

DISTRIBUTOR AGREEMENT

READ THIS DISTRIBUTOR AGREEMENT CLICK-THROUGH BEFORE REGISTERING AS A MALWAREBYTES DISTRIBUTOR PROGRAM MEMBER WITH MALWAREBYTES. IF YOU DO NOT OR CANNOT AGREE TO THE TERMS CONTAINED HEREIN, THEN DO NOT REGISTER AS FOR THE DISTRIBUTOR PROGRAM WITH MALWAREBYTES. BY REGISTERING WITH MALWAREBYTES, YOU (AS “PROGRAM MEMBER” AND AS A REPRESENTATIVE AUTHORIZED TO BIND THE PROGRAM MEMBER ENTITY) CONSENT AND AGREE, ON BEHALF OF YOURSELF AND THE PROGRAM MEMBER ENTITY, TO BE BOUND BY THIS AGREEMENT. FURTHER, PROGRAM MEMBER REPRESENTS THAT IT IS A SOPHISTICATED ENTITY THAT IT HAS READ AND UNDERSTANDS THIS AGREEMENT AND HAS HAD SUFFICIENT OPPORTUNITY TO CONSULT WITH COUNSEL, PRIOR TO AGREEING TO THE TERMS HEREIN AND SUBMITTING ITS REGISTRATION. IF PROGRAM MEMBER HAS ANY QUESTIONS OR CONCERNS, OR DESIRES TO SUGGEST ANY MODIFICATIONS TO THIS AGREEMENT, PLEASE CONTACT THE LOCAL MALWAREBYTES SALES REPRESENTATIVE TO BE REFERRED TO MALWAREBYTES LEGAL.

This Distributor Agreement (including the applicable POs (as defined below), this “*Agreement*”) is made and entered as of the date Malwarebytes accepts Program Member’s application (the “*Effective Date*”), by and between Malwarebytes (defined below), and Program Member as identified in the online application (“*Distributor*”). “*Malwarebytes*” means: (a) if you acquired the Malwarebytes Products in the United States or Canada, Malwarebytes Inc. a Delaware corporation, or (b) if you acquired the Malwarebytes Products in any other country, MWB Software Enterprises Ltd, an Irish company. Malwarebytes and Distributor shall each individually be referred to as a “*Party*” and together as “*Parties*”.

Recitals

- A. Malwarebytes is a leading global provider of cutting-edge cybersecurity software and solutions, such as device protection and antivirus, identity protection, and privacy protection (“*Malwarebytes Products*”).
- B. For the distribution of the Malwarebytes Products, Malwarebytes also engages distributors on a non-exclusive basis.
- C. Distributor is an experienced software and solution distributor in the Territory and has a proven track record of successful distribution of cutting-edge software and solutions in the Territory. The “*Territory*” shall mean the geographic area where Program Member expects to resell at least 90% of its total business volume with Malwarebytes. Malwarebytes will confirm the Territory with Program Member upon completion of the Distributor Program registration process.
- D. Now, Malwarebytes intends to engage Distributor with the distribution of certain Malwarebytes Products in the Territory on a non-exclusive basis, and Distributor is willing to act as a non-exclusive distributor for these products in the Territory.
- E. Against this background, Malwarebytes and Distributor hereby enter into this Agreement for Malwarebytes’ appointment of Distributor as a non-exclusive distributor of certain Malwarebytes Products (the Covered Malwarebytes Products as defined herein) in the Territory.

Agreement

1. **Subject Matter of This Agreement.** This Agreement covers the appointment of Distributor by Malwarebytes as a non-exclusive distributor of the Malwarebytes Products (“*Covered Malwarebytes Products*”) listed in the Malwarebytes distributor program partner portal (“*Partner Portal*”) in the Territory and the related rights and obligations of Distributor and Malwarebytes. Upon the appointment, Distributor will in particular, as further set forth in this Agreement, (i) purchase Covered Malwarebytes Products from Malwarebytes in its own name and on its own account; (ii) resell and distribute the purchased Covered Malwarebytes Products in its own name and on its own account to Resellers (as defined below) and End Users (also as defined below), as the case may be, in the Territory; (iii) market the Covered Malwarebytes

Products in the Territory; and (iv) support and further enhance the reputation of Malwarebytes as a leading global provider of cutting-edge cybersecurity software and solutions in the Territory.

