RESELLER AGREEMENT

**RESELLER NAME \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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| --- | --- | --- |
| **RESELLER ADDRESS** |  |  |
| **CITY** | **STATE/PROVINCE COUNTRY** | **ZIP/POSTAL CODE** |

**PHONE EMAIL FAX**

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**PRIMARY CONTACT NAME TITLE PHONE EMAIL FAX**

**SCHEDULES:**

Price List - Schedule A

This Reseller Agreement, together with the attached Schedules (collectively this “Agreement”) is made by and between Avanan, Inc., 242 West 30th Street, New York, NY 10001 (“Avanan”), and the Reseller named above (“RESELLER”). Avanan and RESELLER are each sometimes referred to in this Agreement as a “Party”, and collectively as the “Parties.” In consideration of the mutual promises contained in this Agreement and other valuable considerations, the Parties agree on the terms and conditions set forth below and in all Schedules. This Agreement shall be effective as of the Effective Date (as defined below) when executed in the space provided below by a duly authorized representative of each Party.

**Avanan, INC.**  **RESELLER**

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

Name: Gil Friedrich Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

# Terms and Conditions

# 1. DEFINITIONS As used in this Agreement:

**1.1 Authorized Use** means use of each Product in the manner specified in its Documentation and as may be separately agreed in writing between the End User customer and Avanan.

**1.2 Documentation** means any specification and use manuals and other documentation made available by Avanan to its end user customers generally with regard to the Products.

**1.3 Effective Date** means the date this Agreement is executed by the last Party to sign.

**1.4 End User** means a person or entity located in the Territory that purchases Products and/or Services for their own use and not for resale.

**1.5** **Managed Services** means the products and services that are provided to End User by Avanan pursuant to a “cloud” based model as elected by End User, under a Purchase Order. The Managed Services may include one or more of the following: consultation by Avanan technical staff; security monitoring; security process guidance; management and configuration of Avanan and/or Third Party Software or technology, and/or any new service that may be introduced or offered by Avanan in the future as described on the then-current Avanan website.

**1.6 Marks** means Avanan’s trademarks, service marks, trade dress, trade names, logos, and any other indications of origin.

**1.7 Products** means any or a combination of (a) Software, (b) Managed Services, (c) Third Party Software and, (d) if provided by Avanan, computer related hardware.

**1.8 Professional Services** means work to be performed by Avanan or its authorized contractors or other designees for RESELLER as specified in a RESELLER purchase order, Schedule A, or other separate agreement accepted by Avanan, and shall include any documentation or other tangible items produced by Avanan in connection with such work.

**1.9 RESELLER Customer** means an End User customer or client of RESELLER to which RESELLER sells Avanan Products, Professional Services and Services.

**1.10 Schedule** means a document identified as a Schedule to this Agreement. The terms set forth in all Schedules shall be included as part of this Agreement.

**1.11 Services** means Avanan’s standard End User maintenance and support services and also any other work to be performed by Avanan or its authorized contractors or other designees for End Users including but not limited to Product implementation and training.

**1.12 Software** means Avanan’s software product and all of its components, in object code format only, including all copies in whole or part, backups, related Documentation and manuals, information relating to such software, printed listings of code, and any workarounds, maintenance releases, enhancements and Updates provided by Avanan. The term “Software**”** shall not be deemed to include any Third Party Software.

**1.13** **Third Party Software** means computer software owned by third parties, licensed to Avanan and others under its own terms, and redistributed by Avanan to its customers in conjunction with the Products.

**1.14** **Updates** means error corrections, bug fixes, patches, additions, enhancements, upgrades or modified versions of the Software made available by Avanan to its customers that receive maintenance and support Services from Avanan or its authorized contractors or other designees.

**1.15 Territory** means the area more specifically described in Schedule A.

**2. APPOINTMENT AND LICENSE**

**2.1 Appointment.** While this Agreement is in effect Avanan appoints RESELLER as an authorized, non-exclusive reseller of Products and Services to End Users in the Territory.

**2.2 License.** Avanan hereby grants RESELLER a limited, revocable, personal, non-exclusive, non-transferable and non-sublicenseable right to (a) purchase Products from Avanan and to resell them to End Users in the Territory, and (b) procure orders for Avanan Services from End Users in the Territory to be performed by Avanan.

