a third party without restriction or (iv) is independently developed by Reseller without use of or reference to OpenVPN’s Proprietary Information. Reseller may make disclosures required by court order provided it uses diligent efforts to limit disclosure and to obtain confidential treatment or a protective order and has allowed OpenVPN to participate in the proceeding, and any information so disclosed shall continue to be treated as Proprietary Information for all other purposes. Reseller acknowledges and agrees that due to the unique nature of the OpenVPN's Proprietary Information, there may be no adequate remedy at law for any breach of its obligations hereunder, and therefore, that upon any such breach or any threat thereof, OpenVPN shall be entitled to seek appropriate equitable relief in addition to whatever remedies it might have at law. Reseller shall notify OpenVPN in writing immediately upon the occurrence of any such unauthorized release or other breach of which it is aware. The provisions of this Section shall remain in full force and effect following the expiration of any Non- Disclosure Agreements executed between the parties and shall survive for five (5) years beyond the expiration, non-renewal or termination of Reseller's approved status hereunder.

Except as expressly set forth herein, these terms do not grant any license under any patents or other intellectual property rights owned or controlled by or licensed to OpenVPN.

## ***12. Indemnification.***

The parties hereto expressly understand and agree that Reseller is an independent contractor in the performance of each and every part of this Agreement. Reseller is solely responsible for all of its employees and agents and its labor costs and expenses arising in connection therewith and is responsible for and shall indemnify OpenVPN, and its directors, employees and subsidiaries from any and all claims, liabilities, damages, debts, settlements, costs, attorneys' fees, expenses and liabilities of any type whatsoever that may arise on account of Reseller's activities or those of its employees or agents (including, without limitation, direct and indirect sub-resellers), including without limitation, providing unauthorized representations or warranties (or failing to effectively disclaim all warranties and liabilities on behalf of OpenVPN) to its Customers or breaching any term, representation or warranty of this Agreement.

## ***13. Warranty.***



OpenVPN warrants to Reseller that the Software shall, for a period of thirty (30) days following delivery ("*Warranty Period*"), substantially conform to the applicable Documentation, provided that the Software (a) has been properly accessed and used at all times and in accordance with the applicable Documentation; and (b) has not been modified or added to by persons other than OpenVPN or its authorized representative. OpenVPN shall, at its own expense and as its sole obligation and Reseller exclusive remedy for any breach of the foregoing warranty, either replace the applicable Software or correct any reproducible error in the Software reported to OpenVPN by Reseller in writing during the Warranty Period. If OpenVPN determines that it is unable to correct the error or replace the Software, OpenVPN will refund to Reseller all License fees actually paid by Reseller, in which case the License for the applicable Software and Reseller right to use such Software shall terminate.

EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, NEITHER OPENVPN NOR ANY OF ITS SUPPLIERS OR LICENSORS MAKES ANY WARRANTIES TO ANY PERSON OR ENTITY WITH RESPECT TO THE PRODUCTS OR ANY SERVICES, LICENSES OR OTHER SUBJECT MATTER OF THIS AGREEMENT, OPENVPN AND ITS SUPPLIERS DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. OPENVPN ALSO MAKES NO WARRANTY REGARDING NON-INTERRUPTION OF USE OR FREEDOM FROM BUGS. THE PRODUCTS ARE NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE WHERE FAILURE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SIGNIFICANT PHYSICAL OR ENVIRONMENTAL DAMAGE ("*HIGH RISK ACTIVITIES*"). USE OF THE PRODUCTS IN HIGH RISK ACTIVITIES IS NOT AUTHORIZED. NO PERSON IS AUTHORIZED TO MAKE ANY OTHER WARRANTY OR REPRESENTATION CONCERNING THE PRODUCTS OR THE MEDIA ON WHICH PRODUCTS ARE SUPPLIED AND/OR THEIR USE. RESELLER WILL MAKE NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, ON BEHALF OF COMPANY.

Reseller agrees to comply with all laws and regulations that are applicable to the business that Reseller transacts. Reseller agrees to indemnify and hold OpenVPN harmless for all liability or damages caused by Reseller's breach of this agreement or failure to comply with the terms of any provision hereof

Reseller, its officers, directors, employees, agents and affiliates, and anyone for whose acts or defaults they may be vicariously liable or anyone acting on behalf of any of them, shall not make any payments in cash or in kind, or grant or promise other benefits of any kind in violation of (i) any applicable anti-bribery Law in connection with or in any way relating to or affecting these terms and conditions, or (ii) OpenVPN's ABC policy hereinabove. Vendor acknowledges that international anti-corruption Laws, including, without limitation, the U.S. Foreign Corrupt Practices Act ("*FCPA*"), prohibit any direct or indirect payment/receipt of money or anything of value to/from any person (including but not limited to any government office, international organization, non-U.S. political party, party official or candidate for political office) for the purpose of obtaining, retaining or directing business, securing any improper advantage in the conduct of business or inducing the improper performance of any public or business-related function. Vendor represents and warrants that in the performance of its obligations under these terms and conditions or otherwise in connection thereto it has not made and agrees that it will not make any such prohibited payment.

#### **14. *Miscellaneous.***

The Reseller's rights and obligations and the licenses granted hereunder may not under any circumstances be assigned or transferred by Reseller to any third party without the prior written consent of OpenVPN (and any attempt to do so shall be void). An assignment by operation of law or a change of control (directly

or indirectly) shall be defined as an assignment or transfer hereunder. OpenVPN may assign and transfer its rights and the licenses granted hereunder without restriction. The provisions hereof are for the benefit of the parties only and not for any other person or entity. Any notice, report, approval, authorization, agreement or consent to or requested of OpenVPN required or permitted hereunder shall be in writing. No failure or delay in exercising any right hereunder shall operate as a waiver thereof, nor shall any partial exercise of any right or power hereunder preclude further exercise. If any provision shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this arrangement shall otherwise remain in full force and effect and enforceable.

These terms & conditions shall be deemed to have been made in and shall be construed pursuant to the laws of the State of California without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act.

This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter hereof and any waivers or amendments shall be effective only if made in writing, and any pre-printed or standard terms of any purchase order, confirmation or similar form, even if signed by the parties after the effectiveness hereof, shall have no force or effect.

IN THE EVENT OF A CONFLICT BETWEEN THESE TERMS & CONDITIONS AND A STATEMENT OF WORK, OR PURCHASE ORDER ISSUED BY RESELLER, THESE TERMS & CONDITIONS SHALL TAKE PRECEDENCE IN EVERY INSTANCE, UNLESS THE STATEMENT OF WORK OR PURCHASE ORDER (I) EXPRESSLY STATES THAT THE PARTIES DESIRED TO AMEND THESE TERMS, (II) SPECIFICALLY STATES THE SECTION OF THESE TERMS THAT WAS TO HAVE BEEN AMENDED, AND (III) IS EXECUTED BY AN AUTHORIZED SIGNATORY OF EACH PARTY.

The substantially prevailing party in any action to enforce these terms shall be entitled to recover its attorney's fees and costs in connection with such action. All rights not expressly granted are expressly reserved by OpenVPN. Reseller is responsible for all acts and omissions of its affiliates or any person or entity whom Reseller is permitted under these terms to allow the use of or access to the Product.