**RESELLER AGREEMENT**

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| **Company Name:** |  |
| **Sales Territory:** | **Americas  EMEA  APJ** |
|  |  |
| **Channel Partner Program:** | |
| **Authorized Reseller** (Check box) | |
| **U.S. Federal Government Reseller** | |
| **Products**  **On-premise software product**  **SaaS offering** | |

This Reseller Agreement (“Reseller Agreement” or “Agreement”) is made as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ (the “Effective Date”), by and between Fidelis Cybersecurity, Inc., a Delaware corporation, having its principal place of business at 4500 East West Highway, 4th Floor, Bethesda, MD 20814 (“Fidelis”), and the company named above, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ organized under the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, having its principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Reseller” or “Partner”).

1. **Definitions.**

Capitalized terms shall have the meanings set forth in this section, or in the section where they are first used.

* 1. “**Channel Partner Program Materials**” shall mean the program materials available at Fidelis’ channel partner portal as of the Effective Date, which can be accessed through Fidelis’ corporate web site at www.fidelissecurity.com. Such materials include, as applicable, the Channel Partner Program summary materials, the current Fidelis Price List, Not-For-Resale product pricing and other materials that from time to time may be updated by Fidelis, which shall be provided to Seller and made a part of this Agreement.
  2. "**Documentation**" shall mean, with respect to any particular Product, Fidelis’ standard user documentation generally made available by Fidelis with such Product.
  3. “**End User**” shall mean the final purchaser of the Product who is located in the Territory and acquires the Products from Reseller for its own use and not for resale or distribution to other parties.
  4. “**EULA**” shall mean the Fidelis End User License Agreement for the Software, as may be modified from time to time; the current version of the EULA is available at www.fidelissecurity.com/contract/fidelis-eula.pdf.
  5. **“Governmental Authority**" shall mean any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of the government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of this organization or authority have the force of law), or any arbitrator, court or tribunal of competent jurisdiction.
  6. “**Marks**” or “**Trademarks**” shall mean those trade names, trademarks, service marks and logos of Fidelis contained on, in or with the Products or used by Fidelis in connection with promoting its products, services and business.
  7. “**Price List**” shall mean Fidelis’ current U.S. price list made available as part of the Channel Partner Program Materials.
  8. “**Product**” or “**Products**” shall mean all Fidelis product(s) as listed in the Price List, including the Software, SaaS Offering, and Professional Services, as Fidelis may amend in its sole discretion from time to time.
  9. “**SaaS Offering**” shall mean the cloud-based software and services, including any hardware and/or Software used in connection therewith.
  10. “**SaaS Terms of Use**” shall mean Fidelis’ standard terms of use license agreement for the SaaS Offering, as may be modified from time to time; the current version of the EULA is available at <https://www.fidelissecurity.com/EULA>.
  11. “**Professional Services**” shall professional (implementation) services and training services, as listed in the Price List.
  12. “**Software**” shall mean the software programs developed by or for Fidelis and listed on Fidelis’ Price List, and/or included in the Products or separately provided by Fidelis for use in connection with the operation of the Products.
  13. “**Territory**” shall mean the territory indicated on the first page of this Agreement.
  14. “**User Agreement**” shall mean (a) for the Software, the EULA, and (b) for the SaaS Offering, the SaaS Terms of Use.

Other defined capitalized terms used herein are defined in context.

1. **Distribution.**
   1. **Appointment as Non-Exclusive Reseller.** Fidelis hereby appoints Reseller, and Reseller accepts the appointment, to act as a Fidelis-authorized reseller of the Products and Services solely to End Users located in the Territory during the Term, subject to the terms and conditions of this Agreement. Fidelis hereby grants to Reseller a personal, nonexclusive and nontransferable right, during the Term, (a) to market and distribute the Products and Services pursuant to Purchase Orders originating in the Territory, for shipment or delivery to End Users in the Territory; and (b) to demonstrate the Products and Services to End Users located in the Territory.
   2. **Fidelis Software**. Subject to the terms and conditions of this Agreement, Fidelis hereby grants to Reseller a non-exclusive, non-transferable right and license during the Term to: (a) distribute copies of Fidelis Software ordered pursuant to this Agreement to End Users within the Territory in accordance with the terms of this Agreement; (b) grant such End Users a non-exclusive, non-transferable, non-sublicenseable, revocable right and license, without the right to sublicense, to install and operate the Fidelis Software in machine-readable, executable, object-code format in accordance with the Documentation for such End User’s internal business purposes, but only after the End User agrees to the EULA; or (c) any subset of, or lesser rights than, the rights and licenses in (b). As between the parties to this Agreement, all Fidelis Software licenses sold pursuant to any Purchase Order are sold directly to End User. Prior to End User installing and/or using the Software, Reseller will cause each End User (and each authorized user of End User) to execute the EULA. Notwithstanding anything in this Agreement to the contrary, Reseller may not license the Software to any third party; only distribute copies subject to the acceptance of the EULA.
   3. **Fidelis SaaS** **Offering**. Subject to the terms and conditions herein, Reseller shall be permitted to authorize End Users for whom Reseller remitted the applicable fees to access the features and functions of the SaaS Offering, only after the Authorized User has agreed to the SaaS Terms of Use with Fidelis, provided that (i) Reseller may not distribute, sublicense, or otherwise convey any rights in the Fidelis SaaS Offering, except for the right to access the application to obtain the Services paid for by Reseller by End Users. Reseller agrees that it will at all times comply with the SaaS Terms of Use when accessing the Fidelis SaaS Offering as permitted under this Agreement. Prior to End User accessing the Fidelis SaaS Offering, Reseller will cause each End User (and each authorized user of End User) to execute the SaaS Terms of Use.

**Support Services**. Fidelis will provide End Users with the support services in accordance with the terms of its Maintenance and Support Agreement, available at https://www.fidelissecurity.com/maintenance-and-support-agreement, which may be updated from time to time. With respect to the SaaS Offering, Fidelis will use commercially reasonable efforts to keep the SaaS Offering operational and available to Subscriber in accordance with the Service Level Agreement available at <https://www.fidelissecurity.com/Fidelis_SLA_Cloud>, which may be updated from time to time.