**2.3 End User License.** Avanan shall license the Software and provide the Third Party Software directly to End Users. Once the Avanan license agreement is accepted by the End User, the End User may access the Software it has licensed and the Third Party Software.

**2.4 Trademarks.** Subject to the terms and conditions of this Agreement, Avanan hereby grants to RESELLER, a limited, personal, non-exclusive, non-transferable, non-sublicensable and royalty-free license while this Agreement is in effect to use and display the Marks, provided, however, that the form of all usage of Marks will be subject to the prior approval of Avanan. All use of Marks in connection with this Agreement shall inure to the benefit of Avanan, and Avanan may require that RESELLER immediately stop using the Marks at any time. RESELLER recognizes the exclusive right of Avanan in and to all of the trademarks and trade names of Avanan. RESELLER shall not use, make reference to, or otherwise designate Avanan’s trademarks or trade names except as they may be used for the benefit of Avanan in the promotion or sale of the Products, maintenance and support Services and other End User services. RESELLER shall not include Avanan’s trade names or trademarks in any trade name under which RESELLER does business. RESELLER agrees to respect and observe and not to alter, remove, or conceal any copyright, trademark, trade name, or other proprietary legend, notice or marking that may appear on or in the Products.

**2.5 Avanan Proprietary Rights.** RESELLER acknowledges that the Products, and all trade secret, copyright, patent, trademark, trade name, and other intellectual and proprietary rights in the Products, are and at all times shall remain the valuable property of Avanan and its licensors, or their respective successors or assigns. RESELLER agrees that, except as provided in this Section 2, nothing contained in this Agreement shall be construed as granting or conferring by implication, estoppel, or otherwise, any license or right under any patent, trademark, copyright, or other proprietary right, whether now existing or hereafter obtained, and no such license or other right shall arise from this Agreement or from any acts or omissions in connection with the execution of this Agreement or the performance of the obligations of the Parties.

## 2.6 Software Restrictions. RESELLER shall not itself, or through any affiliate, agent, or third party: (a) decompile, disassemble, or otherwise reverse engineer any Software, or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming interfaces of any Software by any means whatsoever, except to the extent applicable laws specifically prohibit such restrictions, (b) modify, adapt, translate, or create derivative works based upon any Software, or (c) disclose to any third party any underlying ideas, algorithms, performance information, test results or analyses learned by RESELLER or created by or for RESELLER (including, without limitation, benchmarks) relating to any Products. Further, except as otherwise specifically provided by this Agreement with regard to RESELLER Customers, RESELLER shall not itself, or through any affiliate, agent or third party resell any Products for any purpose other than an Authorized Use.

**2.7 Reserved Rights.** Avanan reserves the right at any time and from time to time, in its sole discretion and without liability of any kind to RESELLER, inside or outside the Territory, to: (a) increase or decrease the number of authorized distributors and resellers of its products and services, and to market, distribute, and deliver such products and services using its own personnel, independent sales representatives, or through any other distribution channel or third party, (b) discontinue the publication, distribution, or licensing of any or all versions of the Products at any time, and cancel any unfilled orders for such discontinued Products, (c) discontinue or vary the nature and extent of its services, and (d) change or terminate any marketing, incentive, or any other programs and any of the levels or types of service or support that Avanan makes available.

**3. ORDERS.**

**3.1 Prices and Discounts.**

**3.1.1** Prices for Products and Services upon which RESELLER’s discounts will be based shall be those in Avanan’s Price List as set forth on Schedule A. Prices to RESELLER shall be such prices less any discounts extended to RESELLER under Avanan’s applicable standard reseller programs then in effect or as separately agreed between Avanan and RESELLER in Schedule A. RESELLER shall purchase Products and Services for resale and Professional Services by submitting written and signed purchase orders for acceptance by Avanan. Each purchase order shall reference this Agreement and specify the items and configurations of Products, Services and the Professional Services being ordered and their prices. Following the Effective Date and upon acceptance of the purchase order by Avanan, the purchase of Products, Services and Professional Services shall be governed by the terms of this Agreement. All purchase orders submitted to Avanan by RESELLER while this Agreement is in effect shall be deemed submitted under this Agreement unless the purchase order explicitly states otherwise, and once accepted by Avanan cannot be cancelled by RESELLER. Any preprinted provisions of RESELLER’s purchase orders or other terms that conflict with the terms of this Agreement shall not apply, exception to such provisions and terms is hereby given, and as between Avanan and RESELLER the terms set forth in this Agreement shall be applicable and control.