2. **Components of This Agreement and Order of Precedents, Rules of Interpretation**

2.1. **Components.** This Agreement consists of the following documents:

- (i) This main body;
- (ii) **Covered Products and Pricing on the Partner Portal** (*Covered Products and Pricing List*);
- (iii) **Exhibit A** (*Distributor Qualification Requirements*);
- (iv) **Exhibit B** (*Personnel Qualification Requirements*).

Covered Products and Pricing List, Exhibit A, and Exhibit B all referred to individually as an “**Exhibit**” and jointly as “**Exhibits**”.

2.2. **Order of Precedents.** In case of contradictions or inconsistencies between the provisions of the main body of this Agreement and the provisions of an **Exhibit**, the provisions of the main body of this Agreement shall prevail. This shall not apply if a provision in the main body of this Agreement explicitly allows for a deviation and the Parties have explicitly deviated from this provision (also citing the provision in the main body) in an **Exhibit**.

2.3. **Rules of Interpretation.** The terms “including”, “such as”, “in particular”, and similar terms are to be interpreted in each case as “including, without limitation”, “in particular, without limitation”, “such as, without limitation”, etc. Headings are for convenience only and shall not alter or otherwise impair the interpretation of the provision itself. Unless indicated otherwise, defined terms shall apply in singular and plural.

3. **Appointment and Qualification of Distributor, Covered Malware Products**

3.1. **Appointment.** Subject to Distributor’s compliance with the terms and conditions of this Agreement, Malwarebytes hereby appoints Distributor as an independent non-exclusive distributor of the Covered Malwarebytes Products in the Territory.

3.2. **Qualification of Distributor.** Distributor meets, and will continue to meet over the entire term of this Agreement, the qualification requirements defined in **Exhibit A**.

3.3. **Covered Malwarebytes Products**

3.3.1. **General.** The Covered Malwarebytes Products agreed on the Effective Date are set forth in Covered Products and Pricing List. Distributor agrees that Malwarebytes is entitled to change, add, or delete any Covered Malwarebytes Product from Covered Products and Pricing List at any time by providing Distributor at least 30 (*thirty*) calendar days prior written notice. After expiration of this notice period, the change, addition and/or deletion becomes effective. Without prejudice to the effectiveness of the change, addition and/or deletion, such change, addition and/or deletion will be effected by updating Covered Products and Pricing List on the Partner Portal. For the avoidance of doubt, all POs (as defined below) in effect at expiration of the notice period remain in effect, and Malwarebytes and Distributor will fulfil them as agreed in the PO.

3.3.2. **Covered Malwarebytes Products.** As further detailed in Covered Products and Pricing List, Malwarebytes will make available for purchase, resale, and distribution – subject to the provisions of this Agreement, temporary subscriptions of software (either for device installation or as a service (“**SaaS**”), and the subscription made available by Malwarebytes, the “**Subscriptions**”) as Covered Malwarebytes Products.

4. **Purchase, Resale and Distribution of Covered Malwarebytes Products**

4.1. **POs by Distributor.** Distributor may purchase Covered Malwarebytes Products from Malwarebytes – in its own name and on its own account – by submitting purchase orders (“PO”) to Malwarebytes via the electronic order process made available by Malwarebytes to Distributor for this purpose (the “**Malwarebytes’ Order Process**”). If and as required for the use of this Malwarebytes’ Order Process, Distributor will, at its cost,

connect its electronic order system with the electronic order system of Malwarebytes via an application program interface (API). Malwarebytes may require Distributor from time to time to use another Malwarebytes' Order Process (e.g., ordering via email), in which case Malwarebytes will provide written notice (email suffice) with the necessary details to Distributor at least, 30 (*thirty*) calendar days in advance.