* 1. **User Agreements**. Reseller may not distribute or make available any Fidelis Product to any End User or other third party who has not executed a User Agreement for such Product. Reseller understands and acknowledges that circumstances may arise from time to time in which Fidelis may desire or be required to amend the applicable User Agreement. Reseller will require End Users to sign or execute by “click to accept” means a copy of Fidelis’ then-current User Agreement, prior to End User’s use. In the event Fidelis wishes to exercise its audit rights under the EULA on an End User, Fidelis will first request that Reseller perform such audit on Fidelis’ behalf.
  2. **Restrictions**. Reseller will not market, distribute or use the Products or the Fidelis Trademarks for any purposes beyond the scope of the licenses granted in this Agreement. Reseller will undertake all measures necessary to ensure that its use of the Products complies in all respects with: (a) any contractual or other legally binding obligations of Fidelis to any third party, provided that Fidelis has notified Reseller with respect to any such obligations; and (b) all applicable laws, statutes, regulations, ordinances or other rules promulgated by governing authorities having jurisdiction over the Parties. Reseller will not enter into any contractual relationship or other legally binding obligation with any third party which will have the purpose or effect of encumbering the use by Fidelis of the Products. Without limiting the foregoing, Reseller will not: (a) assign, sublicense, sell, lease or otherwise transfer or convey, or pledge as security or otherwise encumber, Reseller’s rights under the licenses granted under this Agreement; (b) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any component of the Products is compiled or interpreted, and Reseller hereby acknowledges that nothing in this Agreement will be construed to grant Reseller any right to obtain or use such source code; (c) use the Products in any time-sharing or service bureau arrangement, including, without limitation, any use to provide services or process data for the benefit of, or on behalf of, any third party; (d) copy or duplicate the Products except as expressly permitted herein; (e) market or distribute the Products in any form other than in the form delivered by Fidelis to Reseller; or (f) combine or integrate the Products with hardware, software or technology not provided or authorized by Fidelis hereunder.
  3. **Delivery.**
     1. Fidelis Software. Reseller will provide all information and documents reasonably requested by Fidelis in order to permit Fidelis to make the applicable Software available for a given End User. Software and Documentation will be made available to Reseller by electronic software transfer on an Fidelis server that can be accessed via the Internet (the “FTP Server”), and Reseller will be notified electronically of such availability. Reseller agrees that upon availability of the Software and Documentation on the FTP Server, Fidelis will have fulfilled its obligation to deliver the Software and Documentation to Reseller and End User. Reseller is responsible for: (a) providing Fidelis with any change in the End User’s contact email address; and (b) End User obtaining access to the Internet and retrieving the Software and Documentation from the FTP Server.
     2. Fidelis SaaS Offering. As soon as commercially practicable after the Effective Date and each accepted Purchase Order for Fidelis SaaS, Fidelis will specify to Reseller any access codes, passwords, technical specifications, connectivity standards or protocols, or any other relevant procedures, to the limited extent necessary to enable an End User to receive access to the features and functions of the Fidelis SaaS Offering.
     3. Third Party Applications. Reseller understands and acknowledges that the Products may contain certain open source and/or third-party applications, as identified in the Documentation (“**Third-Party Software**”). Reseller agrees and acknowledges that such Third-Party Software is not licensed by Fidelis to Reseller or End Users pursuant to the provisions of this Agreement or any other agreement, and that this Agreement may not be construed to grant any such right or license. Reseller and End Users will have only such rights and/or licenses, if any, to use and distribute the Third-Party Software as are set forth in the relevant agreements listed in the Documentation.

1. **Reseller Obligations.** 
   1. **Marketing.** Reseller shall, in good faith and at its own expense:
      1. market, advertise, promote and resell the Products and Services in a manner that reflects favorably at all times on the Products, and the good name, goodwill and reputation of Fidelis, and shall use its best efforts to maximize the sales volume of the Products;
      2. develop and execute a marketing plan sufficient to fulfill its obligations under this Agreement;
      3. have sufficient knowledge of the industry and products competitive with each of the Products (including specifications, features and benefits) so as to be able to explain in detail to the End Users (i) the differences between the Product and competing products; and (ii) information on standard protocols and features of each Product;
      4. observe all directions and instructions from Fidelis relating to the marketing, advertisement and promotion of the Products, to the extent that such marketing, advertisement and promotions refer to the Products or otherwise use Fidelis’ Trademarks;
      5. promptly notify Fidelis of any complaint or adverse claim about any Product or its use of which Reseller becomes aware;
      6. demonstrate and promote the features, pricing and availability of the Products, including without limitation, advertising the Products in Reseller catalogs, in Reseller’s print and electronic catalogs as soon as possible after the Effective Date, and trade publications within the Territory, participating in appropriate trade shows and events, participating in direct marketing and electronic promotion, and feature the Products in any relevant event or program within the Territory that Reseller attends or executes, and directly soliciting orders from End Users for the Products and Services. Reseller also agrees to promote the Products throughout its own organization;
      7. assist Fidelis in assessing End User requirements for the Products, including modifications and improvements thereto, in terms of quality, design, functional capability, and other features; and
      8. upon Fidelis’ reasonable request, provide to Fidelis market research information regarding competition and changes in the market within the Territory.
   2. **Resources.**
      1. Reseller shall commit sufficient resources to fulfill its obligations hereunder. Without limiting the foregoing, Reseller agrees to maintain and train, on an on-going basis, a sufficient staff of qualified sales, marketing, and technical pre-sales personnel familiar with the applications, features, benefits, operation and configuration of the Products.
      2. Unless otherwise agreed in writing by the parties, Reseller shall be responsible for all costs associated with its sales and marketing efforts related to the Products.
      3. Reseller shall designate and identify a technical and business contact, as set forth on Exhibit A, who will be responsible for interfacing with Fidelis during the Term. Reseller may change the designated contact by written notice to Fidelis, providing as much notice as is reasonably practicable under the circumstances. If a designated contact is changed, Reseller shall use commercially reasonable efforts to ensure that there is a smooth transition of responsibilities. In the event that a designated contact leaves his/her employment with the Reseller before a replacement is identified, Reseller shall identify a replacement within thirty (30) days of such departure.
   3. **Business Reviews and Planning.** Fidelis and Reseller will meet regularly, but not less than once every business quarter, to review the business relationship. On an annual basis, or more frequently as appropriate, the parties will develop a mutually agreeable business plan to address specific planned sales and marketing activities.
   4. **U.S. Federal Government Reseller.** Reseller may be designated as a “U.S. Federal Government Reseller” subject to the terms of the U.S. Federal Government Reseller Terms and Conditions Addendum (Exhibit C). If Exhibit C is executed by the parties and attached hereto, the terms and conditions of Exhibit C are deemed incorporated herein by reference.
2. **Fidelis Obligations.** 
   1. **Marketing Materials.** Fidelis shall supply Reseller, at no cost, with information and materials determined by Fidelis to be useful in the promotion of the Products, including marketing and technical information concerning the Products, brochures, instructional material, advertising literature, and other Product data, all in the English language. Fidelis may provide additional marketing and training materials or events for an additional fee, upon the parties’ agreement in writing, which writing shall set forth the specific materials or events to be provided, the schedule (as applicable), and the applicable fees.
   2. **Training.** Fidelis shall provide Reseller, in its discretion, with appropriate sales training for Reseller’s sales staff. Any such sales training shall take place at a mutually agreed upon time and place, and may be provided at such rates as Fidelis deems appropriate.
   3. **Events.** In its sole discretion, Fidelis may invite Reseller to participate in selected Fidelis-sponsored trade shows, and other marketing events in the Territory. Fidelis reserves the right to charge for participation in certain marketing events or activities.
3. **Order of Preference.** This Agreement, along with all Exhibits and other documents incorporated herein by specific reference constitutes the Parties' sole and entire agreement regarding the subject matter of this Agreement and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding this subject matter. In the event of an inconsistency between any of the provisions of this Agreement, the inconsistency shall be resolved by giving precedence to the provisions of this Agreement in the following order:

(a) The U.S. Federal Government Reseller Terms and Conditions Addendum (Exhibit C);

(b) The User Agreements;

(c) The terms and conditions of this Reseller’s Agreement;

(d) The prices, quantities, and shipping terms set forth in the Purchase Order.