**3.1.2** End User customers procured by RESELLER shall purchase Avanan Products by submitting written and signed purchase orders for acceptance by Avanan. Avanan shall have the absolute right in its sole discretion to accept or reject any such purchase orders and to determine the terms of any resulting agreement.

**3.1.3** Avanan reserves the right to change its prices, discounts and related terms and conditions at any time without notice, provided that any such changes shall not affect purchase orders already accepted by Avanan.

**3.2 Sizing.** Avanan shall have the right to review the details of any prospective order to evaluate appropriate Product sizing and capability, taking into account factors such as the proposed use of the Products by the prospective End User customer of RESELLER. RESELLER agrees to submit any such information that may be requested by Avanan.

**3.3 Other Information.** Each purchase order submitted by RESELLER shall include, as applicable: RESELLER’s name, the RESELLER’s bill-to and the applicable ship-to address, contact names at the RESELLER (including his/her address, phone number and email address), and the types and quantities of the Products, Services and Professional Services being purchased or ordered. In addition, each order placed or procured by RESELLER shall include the name and address of each applicable End User customer (including a contact name, telephone number, and email address), any applicable registration designation issued by Avanan and the respective intended business application use of the Products by each End User.

**4. DELIVERY AND SHIPMENT.** If RESELLER purchases hardware, Avanan will notify RESELLER of scheduled hardware shipments. Delivery of hardware will be f.o.b. point of shipment and will occur, and risk of loss shall pass from Avanan, when the hardware is ready for pickup by the carrier. In the absence of specific instructions from RESELLER, Avanan or its contractors will select a carrier and arrange for in-transit insurance (which may be less than the full value of the purchase). By selecting a carrier and arranging for insurance on RESELLER’s behalf, Avanan does not assume any liability for the shipment, and the carrier will not be considered Avanan’s agent. All transportation and insurance charges shall be paid to Avanan by RESELLER upon invoice. If deliveries are authorized in installments, each shipment shall be paid for when due without regard to other scheduled deliveries. Unless otherwise agreed by the Parties in writing, all Software, Third Party Software and Documentation shall be delivered directly to RESELLER’s End User customer via electronic download. All Products shall be deemed accepted upon delivery to the End User.

**5. PAYMENT AND SECURITY INTEREST.** RESELLER shall promptly remit payment in U.S. Dollars to Avanan for all amounts due under this Agreement and any related purchase order net thirty (30) days from the date of the invoice. Payment to Avanan shall not be dependent on RESELLER’s payment arrangements with its End User customers. Amounts not paid within such thirty (30) day period shall bear interest at the rate of one and one-half percent (1.5%) per month or at the highest lawful rate, whichever is less, from the date such amount is due until payment is received. RESELLER will reimburse Avanan for all costs and expenses incurred, including but not limited to attorneys’ fees, in collecting any overdue amounts. Avanan hereby reserves a security interest in any Products delivered as security for payment, and RESELLER agrees to execute any instruments required to perfect such interest. Payment terms may be revised by Avanan at any time with prior written notice upon any adverse change in RESELLER's payment history or financial status. Avanan shall have the right to cancel any order placed or to refuse or delay delivery or performance for failure of RESELLER to make any payments due Avanan in accordance with the terms of this Agreement. RESELLER will pay all sums equal to taxes (including, without limitation, sales, withholding, value-added, and similar taxes) and any duties paid or payable, however designated, levied or based on amounts payable to Avanan under this Agreement, but exclusive of United States federal, state, and local taxes based on Avanan's net income, and will reimburse Avanan for any such sum that Avanan is required to collect or pay with respect to transactions under this Agreement.