- 4.2. When connecting to and using the Malwarebytes' Order Process, Distributor will apply state-of-the-art cybersecurity measures in order to prevent that malicious code will be introduced into, or that other types of cyberattacks occur in relation to the systems operated by or for Malwarebytes. From time to time, Malwarebytes may request information from Distributor about the cybersecurity measures implemented and maintained for demonstration that these cybersecurity measures are actually state-of-the-art.
- 4.3. Each PO must include, at the minimum and unless Malwarebytes reasonably requires further information, the following information to be a valid PO:
 - (i) Reference to this Agreement;
 - (ii) name and contact details of Distributor;
 - (iii) name and contact details of the Reseller (if a Reseller has placed the PO);
 - (iv) name and contact details of the End User to whom the Covered Malwarebytes Product(s) will be delivered; and
 - (v) number, quantity, quote, or transaction reference number and requested delivery date of the Covered Malwarebytes Products.
- 4.4. Each PO is subject to Malwarebytes' acceptance, at Malwarebytes' sole discretion through the Malwarebytes Order Process. Except for the PO information, any terms and conditions in a PO that are inconsistent with or in addition to the terms and conditions of this Agreement are hereby rejected by Malwarebytes and will be deemed null and of no effect, even if Malwarebytes accepts or acknowledges the PO.
- 4.5. **Cancellation.** Malwarebytes may cancel any PO accepted by Malwarebytes, or refuse or delay delivery of any Covered Malwarebytes Products ordered under it, if Distributor: (i) fails to make any payment as provided in this Agreement or under the payment terms set forth in any invoice or otherwise agreed to by Malwarebytes and Distributor; (ii) fails to meet reasonable credit or financial requirements established by Malwarebytes, including any limitations on allowable credit; or (iii) otherwise fails to comply with any provision of this Agreement. Any such cancellation, refusal or delay by Malwarebytes does not constitute a termination of this Agreement (unless Malwarebytes explicitly terminates) or breach of this Agreement by Malwarebytes.
- 4.6. **Restrictions.** The purchase, resale and distribution are in particular subject to the licenses and license requirements set forth below in Section 7.
- 4.7. **No Restrictions for Passive Sales.** Notwithstanding anything to the contrary in this Agreement or a PO, nothing will restrict Distributor in fulfilling unsolicited requests from End Users or Resellers outside the Territory (so called 'passive sales').
5. **Delivery of Covered Malwarebytes Products.** Upon receipt of the price payable pursuant to the applicable PO, Malwarebytes will, in fulfilment of the PO, whether Distributor or the End User has placed the PO with Malwarebytes, deliver to the End User indicated on the PO, electronically access to the Covered Malwarebytes Product thereby allowing the use the Subscription.
6. **Resellers**
 - 6.1. **Qualification of Resellers.** Distributor will select and appoint only resellers as Resellers in the Territory that meet the qualification requirements set forth in **Exhibit A**. Distributor will document the selection process and appointment of a Reseller in writing (electronic format suffice), and, upon request of Malwarebytes from time to time, Distributor will provide written (electronic format suffice) evidence to Malwarebytes that Distributor has conducted a due diligence and came to the reasonable conclusion, and continuously monitors, that the Reseller meets these requirements.