1. **Product Packaging Alterations.** Reseller shall not remove, alter or obscure any copyright, trademark, patent or other proprietary notice, label, warning, disclaimer or other marking or documentation on or in the Products, including without limitation, the User Agreement, or other terms or conditions that are on, in or packaged with the Products (collectively, “**Notices**”). In the event that Reseller is authorized to copy the Products or Documentation in any manner, Reseller will ensure that all Notices are reproduced as well. Reseller shall not add any additional trademarks or other proprietary notices, labels, markings or documentation on or in the Products without the prior written consent of Fidelis.
2. **Prices** 
   1. **Price List.** Prices for Products are set forth in the Price List, less the applicable discount (if any) specified in the Discount Schedule set forth and attached hereto as Exhibit B. The Discount Schedule, which is hereby incorporated by reference, may be modified from time to time by Fidelis in accordance with the terms of this Agreement.
   2. **Price Modifications.** Fidelis may modify the Price List at any time, including adding or removing Products and increasing or decreasing prices, upon notice to Reseller of any such change. Changes shall apply only to orders received by Fidelis after the effective date of the price change.
   3. All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Governmental Authority (“**Taxes**”) on any amounts payable by Reseller under this Agreement. Unless otherwise agreed between the parties, Reseller shall be responsible for all charges, costs and taxes; provided, that, Reseller is not responsible for any taxes imposed on, or regarding, Supplier's income, revenues, gross receipts, Personnel or real or personal property or other assets. In Fidelis’ sole discretion, such Taxes may be added to the applicable price or may be billed separately. Reseller shall pay all Taxes on or before their due dates. In the event Fidelis is required at any time to pay any Taxes, Reseller shall reimburse Fidelis therefore promptly on demand.
3. **Payment Terms.** Reseller shall pay all amounts invoiced hereunder within thirty (30) days from the date of Fidelis’ invoice. All payments shall be made to Fidelis in US dollars, or, if requested by Fidelis, the applicable currency of the Territory, via wire transfer or in such other manner as the parties shall reasonably designate. Based on Fidelis’ assessment, in its sole discretion, of Reseller’s financial situation and/or payment history, Fidelis may refuse to extend such thirty (30) day credit terms for particular orders placed under this Agreement. Under such circumstances, Fidelis may reject the order or require advance payment or other indication of security as a condition of order fulfillment. In the event any payments to be made under this Agreement are overdue, such payments shall accrue interest at the rate of one and one-half percent (1.5%) per month or the maximum percentage permitted by law, whichever is lower.
4. **Purchase Order Procedure.**
   1. “**Purchase Order**” means a written purchase order issued by Reseller to Fidelis.
   2. All Purchase Orders for Products are subject to acceptance by Fidelis, and Fidelis reserves the right to reject any Purchase Order in its sole discretion. Upon acceptance, Fidelis will issue an estimated shipment schedule and will use commercially reasonable efforts to meet such schedule. Unless otherwise agreed between the parties, the shipment schedule will be based on Fidelis’ standard lead times, which Fidelis may vary from time to time in its sole discretion.
   3. Fidelis may, in its sole discretion, without liability or penalty, make partial shipment of Products. Each shipment will constitute a separate sale and Reseller shall pay for the Products shipped whether such shipment is in whole or partial fulfillment of Reseller’s Purchase Order. The quantity of any installment of Products as recorded by Fidelis on dispatch from Fidelis’ warehouse or place of business is conclusive evidence of the quantity received on delivery unless Reseller can provide conclusive evidence proving the contrary.
   4. The Reseller’s issuance of a Purchase Order to Fidelis, unless otherwise stated on the accepted Purchase Order, is confirmation that the Reseller is assuming all credit risk associated with end-user payment to the Reseller. The payment to Fidelis, from the Reseller, will not be contingent on the End-user payment to the Reseller.
5. **Shipping and Risk of Loss.** Unless otherwise agreed to in writing, Fidelis will select the mode of shipment and the carrier for the Software. Fidelis will not purchase insurance for goods in transit above the standard insurance offered by the carrier. Reseller shall be responsible for payment of all freight, shipping, handling, insurance and other transportation charges. Title to Software and hardware and all risk of loss of or damage to Software and hardware will pass to Reseller upon delivery by Fidelis to the carrier, freight forwarder, Reseller or End User, whichever occurs first. For domestic (U.S.) sales, Software will be shipped from Fidelis’ premises (factory or facility) to the “Ship To” address indicated on the Purchase Order. For international (non-U.S.) sales, Products will be shipped “EXW Seller’s Premises” (INCOTERMS® 2010) from Fidelis’ factory or facility to the “Ship To” address indicated on the Purchase Order.
6. **Reporting.** Upon request from Fidelis, Reseller shall provide certain information to Fidelis, including Products sold, listed by part number and serial number, during the period covered by the request, as well as the End User name, contact information (both for product logistics and support delivery) and date of shipment or service commencement date for each sale, and start/end date for each maintenance services contract purchased, as well as any other information Fidelis may reasonably request upon 30 days’ written notice for new reporting requests). The report shall be provided in such format as Fidelis may reasonably require. End User names furnished are intended for use solely for purposes of compliance, support planning, product safety notices, order processing and scheduling, marketing statistical use and Fidelis internal reviews.
7. **Term.** Unless terminated in accordance with Section 13, the term of this Agreement (“**Term**”) will begin on the Effective Date and will expire on the first anniversary of the Effective Date (“**Initial Term**”). At the end of the Initial Term and each Renewal Term, the Agreement will automatically renew for an additional one-year term (each a “**Renewal Term**”), unless either party provides the other party with a notice of its intent not to renew at least thirty (30) days prior to the expiration of the upcoming renewal date.
8. **Termination.**
   1. **For Convenience***.* Either party may terminate this Agreement for any reason or for no reason at any time upon ninety (90) days written notice to the other.
   2. **For Material Breach***.* Either party shall have the right to terminate this Agreement by written notice sent to the other if the other party breaches any material provision of this Agreement and has failed to cure such breach or has failed to commence a curing action that is satisfactory to the non-breaching party within thirty (30) days following the receipt of such notice. Fidelis reserves the right to determine that a breach is incapable of cure and to therefore terminate this Agreement effective immediately on written notice to Reseller.
   3. **For Insolvency Event***.* This Agreement shall terminate immediately upon written notice if Reseller becomes the subject of any proceeding under any bankruptcy, insolvency or debtor's relief law, makes an assignment for the benefit of a creditor or is unable to meet its current financial obligations as they come due, or if a receiver is appointed to take possession of any part of Reseller’s assets.
   4. **Due to Merger.**Fidelis shall have the right to terminate this Agreement immediately by written notice sent to Reseller in the event that there is (i) a merger, consolidation or reorganization of Reseller with or into another corporation or other entity, (ii) creation of a new majority interest in, or change in majority ownership of, Reseller, (iii) a sale of all or substantially all of Reseller’s assets, or (iv) Reseller makes any assignment in violation of this Agreement.
9. **Effect of Expiration or Termination.** 
   1. **Outstanding Orders***.* Upon the effective date of termination of this Agreement for any reason, all outstanding orders will be automatically canceled and all outstanding invoices will become immediately due and payable.
   2. **License to Market and Distribute.** Reseller's right to market and distribute the Products and to use Fidelis’ Marks will cease immediately upon expiration or termination. Termination or expiration of this Agreement shall not affect licenses to copies of Products properly delivered to End Users prior to the effective date of the termination or expiration.
   3. **Existing Payment Obligations.** Termination or expiration shall not release either party from its obligation to pay any fees accruing prior to the date of the termination or expiration.
   4. **Survival.**The following provisions of this Agreement, as well as any others which, by their nature, would reasonably be expected to survive expiration or termination of this Agreement, will survive such expiration or termination: Sections 1, 7, 8, 11, 14.4-14.6, and 16-24.
   5. **No Compensation for Termination***.* Without prejudice to any other remedies which either party may have in respect of any breach of this Agreement, neither party shall be entitled to any compensation from the other party in connection with the termination of this Agreement.
   6. **Confidential Information.** Reseller shall, at Fidelis’ direction, either return or destroy all Fidelis Confidential Information in Reseller’s possession as of the date of termination or expiration of this Agreement.
10. **Representations and Warranties**
    1. **Reseller.**  Reseller represents and warrants to Fidelis that (i) it is qualified and licensed to do business and in good standing in every jurisdiction where qualification and licensing is required for purposes of this Agreement; (ii) it has the full right, power and authority to enter into this Agreement, and to perform its obligations hereunder; (iii) the execution of this Agreement by its representatives whose signature is set out at the end hereof has been duly authorized by all necessary corporate actions of Reseller; and (iv) when executed and delivered by the parties, this Agreement will constitute the legal, valid and binding obligation of Reseller, enforceable against Reseller in accordance with its terms.
    2. **Fidelis.** Fidelis makes certain limited warranties regarding the Products (each, a “Limited Warranty”) solely to and for the benefit of the End User, which will be set forth in the User Agreement. A “**Defective Product**” is any Product not conforming to the warranties referenced above. No warranty is extended to Reseller under this Agreement.
    3. **Warranty Limitations**. Limited warranties shall not apply where the Product (i) has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to instructions issued by Fidelis; (ii) has been reconstructed, repaired or altered by persons other than Fidelis or its authorized representatives; or (iii) has been used with any hardware or product that has not been previously approved in writing by Fidelis.
    4. **Remedies**. During the warranty period, notwithstanding anything in this Agreement to the contrary, Fidelis’ liability under any Limited Warranty shall be discharged, in Fidelis’ sole discretion and at its expense, by (i) repairing or replacing the Defective Product; or (ii) crediting or refunding the price of the Defective Product, less any applicable discounts, rebates or credits. Fidelis shall be responsible for all costs and risk of loss associated with the delivery of repaired or replaced Products to Reseller. Reseller shall be responsible for all costs and risk of loss associated with the delivery of Defective Products to Fidelis and all costs and risk of loss associated with delivery of the Products to End User.