**6. RESELLER RESPONSIBILITIES**

**6.1 Marketing and Conduct.** RESELLER shall use its best efforts to actively market, advertise, promote, and sell the Products and Services to End Users having appropriate marketing profiles in the Territory. RESELLER shall at all times: (a) conduct its business in a manner that reflects favorably on Avanan and its Products and Services, and comply with the requirements and limitations of all applicable Avanan reseller programs as generally communicated by Avanan through its partner portal and otherwise, (b) avoid deceptive, misleading, or unethical practices, (c) make no false or misleading representations with respect to the Products or Services, (d) not publish or use any misleading or deceptive advertising materials with respect to the Products or Services, (e) make no representations or warranties with respect to the Products or Services that are inconsistent with the Documentation or expand the scope of their specifications or representations or warranties made by Avanan to End Users, and (f) conduct itself in a professional, skilled manner and act in accordance with the terms and conditions of this Agreement. RESELLER shall use commercially reasonable efforts to follow up on inquiries it receives from End Users in the Territory at reasonable intervals. RESELLER shall comply with all applicable laws and regulations, shall obtain and maintain all permits, licenses and government registrations necessary or appropriate to perform its obligations under this Agreement and shall make all filings with governmental authorities required by applicable law, including without limitation those necessary to enable RESELLER to make payments to Avanan in U.S. Dollars.

**6.2** **Costs and Expenses.** RESELLER shall bear all of its own expenses incurred in connection with this Agreement and its performance, and shall provide for itself all materials, equipment, and facilities to advertise, market, promote, and resell Products and Services and as otherwise necessary to carry out the terms of this Agreement.

**6.3** **Registration Program.** RESELLER shall register any proposed sale under this Agreement with Avanan and comply with the terms of Avanan’s Registration Program as generally communicated by Avanan through its partner portal and otherwise.

**6.4 Support, Maintenance and Other Services**. Avanan will provide all Services purchased by an End User directly to and under the terms of a separate agreement with the End User. RESELLER shall ensure that all orders for Products include orders for first year maintenance and support for all such Products, and that each of its End User customers has properly executed or accepted the required agreements with Avanan prior to using the Products or receiving the Services.

**6.5 Other RESELLER Responsibilities**.

**6.5.1** RESELLER shall: (a) market and sell Products and Services solely in conformity with any target End User profiles and the specifications and restrictions established and communicated to RESELLER by Avanan, (b) promptly advise Avanan of any legal notices served on RESELLER which might affect Avanan, (c) advise Avanan on market potentials, trends and forecasts in the Territory, the credit of present and prospective customers, competition, marketing techniques, current developments in the Territory and changes of regulations and practices governing the importation of Products and Services, (d) respond promptly to all correspondence from Avanan, and (e) assist and cooperate with Avanan executives, engineers, service, and sales personnel during trips to the Territory. As a material and fundamental term of this Agreement and in order to protect Avanan’s trade secrets and other intellectual property from misappropriation, while this Agreement is in effect and for a period of one (1) year following its termination, RESELLER agrees not to develop, market, or sell any products or services that are directly competitive with the Products or Services.

**6.5.2** While this Agreement is in effect and for a period of one (1) year after it terminates, RESELLER shall maintain accurate records relating to all shipments, sales, customers, and all other events and materials relating in any manner to the sale of Products and Services under this Agreement, and shall permit Avanan to inspect such records at any time upon reasonable notice. Any underpayment revealed by the audit will promptly be remitted by RESELLER in a manner designated by Avanan. In the event of an underpayment to Avanan of five (5%) or more, RESELLER will also reimburse Avanan for the reasonable cost of such audit**.** RESELLER shall provide Avanan within fifteen (15) days after the end of each quarter while this Agreement is in effect, or more frequently as Avanan may from time to time require in its discretion, sales and other written reports relating to RESELLER’s activities under this Agreement during the prior quarter.

**7. LIMITED WARRANTY AND EXCLUSIONS**

**7.1 Product Warranties.** All Avanan Product warranties shall be solely by and between Avanan and End Users. ALL PRODUCTS ARE PROVIDED TO RESELLER BY Avanan “AS IS” WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, AND NON-INFRINGEMENT. No representation or other affirmation of fact, whether made by Avanan employees or otherwise, shall be deemed a warranty by Avanan for any purpose or give rise to any liability of Avanan whatever unless contained in this Agreement.

**7.2 Professional Services.** Avanan warrants that the Professional Services will be provided by it in a workmanlike manner. In the event that the Professional Services do not conform to the foregoing warranty, RESELLER shall promptly inform Avanan of such fact and, as RESELLER’s sole and exclusive remedy, Avanan shall either: (a) correct or re-perform the Professional Services in a good faith attempt to correct any defects without any additional charge to RESELLER, or (b) if Avanan cannot correct any defects within a reasonable time using commercially reasonable efforts, terminate any agreement for the affected Professional Services in which case Avanan shall pay RESELLER a refund of the fees paid to Avanan for performance of Professional Services that are allocable to the period after the termination of the agreement.