- 6.2. **Issues Regarding and Replacement of Resellers.** In the case of performance issues or reputational issues of a Reseller, Distributor shall discuss these issues with the Reseller and request the elimination of these issues within a reasonable period of time. If, after expiration of this reasonable period of time, the issues still persist, Distributor will no longer resell and distribute Covered Malwarebytes Products to the Reseller, unless to the extent explicitly approved by Malwarebytes in writing (email suffice) on a case-by-case basis. Distributor will follow the same approach if Malwarebytes has reasonable concerns regarding the performance and/or reputation of a Reseller, in which case Malwarebytes will inform Distributor accordingly.
7. **Licenses**
- 7.1. **License to Resell and Distribute.** With respect to each Covered Malwarebytes Product purchased by Distributor, Malwarebytes grants Distributor the right to resell and distribute the Covered Malwarebytes Products to: (i) a Reseller for further resale and distribution by the Reseller to an End User; or (ii) if an End User has purchased the Covered Malwarebytes Product directly from Distributor to the End User.
- 7.2. **License to Use to End Users.** Distributor will ensure, through written, (electronic form suffice if the applicable law allows for electronic form), enforceable license agreements, that either the Reseller (if the Reseller has ordered the Covered Malwarebytes Product from Distributor) or that Distributor (if an End User has ordered a Covered Malwarebytes Product directly from Distributor) grants the End User, always subject to payment of the applicable price by Distributor to Malwarebytes, a non-exclusive, non-transferrable, non-sublicensable, temporary (for the term of the Subscription), terminable, revocable and limited license to use the Covered Malwarebytes Product for the internal purposes of the End User (if the End User is a business, this refers to business purposes, if the End User is an individual and not acting for her or his business, this refers to private purposes) subject to terms online at: www.malwarebytes.com/eula, and such further restrictions, where applicable as set forth in this Agreement, including the restriction set forth in Sections 7.3, 7.4, and 7.5, and the PO, (the license granted to the End User, referred to as the “EULA”). Other than Covered Malwarebytes Products specifically labelled as ‘Teams’, the Covered Malwarebytes Products are licensed only for use by individuals not businesses. ‘Teams’ products are licensed for use by small businesses as described in their official product documentation.
- 7.3. **Restrictions**
- (a) Distributor shall not, and shall not allow any Reseller, End User or any other third party to, disassemble, decompile, or reverse engineer the Covered Malwarebytes Products, except, and solely to the extent, if any, that applicable local law allows any such activity. Except as expressly authorized by this Agreement or by applicable local law, Distributor shall further not, and shall further not allow any Reseller, End User or any other third party to: (i) copy or reproduce the Covered Malwarebytes Products, in whole or in part; (ii) modify the Covered Malwarebytes Products; (iii) provide the Covered Malwarebytes Products or make their functionality available to third parties as an application services provider or service bureau, or by hosting, time sharing or providing any other type of services; or (iv) access or try to access the source code of any Covered Malwarebytes Products.
- (b) Distributor is not entitled to customize, parametrize, change or otherwise adapt any of the Covered Malwarebytes Products or to allow any Reseller (or any End User) to do any of the foregoing, notwithstanding anything to the contrary.
- (c) Malwarebytes does in no event grant any rights with respect to the source code of a Covered Malwarebytes Product to Distributors, Resellers, End User or another third party, and Distributor shall not grant any such rights to Resellers, End User or another third party.
- 7.4. **No Purchase or Sale of Title.** For clarity, as used in this Agreement, the terms “purchase”, “sell”, “resell” and similar terms refer to the purchase or sale of a non-exclusive, temporary right to use the Covered Malwarebytes Products, but in no event to a purchase or sale of title to or ownership of any rights or other interests in the Covered Malwarebytes Products.