All claims for breach of a Limited Warranty must be received by Fidelis no later than thirty (30) days after the expiration of the limited warranty period of the Product. Except as set forth in this Section 15.4 or as otherwise agreed between the parties, Reseller shall have no right to return for repair, replacement, credit or refund any Product. Reseller shall not service, repair, modify, alter, replace, reverse engineer or otherwise change any Product, in whole or in part, either itself or by or through any third party.

THIS SECTION 15.4 SETS FORTH RESELLER’S SOLE REMEDY AND FIDELIS’ ENTIRE LIABILITY FOR ANY BREACH OF ANY WARRANTY RELATING TO THE PRODUCTS.

* 1. **Warranty Disclaimers.** EXCEPT FOR THE LIMITED EXPRESS WARRANTIES SET FORTH IN SECTION 15.4, (A) NEITHER FIDELIS NOR ANY PERSON ON FIDELIS’ BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, INCLUDING ANY WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED; AND (B) RESELLER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY REPRESENTATION OR WARRANTY MADE BY FIDELIS, OR ANY OTHER PERSON ON SUPPLIER’S BEHALF, EXCEPT AS SPECIFICALLY DESCRIBED IN SECTION 15.4 OF THIS AGREEMENT. FIDELIS’ EXPRESS WARRANTIES WILL NOT BE ENLARGED, DIMINISHED OR AFFECTED BY, AND NO OBLIGATION OR LIABILITY WILL ARISE OUT OF FIDELIS’ RENDERING OF TECHNICAL OR OTHER ADVICE OR SERVICE IN CONNECTION WITH THE PRODUCTS OR SUPPORT SERVICES. RESELLER SHALL TAKE SUCH ACTIONS AS ARE REASONABLY NECESSARY TO ENSURE THE ENFORCEABILITY OF THE AFOREMENTIONED DISCLAIMERS AND SHALL UNDERTAKE NO ACTION THAT WOULD INCREASE FIDELIS’ OBLIGATIONS OR LIABILITY TO ANY END USER OR OTHER PARTY WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION, MAKING ANY REPRESENTATIONS OR WARRANTIES REGARDING THE PRODUCTS INCONSISTENT WITH THOSE IN THE EULA.
  2. **Third Party Products.** Reseller acknowledges and agrees that Products ordered by Reseller under this Agreement may contain, be contained in, incorporated into, attached to or packaged together with products manufactured by a third party (“**Third Party Products**”). Third Party Products are not covered by the Limited Warranty. For the avoidance of doubt, Fidelis makes no representations or warranties regarding any Third-Party Products.

1. **Indemnification by Fidelis.** 
   1. Subject to Section 17, Fidelis will defend, indemnify and hold Reseller harmless from and against all claims, losses, liabilities, damages, expenses, including reasonable attorney’s fees and costs, arising out of or resulting from any third party claim against Reseller to the extent that such claim is based on a claim that the use of the Products as licensed under the User Agreement infringes any U.S. patent, U.S. copyright, or U.S. federally registered trademark, or that the Products incorporate any misappropriated trade secrets. Fidelis’ obligation hereunder is subject to the conditions that: (a) Reseller promptly notifies Fidelis in writing of the claim; (b) Fidelis retains the right to sole control of the defense and settlement of all intellectual property claims against Reseller related to the Products; (c) Reseller fully cooperates with Fidelis in such defense or settlement; (d) the alleged infringement is based solely on the use of the Products as licensed under the User Agreement, and (e) should any Product become, or in Fidelis’ opinion if any Product is likely to become, the subject of any such claim, Reseller permits Fidelis, at Fidelis’ sole option, to procure for Reseller and End Users the right to continue using the Products, to replace or modify it or them so that they become non-infringing, or to grant Reseller a credit for such unused Products of the amount paid by Reseller to Fidelis for the Products less any credits or allowances issued, or, if Products are used, as depreciated on a three-year, straight line basis, and accept its return.

* 1. Fidelis shall have no liability hereunder with respect to any claims of infringement or misappropriation arising from (i) the combination of Products with equipment, devices, firmware or software not furnished by Fidelis, (ii) any modification of Products by Reseller or any End User, or (iii) if Software is used, failure by Reseller or End User to install or have installed changes or revisions or updates in accordance with Fidelis’ instructions.
  2. This Section 16 constitutes the sole and exclusive remedy of Reseller and liability of Fidelis in respect of the subject matter hereof.