**7.3 DISCLAIMER.** THE LIMITED WARRANTY IN SECTION 7.2 ABOVE IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE OR OTHERWISE IN LAW, OR FROM A COURSE OF DEALING OR USAGE OF TRADE. AVANAN SPECIFICALLY BUT WITHOUT LIMITATION DOES NOT WARRANT THAT ALL NONCONFORMITIES IN THE PROFESSIONAL SERVICES SHALL BE CORRECTED. THIS WARRANTY GIVES LICENSEE SPECIFIC LEGAL RIGHTS. LICENSEE MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.

**7.4 ADDITIONAL DISCLAIMER.** THE THIRD PARTY SOFTWARE AND ANY EVALUATION PRODUCTS ARE PROVIDED TO LICENSEE “AS IS” WITHOUT WARRANTY OF ANY KIND BY AVANAN, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT.

**8. INFRINGEMENT**

**8.1 Indemnity by Avanan**. If a third party acting against RESELLER claims, threatens to claim, or obtains a judicial or administrative determination that the Products infringe its patent, copyright, or trade secret rights, Avanan shall have the option, at its own expense and at its sole option, to (a) defend RESELLER at Avanan’s expense and pay all damages finally awarded by a court of competent jurisdiction, (b) obtain for RESELLER the right to continue reselling the infringing item, (c) replace the infringing item or modify it so that it shall become non-infringing with no substantial degradation, or (d) terminate this Agreement. RESELLER shall promptly notify Avanan in writing of the claim, allow Avanan solely to control the defense, and cooperate with Avanan in the defense and any related settlement negotiations.

**8.2 Exception**. Notwithstanding the provisions of Section 8.1 above, Avanan shall have no obligation to RESELLER for any claim arising from the license or use of any Product (a) that has been modified by other than by Avanan, (b) used to practice any process, or used in combination with other products not provided by Avanan where such infringement would not have occurred but for such use in combination with such other products; or (c) from failure of RESELLER or an End User to accept updated Products provided by Avanan for avoiding such infringement. Avanan shall not be bound by any settlement of any charge of infringement made without the prior written consent of Avanan.

**8.3 Limitation**. THIS SECTION 8 STATES THE SOLE LIABILITY OF Avanan AND ITS LICENSORS TO RESELLER, AND RESELLER’S EXCLUSIVE REMEDY, FOR INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT WITH RESPECT TO ANY PRODUCT OR SERVICE FURNISHED BY Avanan UNDER THIS AGREEMENT. IN NO EVENT SHALL Avanan’S LIABILITY UNDER THIS SECTION 8 EXCEED THE AMOUNT PAID BY RESELLER TO Avanan FOR ANY ALLEGEDLY INFRINGING PRODUCTS.

**9. LIMITATION OF LIABILITY**

**9.1 Limitation**. IT IS EXPRESSLY AGREED THAT EACH PARTY’S MAXIMUM LIABILITY FOR DAMAGES TO THE OTHER PARTY UNDER OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM OF LEGAL ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, SHALL IN NO EVENT EXCEED THE ACTUAL PAYMENTS RECEIVED BY Avanan FOR THE PRODUCTS OR PROFESSIONAL SERVICES THAT CAUSED SUCH DAMAGE OR THAT ARE DIRECTLY RELATED TO THE CAUSE OF ACTION, EXCEPT THAT NO SUCH LIMITATION ON DAMAGES SHALL APPLY TO LOSSES DUE TO RESELLER’S VIOLATION OF Avanan’S INTELLECTUAL PROPERTY RIGHTS OR BREACH OF ANY OF THE LICENSES OR LICENSE RESTRICTIONS SET FORTH IN SECTION 2, OR EITHER PARTY’S BREACH OF SECTION 11.11.