- 7.5. **Protection of Proprietary Rights.** Distributor shall distribute the Covered Malwarebytes Products in each case under the protected product name and in the original packaging and will observe the proprietary rights and copyright notices on the Covered Malwarebytes Products and not change or remove them.
8. **Pricing, Payments, Reporting and Reporting**
- 8.1. **Covered Products and Pricing List.** The prices for the Covered Malwarebytes Products are set forth in the Malwarebytes' Covered Products and Pricing List applicable to the Territory. The current Covered Products and Pricing List as in effect at the Effective Date is available on the Partner Portal. Malwarebytes is entitled to change the Covered Products and Pricing List at any time in its sole direction, provided that the changed Covered Products and Pricing List will become effective 30 (*thirty*) calendar days after Malwarebytes has sent a written notice (email suffice) to Distributor and will apply only to POs submitted and accepted after expiration of this 30 (*thirty*) calendar day-period.
- 8.2. **Distributor's Pricing.** Distributor is free to determine the prices Distributor will charge to Resellers for the resale and distribution of Covered Malwarebytes Products and undertakes not to impose any pricing restrictions on the Resellers for their resale and distributions to End Users.
- 8.3. **Invoicing and Payments.** After acceptance of a PO, Malwarebytes will send an invoice to Distributor covering the total price of the Covered Malwarebytes Products covered by the PO. Malwarebytes shall invoice Distributor monthly in arrears for the Covered Malwarebytes Products provided in the previous calendar month based on peak volume. Subscriptions and orders of Covered Malwarebytes Products, and associated billing, shall not be prorated in any event, not even where the subscription is not for the entire month; further payment requirements are set forth in Covered Products and Pricing List. All invoices shall be due within 60 days of invoice date and Distributor shall pay the total amount covered by the invoice by wire transfer to the account of Malwarebytes provided in writing to Distributor and confirmed by Malwarebytes in writing. Distributor is solely responsible for billing Resellers and End Users and collecting payments. Distributor's payment obligations to Malwarebytes are not contingent upon collection from Distributor's Resellers or End Users.
- 8.4. **Currency and Taxes**
- 8.4.1. **Currency.** Distributor will make all payments in the currency set forth in the Covered Products and Pricing List.
- 8.4.2. **Taxes.** All amounts payable by Distributor under this Agreement are net amounts and are payable in full, without deduction for taxes or duties of any kind. Distributor will be responsible for, and will promptly pay, all taxes and duties of any kind (including, but not limited to, sales, use and withholding taxes) associated with prices payable under this Agreement and/or Distributor's receipt, use, and distribution of the Covered Malwarebytes Products. The foregoing shall not apply to taxes based on Malwarebytes' net income. If Malwarebytes is required to collect, or pays on Distributor's behalf, any taxes or duties for which Distributor is responsible, Distributor will pay or reimburse Malwarebytes, as the case may be, for all such amounts. If Distributor pays any withholding taxes based on the payments made by Distributor to Malwarebytes hereunder, Distributor will furnish Malwarebytes with written documentation of all such tax payments, including receipts and other customary documentation, and shall increase the payment amount so that Malwarebytes receives the full amount, net of any such taxes.
- 8.5. **Interest.** All amounts not paid when due will accrue interest (without the requirement of a notice) at the lower of 1.5% (*one point five percent*) per month or the highest rate permissible by law until the amounts are paid in full. Distributor will promptly reimburse Malwarebytes for all reasonable costs and expenses (including reasonable attorneys' fees) incurred by Malwarebytes in connection with collecting any overdue amounts.
- 8.6. **Records and Audits**
- 8.6.1. **Reports.** Distributor will submit reports to Malwarebytes pursuant to the reporting requirements communicated to it by Malwarebytes, which Malwarebytes may change from time to time through written notice (email suffice) to Distributor at least 30 (*thirty*) calendar days in advance.

8.6.2. Records and Audits

- (a) During the term of this Agreement and for a period of 3 (*three*) years thereafter (“**Audit Period**”), Distributor will maintain complete and accurate books and records regarding Distributor’s use, purchase, resale, and distribution of Covered Malwarebytes Products.
- (b) During the Audit Period, Malwarebytes is entitled to audit these books and records for the purpose of confirming Distributor’s compliance with the provisions of this Agreement, including its payment obligations. Malwarebytes will conduct any such audit during regular business hours and in a manner that minimizes interference with Distributor’s normal business activities. If an audit reveals an underpayment of any amounts payable to Malwarebytes, Distributor will promptly remit the full amount of such underpayment to Malwarebytes, including interest calculated pursuant to Section 9.5 above. If the underpaid amount exceeds 5% (*five percent*) of the amounts payable to Malwarebytes for the period audited, Distributor will also pay Malwarebytes’ reasonable costs of the audit.

9. Marketing and Reputational Activities

- 9.1. **Obligations of Malwarebytes.** Malwarebytes will provide Distributor with marketing materials for Distributor’s use for marketing in the Territory (“**Marketing Materials**”). Marketing Materials can be physical materials (handouts, flyers, etc.) and electronic materials (online advertising, marketing emails, etc.). Malwarebytes will further develop these Marketing Materials in Malwarebytes’ reasonable discretion and will provide the further developments to Distributors in due course. Malwarebytes will provide Marketing Materials to the Distributor in reasonable volumes without an extra fee. If Distributor requires higher volumes of Marketing Materials, Distributor will pay the then-current price for the Marketing Materials, unless the Parties agree otherwise in writing in an individual case.

9.2. Obligations of Distributor

- 9.2.1. **Marketing and other Activities Relevant for Malwarebytes’ Reputation.** Distributor will (i) actively market the Covered Malwarebytes Products in the Territory using the Marketing Materials; (ii) conduct business in a manner that reflects favorably at all times on the Covered Malwarebytes Products Resellers and the good name, goodwill and reputation of Malwarebytes; (iii) provide insights to business changes and requirements with forecasts or other relevant business reporting as may be further agreed between the Parties; (iv) make no false or misleading representations with regard to Malwarebytes or the Covered Malwarebytes Products Resellers; and (v) make no representations, warranties or guarantees with respect to the specifications, features or functionality of the Products that are inconsistent with the Product documentation or literature distributed by Malwarebytes. Distributor may not modify any Marketing Materials without Malwarebytes’ prior written consent.