1. **Indemnification by Reseller.** Reseller will indemnify, defend and hold Fidelis harmless against all claims, losses, liabilities, damages, expenses, including reasonable attorney’s fees and costs, arising out of or resulting from (i) Reseller’s marketing, distribution or resale of the Products, including without limitation any claims or statements regarding the Products inconsistent with or in addition to those set forth in the User Agreement or Fidelis’ applicable documentation, (ii) bodily injury or damage to tangible personal property that is caused by any negligent or intentional act or omission of Reseller or any of its or their employees, agents, contractors or representatives, or (iii) alleged or actual infringement of any patent, copyright or other proprietary right that results from a claim that is caused by Reseller.
2. **LIMITATION OF LIABILITY.**
   1. EXCEPT FOR LIABILITY ARISING FROM A PARTY’S BREACH OF THE OTHER PARTY’S INTELLECTUAL PROPERTY, INDEMNIFICATION OBLIGATIONS, OR BREACH OF CONFIDENTIALITY OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF BUSINESS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE PRODUCTS, SOFTWARE OR ANY OTHER PRODUCTS, MATERIALS OR SERVICES FURNISHED HEREUNDER, EVEN IF RESELLER OR FIDELIS, AS APPLICABLE, HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
   2. EXCEPT FOR LIABILITY ARISING FROM A PARTY’S BREACH OF THE OTHER PARTY’S INTELLECTUAL PROPERTY, INDEMNIFICATION OBLIGATIONS, OR BREACH OF CONFIDENTIALITY OBLIGATIONS, EACH PARTY’S LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE LESSER OF: (i) THE TOTAL AMOUNT PAYABLE BY RESELLER TO FIDELIS UNDER THE APPLICABLE PURCHASE ORDER(S) OR FIVE HUNDRED THOUSAND U.S. DOLLARS (U.S. $500,000).
   3. THE LIMITATIONS STATED IN THIS SECTION 18 SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER THE ASSERTED LIABILITY OR DAMAGES ARE BASED ON CONTRACT (INCLUDING BREACH OF WARRANTY), TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, STATUTE, OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.
3. **Confidentiality.** For purposes of this Agreement, “Confidential Information” shall mean information, in whatever form, pertaining to Fidelis’ business, finances, technology, marketing/product strategy and product offerings (including, without limitation, the Products and pre-release information about any of Fidelis’ or its licensors’ products or software) that is identified as such, or which Fidelis would reasonably expect Reseller to understand is proprietary or confidential. Reseller agrees not to use Confidential Information except to the extent necessary to implement the purposes of this Agreement. Reseller shall limit disclosure of Confidential Information received from Fidelis to those employees or agents of Reseller whose use of or access to the Confidential Information is strictly necessary to carry out Reseller’s obligations under this Agreement. Reseller shall not disclose such Confidential Information to any third party. Reseller shall exercise commercially reasonable efforts to protect the integrity and confidentiality of the Confidential Information, and shall ensure that all employees, agents or contractors who have access to the Confidential Information have entered into agreements with Reseller with terms at least as protective of the Confidential Information as the provisions of this Section 19. Confidential Information shall not include information that Reseller can demonstrate: (a) was in Reseller’s possession at the time of disclosure without confidentiality restriction prior to disclosure hereunder, (b) is or has become generally available to the public through no act or omission of Reseller, (c) has been rightfully received by Reseller from a third party without restriction on use or disclosure or (d) is independently developed by Reseller without use of the Confidential Information.
4. **Ownership Rights; Trademarks.** 
   1. Subject to the express rights and licenses granted by Fidelis in this Agreement, Reseller acknowledges and agrees that: (i) the Products and Professional Services, and any and all of Fidelis’ intellectual property rights are the sole and exclusive property of Fidelis or its licensors; (ii) Reseller shall not acquire any ownership interest in any of Fidelis’ intellectual property rights under this Agreement; (iii) any goodwill derived from the use by Reseller of Fidelis’ intellectual property rights inures to the benefit of Fidelis or its licensors, as the case may be; (iv) if Reseller acquires any intellectual property rights in or relating to any product (including any Product) purchased under this Agreement (including any rights in any Trademarks, derivative works or patent improvements relating thereto), by operation of law, or otherwise, these rights are deemed and are hereby irrevocably assigned to Fidelis or its licensors, as the case may be, without further action by either Party; and (v) Reseller shall use Fidelis’ intellectual property rights solely for the purposes of performing its obligations under this Agreement and only in accordance with this Agreement and the instructions of Fidelis.
   2. Subject to the terms and conditions hereof, Fidelis grants Reseller a limited, non-exclusive, non-transferable, revocable license for the duration of the Term to use Fidelis’ trademarks, trade names, service marks and/or service names (“Trademarks”) in Reseller’s marketing of the Products (the “Trademark License”), provided that such use is in accordance, at all times, with Fidelis’ trademark usage guidelines then in effect. Such use must reference the Trademarks as being owned by Fidelis. Nothing in this Agreement grants Reseller any rights in or to use the Trademarks, except in accordance with the Trademark License, and Reseller’s use of the Trademarks will inure to the benefit of Fidelis. The rights granted to Reseller under the Trademark License will terminate upon any termination or expiration of this Agreement or otherwise upon written notice from Fidelis. Upon such termination or expiration, Reseller will no longer make any use of the Trademarks. Fidelis will have the exclusive right to own, use, hold, apply for registration for, and register the Trademarks during the term of, and after the expiration or termination of, this Agreement; Reseller will neither take nor authorize any activity inconsistent with such exclusive right.
   3. Upon expiration or earlier termination of this Agreement, Reseller's rights under this Agreement, including Section 2, shall cease immediately; and Reseller shall immediately cease all display, advertising, promotion and use of all of Fidelis’ Trademarks and shall not thereafter use, advertise, promote or display any trademark, trade name or product designation or any part thereof that is similar to or confusing with Fidelis’ Trademarks or with any trademark, trade name or product designation associated with Fidelis or any Product.
5. **Compliance with Laws.** 
   1. Reseller represents and warrants that it will comply with (i) the laws applicable to Reseller and its business and activities within the Territory; (ii) U.S. laws applicable to export from the United States of controlled commodities, software, or technology, or embargoes, sanctions, and boycotts, including without limitation, the Arms Export Controls Act (22 U.S.C. Ch. 39), the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 et seq.), the Trading With the Enemy Act (50 U.S.C. app. §§ 1 et seq.), the Export Administration Act of 1979 (50 U.S.C. app. §§ 2401 et seq.), International Boycott Provisions of Section 999 of the U.S. Internal Revenue Code of 1986, and all rules, regulations, and executive orders relating to any of the foregoing, including, but not limited to, the Export Administration Regulations (15 C.F.R. §§ 730 et seq.), the International Traffic in Arms Regulations (22 C.F.R. §§ 120 et seq.), and the regulations administered by the Office of Foreign Assets Control (“OFAC”) of the U.S. Department of the Treasury (“U.S. Export Control Laws”); (iii) U.S. laws with extraterritorial application, including without limitation, the U.S. Foreign Corrupt Practices Act of 1997, as amended (“FCPA”); and (iv) all other applicable laws in jurisdictions in which the Reseller engages in business that govern corruption, bribery, kickbacks, ethical business conduct, fraud, money laundering, export control, economic sanctions and embargoes, and boycotts.
   2. Reseller shall not, directly or indirectly through third parties, offer, promise, authorize, pay, provide, accept, or solicit any bribe, kickback, or improper payment, gratuity, favor, or benefit to or from (i) any Public Official; (ii) any individual, entity, or organization while knowing that all or a portion of that money or thing of value will be offered, promised, or provided to a Public Official; or (iii) any other individual, entity, or organization, to obtain, retain, or direct any business or for any other improper purpose. “Public Official” means (a) any director, officer, employee, representative, department, agency, official, corporate entity, instrumentality, or subdivision of any government, military, government-owned or affiliated entity or organization, or any public international organization, or (b) any candidate for public office, any political party, or any official of a political party.
   3. Reseller agrees that it shall not (i) export, reexport, or transfer any of the Products outside of the Territory without first obtaining Fidelis’ prior written consent and any applicable export licenses to the extent required under applicable export control laws; (ii) export, reexport, or transfer any Products to any country or territory that is subject to an embargo by the U.S. government (currently, Cuba, Iran, Sudan, Syria, and the Crimea Region of the Ukraine) (collectively, “Embargoed Countries”); (iii) export, reexport, or transfer any Products to any instrumentality, agent, entity, or individual that is located in, or acting on behalf of or directly or indirectly owned or controlled by any governmental entity of, any Embargoed Country; (iv) export, reexport, or transfer any Products to a national of an Embargoed Country; and (v) engage in any transactions or dealings with any organization, entity, or individual identified on any list of designated and prohibited parties maintained by the U.S. government, including the List of Specially Designated Nationals and Blocked Persons, the Foreign Sanctions Evaders List, or the Sectoral Sanctions Identification List, which are maintained by OFAC, or the Entity List, Denied Persons List, or Unverified List, which are maintained by the Bureau of Industry and Security of the U.S. Commerce Department.
   4. Reseller will immediately report to Fidelis (i) any concerns, suspicions, or actual knowledge of violations of the FCPA, other applicable anti-corruption laws, U.S. Export Control Laws, or any other applicable law, or (ii) if Reseller becomes the subject of any formal or informal investigation, prosecution, or government or judicial determination related to a violation of the FCPA, other applicable anti-corruption laws, U.S. Export Control Laws, or any other applicable law. Reseller will fully cooperate with Fidelis in Fidelis’ review or investigation in relation to an actual or potential violation of any applicable law or regulation.
6. **Force Majeure.** Neither party is liable for its failure or delay in performing its obligations under this Agreement due to strikes, wars, revolutions, acts of terrorism, fires, floods, severe weather, explosions, earthquakes, or otherwise acts of God, parts or labor shortages, government regulations, or other causes beyond its reasonable control.
7. **Assignment.** Reseller may not assign or transfer its rights or obligations under this Agreement (in whole or in part), whether by operation of law or otherwise, including in connection with a merger or acquisition, without Fidelis’ prior written consent, and any such attempted assignment or transfer shall be void. Fidelis may assign or otherwise transfer its rights, title and interest in and to this Agreement (or any part thereof), for any reason, whether by operation of law or otherwise, in conjunction with a change of ownership, merger, acquisition, or sale or transfer of all, substantially all or any part of its business or assets. Fidelis agrees to notify Reseller of any such assignment or transfer, and shall make reasonable commercial efforts to provide advance notice where feasible unless restricted by law or by a nondisclosure obligation.
8. **General.** 
   1. Any waiver, amendment or modification of any term of this Agreement will not be effective unless in writing and signed by authorized representatives of both parties.