**9.2 No Consequential Damages**. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF USE, OR LOSS OF DATA, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS, OR, IF REASONABLY FORESEEABLE, INCURRED BY THE OTHER PARTY OR CLAIMED AGAINST THE OTHER PARTY BY ANY OTHER PARTY, EXCEPT THAT NO SUCH LIMITATIONS ON CONSEQUENTIAL DAMAGES SHALL APPLY IN THE EVENT OF VIOLATION BY RESELLER OF Avanan’S INTELLECTUAL PROPERTY RIGHTS OR ANY OF THE LICENSES OR LICENSE RESTRICTIONS SET FORTH IN SECTION 2, OR BREACH BY EITHER PARTY OF SECTION 11.1. NEITHER PARTY’S LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM THE NEGLIGENCE OF A PARTY OR THAT OF ITS EMPLOYEES OR AGENTS OR IN RELATION TO ANY OTHER LIABILITY THAT MAY NOT BY APPLICABLE LAW BE EXCLUDED OR LIMITED IS EXCLUDED OR LIMITED, AND NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS AN ATTEMPT TO EXCLUDE OR LIMIT SUCH LIABILITY.

**10. TERM; TERMINATION**

**10.1 Term**. This Agreement shall be effective from the Effective Date, shall continue in full force and effect for a period of one (1) year, and will automatically renew upon its anniversary date for successive twelve (12) month periods unless and until terminated as set forth elsewhere in this Agreement. Either party may, without cause, terminate this Agreement at any time by notifying the other party of its decision to terminate in writing not less than sixty (60) days prior to the termination date. Upon any termination of this Agreement, any licenses granted under this Agreement shall also terminate except as otherwise provided in Section 10.3 below.

**10.2 General**. Upon any material breach or default of this Agreement by either party, the other party shall have the right to terminate this Agreement and any licenses granted under it effective on thirty (30) days’ prior written notice; such termination shall become automatically effective unless the breaching or defaulting party shall have cured any material breach or default prior to the expiration of the thirty (30) day period. Avanan shall have the right to terminate this Agreement immediately upon (a) bankruptcy, insolvency, or placing of the assets or the business of RESELLER in the hands of a receiver or trustee, (b) filing of a petition for bankruptcy or reorganization by or against RESELLER, (c) dissolution or liquidation of RESELLER, or (d) failure of RESELLER to pay any sum when due under or in connection with this Agreement.

**10.3 Consequences**. In the event of termination of this Agreement for any reason, RESELLER shall immediately (a) discontinue all sales and promotion of the Products and Services, (b) erase or destroy any Software contained in the computer memory or data storage apparatus under the control of RESELLER, (c) return to Avanan or destroy all copies of the Software and all related collateral or other written materials in RESELLER’s possession, (d) return to Avanan any hardware Products for which payment has not been made to Avanan, and (e) certify in writing to Avanan within fifteen (15) days of termination that RESELLER has complied with the foregoing. Notwithstanding the foregoing provisions of this Section 10.3, RESELLER shall have right to fill any accepted orders from End Users for Products and Services that are outstanding on the effective date of termination, provided that such orders are filled in accordance with all of the terms of this Agreement and provided further that full payment must be made to Avanan prior to shipment. Termination of this Agreement shall immediately accelerate all sums payable by RESELLER to Avanan under this Agreement, all such sums will be immediately due and payable, and all licenses granted in this Agreement shall terminate.

**10.4 Survival**. All RESELLER payment obligations under this Agreement shall survive any termination of this Agreement. In addition and not by way of limitation, the provisions of Sections 2.5, 2.6, 5, 6.5.1, 6.5.2, and 7 through 11 shall survive any termination of this Agreement.

**11. GENERAL**

## 11.1 Notices. All notices required or permitted under this Agreement will be in writing and will be deemed given: (a) when delivered personally, (b) when sent by confirmed telex or facsimile, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a commercial overnight carrier specifying next day delivery, with written verification of receipt or (e) by electronic mail to the address of the party specified on the purchase order or such other address as either party may specify in writing. All communications will be sent to the principal office of each Party or to such other address as may be designated by a Party by giving written notice to the other Party pursuant to this Section 11.1. If the communication is from RESELLER to Avanan, it shall be addressed to “Attn: Chief Financial Officer.” If the communication is from Avanan to RESELLER, it shall be addressed to the Chief Executive Officer of RESELLER.