- 10. **Compliance and Cooperation.** Over the term of this Agreement, Distributor will: (i) comply with the applicable law, regulations, and orders, including applicable law on data protection, anti-trust, and anti-corruption. Distributor will in particular not commit any prohibited acts in connection with its obligations under this Agreement, such as promising, offering, granting, soliciting or accepting, an improper advantage to influence action in an improper manner; (ii) reasonably cooperate with Malwarebytes and support Malwarebytes in increasing the marketing and sales success of the Covered Malwarebytes Products within the Territory; and (iii) use its best efforts to sign agreements with Resellers over the resale of Covered Malwarebytes Products within the Territory.

- 11. **Personnel.** Distributor will assign only appropriately trained and skilled personnel for the performance of its obligations pursuant to this Agreement, which meets at least the qualification requirements set forth in **Exhibit B**. Distributor will inform Malwarebytes about any complaints about the skills and qualification of Distributor’s personnel in connection with Malwarebytes and any Covered Malwarebytes Products and will propose and implement remediation measures (additional training, replacement, etc.).

12. Proprietary Rights

- 12.1. **Ownership of Software.** The software in the Covered Malwarebytes Products and all intellectual property and proprietary rights in such software and, more general, Covered Malwarebytes Products, including copyrights and trade secrets, (generally “*IP*”) are and will remain the sole and exclusive property of Malwarebytes and its licensors. Distributor will reproduce on each copy it makes of the Covered Malwarebytes Products, and not alter, remove or obscure, the IP notices of Malwarebytes and its licensors that may appear on the Covered Malwarebytes Products as delivered to Distributor. Distributor will protect Malwarebytes’ IP in the Products and will promptly report to Malwarebytes any infringement or other violation of such rights by third parties of which Distributor becomes aware.
- 12.2. **Trademark License.** Subject to Distributor’s compliance with the provisions of this Agreement, Malwarebytes hereby grants to Distributor a non-exclusive, non-transferable license, during the term of this Agreement, to use the Malwarebytes name, Covered Malwarebytes Products’ names, and related trademarks and service marks (collectively, the “*Malwarebytes Marks*”) solely in connection with Distributor’s marketing, promotion, reselling and distribution of the Covered Malwarebytes Product(s) pursuant to this Agreement. Any use of a Malwarebytes Mark by Distributor must correctly attribute ownership of such mark to Malwarebytes and must be in accordance with applicable law and Malwarebytes’ then-current trademark usage guidelines. Distributor will not alter, remove or obscure any Malwarebytes Mark on or in the Covered Malwarebytes Product as delivered to Distributor, and will not, without Malwarebytes’ prior written consent, attach any additional trademarks, logos or trade designations on or to the Covered Malwarebytes Product(s), and will not permit any third party to do any of the foregoing. Distributor acknowledges and agrees that Malwarebytes owns the Malwarebytes Marks and that any and all goodwill and other proprietary rights that are created by or that result from Distributor’s use of a Malwarebytes Mark hereunder inure solely to the benefit of Malwarebytes. Distributor will at no time contest or aid in contesting the validity or ownership of any Malwarebytes Mark or take any action in derogation of Malwarebytes’ rights therein, including, without limitation, applying to register any trademark, trade name or other designation that is confusingly similar to any Malwarebytes Mark.
13. **Warranty Disclaimer; Limitation Of Liability; Indemnities**
- 13.1. **DISCLAIMER.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, MALWAREBYTES WILL SELL AND PROVIDE ALL COVERED MALWAREBYTES PRODUCTS TO DISTRIBUTOR “*AS IS*” AND “*WHERE IS*,” AND MALWAREBYTES DISCLAIMS ANY AND ALL WARRANTIES AND REPRESENTATIONS REGARDING THE COVERED MALWAREBYTES PRODUCTS, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM MALWAREBYTES OR ELSEWHERE, WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. DISTRIBUTOR WILL MAKE NO WARRANTIES OR REPRESENTATIONS IN MALWAREBYTES’ NAME OR ON MALWAREBYTES’ BEHALF. AS BETWEEN MALWAREBYTES AND DISTRIBUTOR, ALL SALES ARE FINAL AND IN NO EVENT WILL RESELLER BE ENTITLED TO ANY RETURN RIGHT, REFUND, OR CANCELLATION RIGHT VERSUS MALWAREBYTES.
- 13.2. **LIMITATION OF LIABILITY.** IN NO EVENT WILL MALWAREBYTES BE LIABLE TO DISTRIBUTOR FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS, LOSS OF USE, LOSS OF DATA OR LOSS OF GOODWILL), OR THE COSTS OF PROCURING SUBSTITUTE PRODUCTS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE COVERED MALWAREBYTES PRODUCTS, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, AND WHETHER OR NOT MALWAREBYTES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. MALWAREBYTES’ TOTAL LIABILITY TO DISTRIBUTOR UNDER THIS AGREEMENT, FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, WILL BE LIMITED TO THE PAYMENTS ACTUALLY RECEIVED FROM DISTRIBUTOR UNDER THIS AGREEMENT DURING THE 6 (SIX) MONTHS PRIOR TO THE DATE OF THE EVENT GIVING RISE TO ANY LIABILITY. THE LIMITATIONS SPECIFIED IN THIS SECTION 14.2 WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