* 1. The relationship between Fidelis and Reseller is solely that of independent contractors and not that of an agency, partnership or joint venture. Neither party shall have the authority to represent or bind the other in any way. The term “Partner” as used herein indicates a marketing, sales and service association of the parties, but does not indicate a legal partnership.
  2. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the law of the State of Delaware, USA. The parties expressly exclude the application of the Convention on Contracts for the International Sale of Goods to this Agreement. The Uniform Computer Information Transactions Act does not apply to this Agreement.
  3. The original of this Agreement has been written in English, and English is the governing language of the Agreement. Reseller waives any right it may have under the law of the Territory to have this Agreement written in any other language.
  4. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions will remain in full force and effect and the invalid or unenforceable provision will be reworded to make the Agreement as a whole enforceable while maintaining to the greatest extent possible the original intent of the parties.
  5. During the Term and for three (3) years thereafter, Reseller will keep suitable records consistent with industry custom and practice to demonstrate compliance with this Agreement, and Fidelis or its representative may, upon five (5) business days’ prior notice, review these records during normal business hours for the sole purpose of determining Reseller's compliance with this Agreement.
  6. Each party agrees that, during the term of this Agreement and for a period of twelve (12) months thereafter, it will not, directly or indirectly recruit, solicit or hire any employee of the other party who has been directly involved in the performance of this Agreement or induce or attempt to induce such employee to terminate his or her employment with, or otherwise cease his or her relationship with, the other party; provided, however, that neither party shall be prohibited from recruiting, soliciting or hiring: (i) any person who responds to an advertisement or general solicitation that is not specifically targeted at the employees of the other party, or who is contacted by a recruitment agency, provided that the soliciting party did not instruct such agency to target the employees of the other party; (ii) any person whose employment was terminated by the other party or any of its affiliates; or (iii) any person who contacts the soliciting party or its affiliates on his or her own initiative.
  7. Either party’s failure to enforce any provision of this Agreement will not be deemed a waiver of that provision or of the right to enforce it in the future.
  8. This Agreement including all exhibits included and specified, constitutes the entire Agreement between the parties as to the subject matter hereof and supersedes any and all written or oral agreements previously existing between the parties with respect to such subject matter. Any modifications of this Agreement must make specific reference to the provision(s) hereof to be so modified, and must be in writing and signed by authorized representatives both parties.
  9. Any notices provided under this Agreement shall be deemed given two (2) business days after being sent via reputable overnight delivery service and immediately after transmission by facsimile to the other party at the addresses shown above, to the attention of the following respective representatives:

Fidelis

Fidelis Cybersecurity, Inc.

4500 East West Hwy, 4th Floor

Bethesda, MD 20814

Attention: Contracts Department

Fax: 301-652-7190

Reseller

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Fax: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

or to such different address and/or representative as either party may designate from time to time.

Notwithstanding the foregoing, non-legal notices will be deemed effective upon delivery by electronic mail to a party’s main contact as provided in writing by each party.