## 11.2 Assignment. RESELLER may not assign, delegate or otherwise transfer this Agreement or any of its licenses, rights or duties under this Agreement, whether by operation of law or otherwise, without the prior written consent of Avanan. Any attempt to transfer or assign this Agreement without such written consent will be null and void and will constitute an immediate termination of this Agreement. If the Software is a valid Update, a permitted transfer may be made only in conjunction with the prior version(s) of the Software. Avanan may assign monies due or becoming due solely for financing purposes or may assign this Agreement without RESELLER’s consent to any affiliate or to a person or entity into which it has merged or which has otherwise succeeded to all or substantially all of its business and assets to which this Agreement pertains, by merger, reorganization or otherwise, and which has assumed in writing or by operation of law its obligations under this Agreement. Subject to the above provisions of this Section 11.2, the rights and liabilities of the Parties hereto will bind and inure to the benefit of their respective successors, executors and administrators, as the case may be.

**11.3 Waiver**. The failure of either Party to enforce in any one or more instances any of the terms and conditions of this Agreement shall not be construed as a waiver of future performance of any such term or condition. Waiver of any term or condition shall only be deemed to have been made if expressed in writing by the Party granting such waiver.

**11.4 Severability**. If any provision of this Agreement shall be held by a court of law of competent jurisdiction to be illegal, invalid, or unenforceable, that provision shall be reformed, construed, and enforced to the maximum extent permissible and the remaining provisions shall remain in full force and effect.

**11.5 Governing Law and Jurisdiction.** This Agreement shall be governed by and construed under the laws of the Commonwealth of Massachusetts without regard to conflict of laws provisions. The federal and state courts sitting in Boston, Massachusetts shall have exclusive jurisdiction and venue to adjudicate any dispute arising out of this Agreement. Each Party hereto expressly consents to the personal jurisdiction of the courts of Massachusetts and service of process being effected upon it by registered mail sent to the respective addresses referred to in Section 11.1 above. The United Nations Convention on Contracts for the International Sale of Goods does not apply.

**11.6 Entire Agreement**. This Agreement and its Schedules constitute the entire understanding between the Parties, and supersede all prior discussions, representations, understandings or agreements (including any pre-existing nondisclosure agreement, except as to its surviving terms), whether oral or in writing, between the Parties with respect to the subject matter of this Agreement. In the event of any conflict between the terms of this Agreement and terms other than quantity, price, and the like set forth in an accepted purchase order, the terms of this Agreement shall prevail. Any modification or amendment to this Agreement must be in writing and signed by authorized representatives of both Parties. Any item or service furnished by Avanan in furtherance of this Agreement, although not specifically identified in it or in a purchase order referencing this Agreement, shall nevertheless be covered by this Agreement unless specifically covered by some other written agreement executed by RESELLER and an authorized representative of Avanan. The headings and captions used in this Agreement are for convenience only, and shall not affect the interpretation of the provisions of this Agreement.

**11.7 U.S. Government Restricted Rights**. All Software is a “commercial item,” as that term is defined in 48 C.F.R. §2.101, consisting of “commercial computer software” and “commercial computer software documentation,” as such terms are used in 48 C.F.R. §12.212, and is provided with “Restricted Rights”. Consistent with 48 C.F.R. §12.212 and 48 C.F.R. §227.7202-1 through 227.7202-4, all U.S. Government end users acquire all Software only with the rights set forth therein along with the terms of their license with Avanan.

## 11.8 Export Control. RESELLER agrees to comply with all applicable export and re-export control laws and regulations, including the Export Administration Regulations ("EAR") maintained by the United States Department of Commerce. RESELLER agrees to indemnify Avanan, to the fullest extent permitted by law, from and against any fines or penalties that may arise as a result of RESELLER’s breach of this provision. This export control clause shall survive termination of this Agreement.

**11.9 Use of RESELLER Name.** Avanan may include RESELLER's name or logo as an Avanan customer in a list of representative customers. Avanan agrees to display the RESELLER's name or logo in compliance with any publishing standards defined by RESELLER. Prior to developing and publicizing any profile, case study or similar document published on Avanan's Web site or in hardcopy describing how Avanan's products are used by RESELLER, Avanan agrees to obtain RESELLER's specific approval.

**11.10 Independent Contractors**. The relationship of Avanan and RESELLER established by this Agreement is that of independent contractors, and nothing contained in the Agreement will be construed to constitute the Parties as partners, joint venturers, co-owners, or otherwise as participants in a joint or common undertaking. For a period of one (1) year following the completion of any Professional Services performed for RESELLER under this Agreement, both parties shall not directly or indirectly solicit to employ or contract with other party’s employee.