- 13.3. **Indemnification by Malwarebytes.** Subject to the remainder of this Section 14.3, in particular subject to the Indemnity Exclusions (as defined below), Malwarebytes will defend or settle any action brought against Distributor to the extent that it is based upon a third-party claim that the Covered Malwarebytes Products, as provided by Malwarebytes to Distributor under this Agreement, infringes any U.S. patent or any copyright or misappropriates any trade secret, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are awarded in a final judgment against Distributor or are payable in settlement by Distributor. As an express condition to Malwarebytes' obligation pursuant to this Section 14.3, Distributor must: (i) promptly notify Malwarebytes in writing of the claim; (ii) grant Malwarebytes sole control of the defense and settlement of the claim; and (iii) provide Malwarebytes, at Malwarebytes' expense, with all assistance, information and authority reasonably required for the defense and settlement of the claim. Malwarebytes will not be bound by any settlement or compromise that Distributor enters into without Malwarebytes' express prior consent.
- 13.3.1. **Injunctions.** If Distributor's rights to use the Demo Products, and resell and distribute the Covered Malwarebytes Products hereunder are, or in Malwarebytes' opinion are likely to be, enjoined due to the type of claim specified in this Section 14.3, Malwarebytes may, at its sole discretion and expense: (i) procure for Distributor the right to continue using the affected Covered Malwarebytes Product(s) under the terms of this Agreement; or (ii) replace or modify the affected Covered Malwarebytes Product(s) so that it is non-infringing and substantially equivalent in function to the enjoined Product. If Malwarebytes cannot achieve either option (i) or (ii) despite Malwarebytes' reasonable efforts, then Malwarebytes may terminate its obligations and Distributor's rights hereunder with respect to the affected Covered Malwarebytes Product(s).
- 13.3.2. **Exclusions.** Notwithstanding the foregoing provisions of this Section 14.3, Malwarebytes will have no liability for any infringement or misappropriation claim of any kind to the extent that it results from: (i) modifications to the Covered Malwarebytes Products made by a Party other than Malwarebytes, if a claim would not have occurred but for such modifications; (ii) the combination, operation or use of the Covered Malwarebytes Products with equipment, devices, software or data not supplied by Malwarebytes, if a claim would not have occurred but for such combination, operation or use; (iii) Distributor's failure to use updated or modified Covered Malwarebytes Products provided by Malwarebytes; (iv) Malwarebytes' compliance with any designs or specifications provided by Distributor; or (v) Distributor's breach of any obligations pursuant to this Agreement. The foregoing (i) through (v) are referred to collectively as "**Indemnity Exclusions**".
- 13.3.3. **Sole Remedy.** The foregoing provisions of this Section 14.3 set forth Malwarebytes' sole and exclusive liability and Distributor's sole and exclusive remedy for any claims of infringement or misappropriation of IP of any kind.
- 13.4. **Distributor Indemnity.** Distributor will defend or settle, indemnify and hold Malwarebytes harmless from any liability, damages and expenses (including court costs and reasonable attorneys' fees) arising out of or resulting from any third-party claim based on or otherwise attributable to: (i) Distributor's gross negligence or intentional misconduct; (ii) by reason of any act of Distributor in connection with the Covered Malwarebytes Products or Distributor's activities under this Agreement, including any misrepresentations made by Distributor with respect to Malwarebytes or the Covered Malwarebytes Products; or (iii) an Indemnity Exclusion.
14. **Confidentiality**
- 14.1. "**Confidential Information**" means, subject to Section 15.2, any financial, business and/or technical information of Malwarebytes or Distributor that is either marked as "confidential" or "proprietary" at the time of disclosure, or that a reasonably prudent person would consider as confidential given the content. Confidential Information of Malwarebytes includes the specific provisions set forth in this Agreement and the PO, including the quantities, schedules, pricing, sales reports, and inventory reports and the Covered Malwarebytes Products, its operations, and other related information disclosed in this relation.
- 14.2. **Exclusions.** Information shall not qualify as Confidential Information, to the extent that it is or becomes (i) generally known to the public through no fault of or breach of this Agreement by the receiving Party; (ii) rightfully known by the receiving Party at the time of disclosure without an obligation of confidentiality;