***[SIGNATURES APPEAR ON FOLLOWING PAGE]***

IN WITNESS WHEREOF, the parties have executed this Reseller Agreement as of the Effective Date:

**FIDELIS CYBERSECURITY, INC.**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**RESELLER:**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Exhibit A**

**Contacts**

(Please enter name, title, phone and email for each)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Type** | **Name** | **Title** | **Phone (w/ country code)** | **Email** |
| Chief Executive (CEO) |  |  |  |  |
| Chief Financial (CFO) |  |  |  |  |
| Main Sales / Business Dev. |  |  |  |  |
| Main Pre-Sales Technical |  |  |  |  |
| Marketing |  |  |  |  |
| Purchasing / Ordering |  |  |  |  |
| Other\* |  |  |  |  |
| Other\* |  |  |  |  |
| Other\* |  |  |  |  |

*\*If/as applicable. May include technical support, marketing and/or other appropriate contacts*

**Exhibit B**

**1. Discount Schedule**

The following discounts will be applied to the Price List, based on the following Reseller categories and Classes of Products and Services as designated on the Price List. In the event that Fidelis refers an End User to Reseller for fulfillment purposes only, then the Discount Schedule relating to the Price List applicable to such opportunity shall be as mutually determined between the parties on a case by case basis:

|  |  |  |  |
| --- | --- | --- | --- |
| **Class** | **Description1** | **Authorized Reseller6** | **US Fed Gov Reseller3,4** |
| **Unreg / Reg2** | **Unreg / Reg2** |
| **A** | **Physical Appliances** | **15/255** | **30/40** |
| **B** | **Device Only (Unlicensed Spares, Hardware for**  **Subscriptions)** | **10** | **10** |
| **C** | **Physical Appliance Subscriptions** | **13/235** | **13/35** |
| **D** | **Virtual Appliances and Virtual Appliance Subscriptions** | **15/255** | **30/40** |
| **E** | **Network TAPs** | **10** | **10** |
| **F** | **Professional Services (Installation, On-Site Support, etc.)** | **10** | **10** |
| **G** | **SSL Inspector Products6** | **5/155** | **10/20** |
| **H** | **Miscellaneous** | **5/155** | **20/30** |
| **N** | **Fidelis Network Cloud** | **5/25** | **5/25** |
| **P** | **Fidelis Endpoint Cloud** | **5/25** | **5/25** |
| **I** | **Endpoint Software Licenses (Perpetual)** | **15/25** | **15/40** |
| **Z** | **Not-for-Resale (NFR) Products** | **0** | **0** |

|  |  |  |
| --- | --- | --- |
| **M** | **Maintenance on Physical and Virtual Appliances and Endpoint** | **Fidelis will charge Reseller maintenance fees as a percentage of the fees for licensing as listed below. License fees shall be in accordance with the discount schedule above. Fidelis recommends that Reseller utilize the same fee structure when pricing maintenance to Reseller’s customers** |

|  |  |
| --- | --- |
| Standard Maintenance | \_\_\_\_\_\_% of License fee |
| Premium Maintenance | \_\_\_\_\_\_% of License fee |
| Premium Plus Maintenance | \_\_\_\_\_\_% of License fee |

**NOTE:**

1. Discounts are based on the Class of the Product as shown in the “Class” column. The descriptions shown in the “Descriptions” column are for illustrative purposes only. The assignment of products to discount Classes is at Fidelis’ discretion and is subject to change without notice.
2. Product purchase will be subject to the registered opportunity discount only where the purchase has been made following compliance with the Fidelis opportunity registration process as set forth in the Channel Partner Program Materials. Any determinations as to whether a purchase qualifies as a registered opportunity under such program will be made in the sole discretion of Fidelis.
3. Discounts shown in the “U.S. Federal Government Reseller” column are only applicable to U.S. Federal Government Resellers, and only apply to Products resold to End Users who are United States federal government entities purchasing Fidelis Products. In the event that a U.S. Federal Government Reseller resells under this Agreement to other End Users, discounts applicable for such purchases will be based on Authorized Reseller status.
4. U.S. Federal Government Resellers are not obligated to deliver Level 1 and Level 2 maintenance and support services.
5. Discounts shown are the default discounts for Authorized Resellers. Authorized Resellers who complete the requirements in Exhibit C, Sections I.A, I.B and I.C, will be entitled to the discounts shown in the “U.S. Federal Government Reseller” column.
6. Blue Coat SSL Inspector Products are not sold directly by Fidelis under the Reseller Agreement; Reseller must enter into a separate reseller agreement with Blue Coat in order to resell Blue Coat SSL Inspector Products.

**2. NFR Pricing**

Reseller may purchase Products that are not for resale, solely for demonstrations purposes (“**NFR Products**”), and support thereon, at the prices shown in the Channel Partner Program Materials.

**3. Referral Terms**

1. The parties agree that under certain circumstances, Reseller may refer End Users to Fidelis. In each such instance and promptly upon identification, the Reseller will provide Fidelis with such reasonable detail to enable Fidelis to pursue a EULA with a referred End User (the “Registration Referral Form”). Upon receipt of a referred End User, Fidelis will use commercially reasonable efforts both to qualify the End User as a candidate for Products and Services and to secure a EULA with the End User as soon as reasonably practicable.
2. If, by not later than one-hundred and twenty (120) days after Fidelis’ receipt of a Registration Referral Form from Reseller, Fidelis enters into a EULA with an End User, then, in each such instance, by not later than thirty (30) days after the date Fidelis receives payment from the End User, Fidelis will pay Reseller a mutually determined percentage of the net license fee (that is, the gross license fee less Fidelis costs for third party reseller fees, third party products and services incorporated into or licensed in connection with the Products and/or Services, and sales tax and gross receipts tax amounts imposed by any competent taxing authority) that Fidelis collects under such EULA for the first 12 months of the term of the EULA (the “Referral Fee”). The parties will determine the percentage which constitutes the Referral Fee on a case by case basis prior to the execution of the EULA. Fidelis will have no obligation to pay the Reseller a Referral Fee in the event the End User is already a customer of Fidelis or has already been identified by a different partner or Fidelis’ internal sales as a prospective customer of the NFR Products. Without limiting the foregoing, however, in each and any instance, Fidelis reserves the right to offset any and all such Referral Fees against any and all sums otherwise due and owing from the Reseller at the time Fidelis’ obligation to remit such Referral Fee to the Reseller arises. In addition, in the event that Fidelis enters into a EULA with an End User which maintains several business units, subsidiaries, affiliates or other defined corporate forms (each a “Business Unit”), Fidelis shall have the discretion to limit the scope of such referral to the specific Business Unit at issue and may permit other referral partners to refer other, separate Business Units of the same End User without any obligation to the Reseller. Notwithstanding the foregoing, Fidelis will have no obligation to enter into a EULA with an End User for any reason whatsoever.

**Exhibit C**

**U.S. Federal Government Reseller Terms and Conditions Addendum**

By their signatures below, Fidelis and Reseller agree that Reseller is an authorized “U.S. Federal Government Reseller,” and accordingly the further terms and conditions set forth in this U.S. Federal Government Reseller Terms and Conditions Addendum (“Addendum”) and the Channel Partner Program Materials are hereby incorporated into the Reseller Agreement. These supplemental terms and conditions shall apply only to and to all Purchase Orders involving the sale of Products or Services to End Users that are agencies of the U.S. Government (a “U.S. Government End User”), including, as applicable, to any Support POs involving a U.S. Government End User. Capitalized terms used in this Addendum but not defined shall have the meaning as set forth in the Reseller Agreement.