**11.11 Confidential Information.** Each Party acknowledges that by reason of its relationship to the other Party under the provisions of this Agreement it may have access to certain information and material concerning the other Party's business, plans, customers, technology, and products that are confidential and of substantial value to the disclosing Party (“Confidential Information”), which value would be impaired if such Confidential Information were disclosed to third Parties. Each Party agrees to maintain all Confidential Information received from the other, both orally and in writing, in confidence and agrees not to disclose or otherwise make available such Information to any third party without the prior written consent of the disclosing Party. Each Party further agrees to use the Confidential Information only for the purpose of performing this Agreement. No information shall be deemed confidential unless so marked if given in writing or, if given orally, identified as confidential orally prior to disclosure, except that RESELLER agrees that any information in whatever form relating to (a) the Documentation and the underlying ideas, algorithms, techniques, knowhow, design, functionality, operational methods or coding of the Software, including but not limited to any complete or partial source or object code versions, and (b) performance information, test results, algorithms, techniques, Products roadmap and knowhow or analyses created by or for RESELLER (including, without limitation, benchmarks) relating to the Products, shall be deemed Confidential Information of Avanan regardless of the presence or absence of any confidential markings or identification.

**11.11.1** The Parties’ obligations of non-disclosure under this Agreement shall not apply to information that: (a) is or becomes a matter of public knowledge through no fault of or action by the receiving Party, (b) was rightfully in the receiving Party’s possession without restriction prior to disclosure by the disclosing Party, (c) subsequent to disclosure, is rightfully obtained by the receiving Party from a third party who is lawfully in possession of such Information without restriction, or (d) except as otherwise provided in Section 11.11(b) above, is independently developed by the receiving Party without resort to Confidential Information. The prohibitions on the disclosure of Confidential Information under this Agreement shall not preclude a receiving Party, on the advice of counsel, from complying with applicable law or other demand under lawful process, including a discovery request in a civil litigation, so long as the receiving Party first gives the disclosing Party written notice of the required disclosure and reasonably cooperates with the disclosing Party, at the disclosing Party’s expense, in seeking reasonable protective arrangements with respect to such Confidential Information.

**11.11.2** Whenever requested by a disclosing Party, a receiving Party shall immediately return to the disclosing Party all manifestations of the Confidential Information or, at the disclosing Party’s option, shall destroy all such Confidential Information as the disclosing Party may designate. Recipient's obligation of confidentiality shall survive this Agreement for a period of seven (7) years from the date of its termination, and thereafter shall terminate and be of no further force or effect.

**11.11.3** Each Party acknowledges that any breach of any of its obligations with respect to the other Party's Confidential Information hereunder may cause or threaten irreparable harm to such Party. Accordingly, each Party agrees that in such event each Party shall be entitled to seek equitable relief to protect its interests, including but not limited to temporary restraining orders, preliminary and permanent injunctive relief, as well as money damages.

**SCHEDULE A**

PRICE LIST

1. **Territory**

“Territory” means the geographic area within which the license granted hereunder shall be operative, specified herein as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. **Product Pricing Terms:**

2.1 Reseller Discount

2.1.1 Authorized Reseller Discount for Registered Deals:

* 25% discount off of Avanan’s then-current list price for \_\_\_\_\_\_\_Product

2.1.2 Authorized Reseller Discount for Non-Registered Deals:

* + - 10% discount off of Avanan’s then-current list price for \_\_\_\_\_\_\_ Product
  1. Definition of a Registered Deal

A specific opportunity to resell Products to an End User by RESELLER hereunder shall be deemed a Registered Deal if RESELLER has logged into Avanan’s partner portal (located on Avanan’s website) and submitted such opportunity as a “Registered Deal” and Avanan has approved in writing that such transaction is an approved Registered Deal. Opportunities will remain registered for a reasonable time, not to exceed one hundred and twenty (120) days. Avanan reserves the right to extend this period based on circumstances of individual deals. Any transaction in which Avanan has not approved as a Registered Deal or for which RESELLER has not logged into Avanan’s partner portal and submitted such opportunity for approval as a Registered Deal, shall be deemed a “Non-Registered Deal” hereunder.