**FIDELIS CYBERSECURITY, INC.**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**RESELLER:** [Insert full company name here]

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. ***U.S. Federal Government Reseller Obligations.***

As a condition of any rights and obligations under this Addendum, Reseller agrees to the following:

1. **Technical Sales Training**

Reseller shall assign technical sales personnel to be the subject matter experts on Fidelis products (“Technical Contacts”). Reseller will ensure that its Technical Contacts attend Fidelis technical training, as designated and directed by Fidelis. At no additional charge to Reseller, Fidelis will provide access to training material, participation in certification classes, web-based training, and/or applicable one-on-one time with qualified staff to ensure that Technical Contacts are qualified to provide technical sales support.

1. **NFR Equipment**

For the purposes of this section a “Minimum Functional NFR Configuration” is defined to be a set of Fidelis products and maintenance services that includes at least the following items:

|  |  |
| --- | --- |
| **Quantity** | **Description** |
| 1 | Fidelis XPS CommandPost+ NFR appliance with maintenance, or NFR VM subscription |
| 1 | Fidelis XPS Direct or Edge appliance with maintenance, or NFR VM subscription |
| 1 | Fidelis XPS Collector appliance with maintenance, or NFR VM subscription |
| 1 | Resolution1 software with maintenance NFR |
| 2 | Pair Country-Specific Power Cables |

Within thirty (30) days of Reseller’s signature to this Addendum, Reseller shall purchase at least one (1) Minimum Functional NFR Configuration. Reseller agrees to keep and maintain at least one (1) Minimum Functional NFR Configuration at all times during the period that Reseller is an authorized U.S. Federal Government Reseller.

1. **Display of Fidelis Logo**

Within thirty (30) days of Reseller’s signature to this Addendum, Reseller shall display the Fidelis logo on its website. Reseller agrees to maintain the Fidelis logo on its website at all times during the period that Reseller is an authorized U.S. Federal Government Reseller.

1. ***Supplemental Terms and Conditions***

A. Commercial Items.

The Products and Services are “commercial items” as that term is defined at Federal Acquisition Regulation (FAR) 2.101, and includes “commercial computer software” and “commercial computer software documentation” as such terms are used in FAR 12.212 and Department of Defense FAR Supplement (DFARS) Subpart 227. Consistent with FAR 12.212 and DFARS 227.7202-1 through 227.7202-4, all U.S. Government End Users acquire the Software and Documentation with only those rights set forth herein and as stated in the EULA. The Contractor/manufacturer of Fidelis Software and Products is Fidelis Cybersecurity, Inc.

B. Federal Acquisition Regulation and Agency FAR Supplements.

Any Purchase Order issued for the sale of Products or Services to a U.S. Government End User is a subcontract for commercial items, as defined in FAR 2.101. Only the clauses in FAR Subparts 12.5 and 44.4 that are required to be incorporated into a commercial item subcontract and that are expressly incorporated into the Purchase Order by mutual agreement of the parties shall apply to such Purchase Order. Any additional FAR, DFARS, or other agency FAR Supplement clauses are specifically rejected by Fidelis and shall have no force or effect unless Fidelis accepts their inclusion in writing.

C. Representations and Certifications.

Fidelis’ representations and certifications are available online at the United States Government’s online Representation and Certification site: https://sam.gov. Upon Reseller’s request, Fidelis will separately provide Reseller with Representations and Certifications only if and to the extent required for commercial item subcontracts and if Fidelis accepts the Purchase Order.

D. End User License Agreement.

The EULA contains special terms specific to licenses to U.S. Government End Users. If the U.S. Government End User requires an end user software license agreement specifically tailored to the U.S. Government beyond the EULA’s special terms, the Reseller shall contact Fidelis prior to any agreement with the End User and the issuance of any Purchase Order. Reseller shall provide a hard copy of the EULA to the U.S. Government End User and obtain the U.S. Government End User’s written acceptance of the EULA before a Purchase Order may be issued.

E. Prices and Discounts.

Prices for Products are set forth in the Price List, less the applicable discount, if any, specified in the Discount Schedule set forth and attached hereto as Exhibit B. These prices do not include any applicable federal, state, or local taxes. To the extent any such taxes are applicable to Reseller’s sales of Products or Services to a U.S. Government End User, payment of such taxes shall be the sole responsibility of Reseller and not charged to the U.S Government End User, unless authorized by the cognizant contracting officer for the U.S. Government End User.

F. Inspection and Acceptance; Warranty.

(i) Notwithstanding anything else in this Agreement to the contrary, the U.S. Government End User shall have the right to inspect or test any Products or Services that have been tendered by Fidelis under a Purchase Order for acceptance. Upon notification by the Government, and verification by Fidelis, that the Products or Services do not perform substantially in accordance with applicable Documentation, Fidelis will repair or replace the nonconforming Products or re-perform the Services at no additional charge, or issue a refund of that portion of the purchase price allocable to Fidelis.

(ii) In lieu of the warranty specified in FAR 52.212-4(o), the commercial warranties provided in the EULA, Section VIII; and the Support and Maintenance Agreement, Section 5.3, shall apply to Products and Services provided to U.S. Government End Users, as applicable, in accordance with the guidance at FAR 12.404(b) to use standard commercial warranties offered to the general public in customary commercial practice. Any additional warranty requested by the U.S. Government End User is expressly disclaimed by Fidelis unless such warranty terms are expressly agreed to in writing by Fidelis. Any additional warranty Fidelis may agree to beyond the warranties in EULA, Section VIII and the Support and Maintenance Agreement, Section 5.3 may result in Fidelis charging Reseller a higher price for the Products and Services.

G. Purchase Order Termination.

Notwithstanding the terms of the Reseller Agreement, Section 12 (Purchase Order Procedure), Section 16 (Termination), or anything else in this Agreement to the contrary, in the event Reseller’s agreement with a U.S. Government End User for Products or Services is terminated by the Government, Reseller may, in turn, immediately cancel any affected Purchase Order(s) by written notice to Fidelis. Fidelis shall be entitled to payment for all work performed prior to receipt of the notice of termination, pursuant to FAR 52.212-4(l).

H. Changes.

Notwithstanding anything in this Agreement to the contrary, any changes to the terms of a Purchase Order for the sale of Products or Services to a U.S. Government End User may be made only by mutual written agreement of the parties.

1. ***Effectiveness of Addendum.***

Reseller may be authorized to be a U.S. Federal Government Reseller so long as Reseller continues to fulfill each of the obligations set forth in Section I of this Addendum. In the event of failure of Reseller to fulfill any of these obligations, Fidelis may notify Reseller of the failure, and if Reseller fails to cure such failure within thirty (30) days of such notice, Fidelis may immediately withdraw Reseller’s authorization to be a U.S. Federal Government Reseller. In the event Reseller’s authorization to be a U.S. Federal Government Reseller is withdrawn, terminated, or expired, Fidelis will honor any pending Purchase Orders for Products and Services to U.S. Government End Users and Reseller shall comply with all applicable terms and conditions related to those Purchase Orders. However, Fidelis shall not be obligated to accept any new Purchase Orders for U.S. Government End Users. Termination or expiration of this Addendum alone will not terminate the Reseller Agreement.