(iii) independently developed by the receiving Party without direct or indirect use of the disclosing Party's Confidential Information; or (iv) rightfully obtained by the receiving Party from a third party without restriction on use or disclosure.

- 14.3. **Use and Disclosure Restrictions.** Each Party will: (i) keep Confidential Information of the disclosing Party confidential; (ii) not use the other Party's Confidential Information, except as necessary for the performance of this Agreement, and will not disclose such Confidential Information to any third party, except to those of its employees and subcontractors that need to know such Confidential Information for the performance of this Agreement, provided that each such employee and subcontractor is subject to a written agreement that includes binding use and disclosure restrictions that are at least as protective as those set forth herein; and (iii) apply appropriate technical and organisational measure to maintain the confidentiality of all of the other Party's Confidential Information in its possession or control, which will in no event be less restrictive than the technical and organisational measures that it ordinarily uses with respect to its own confidential information of similar nature and importance.
- 14.4. **Allowed Disclosures.** The obligations in this Section 15 will not restrict either Party from disclosing the other Party's Confidential Information or the provisions of this Agreement: (i) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the Party required to make such a disclosure gives reasonable notice to the other Party to enable it to contest such order or requirement and uses reasonable efforts to limit the disclosure and provides the other Party a reasonable opportunity to preview and to object to the disclosure; (ii) on a confidential basis to its legal or professional financial advisors; or (iii) as required under applicable securities regulations.
- 14.5. **Survival.** The obligations pursuant to this Section 15 apply over the entire term of this Agreement and for a period of 6 (*six*) years after expiration or termination.
15. **Data Protection.** Each Party processes personal data as an independent controller and is responsible for compliance with applicable data protection and other laws, as they apply to data processing, in relation to such Party's processing. In particular, Distributor is responsible to comply with all marketing-related requirements pursuant to any such laws, such as, if and as applicable in the relevant jurisdictions, the requirement to procure the prior explicit consent for email marketing.
16. **Term And Termination**
- 16.1. **Term.** This Agreement will begin on the Effective Date and, unless terminated earlier in accordance with its provisions, will remain in effect for an initial term of 1 (*one*) year. At the end of such initial term (and each renewal term thereafter, if any), this Agreement will automatically renew for successive additional renewal terms of 1 (*one*) year, unless either Party provides the other Party with notice of nonrenewal at least 60 (*sixty*) calendar days prior to the end of the then-current term.
- 16.2. **Termination**
- 16.2.1. **Termination for Breach.** Either Party may terminate this Agreement, at any time, in the event that the other Party materially breaches a provision of this Agreement and fails to cure such material breach within 30 (*thirty*) calendar days following notice thereof from the non-breaching Party.
- 16.2.2. **Termination for Payment Delays.** In addition, Malwarebytes may terminate this Agreement, at any time, in the event that Distributor breaches any payment-related provision and fails to cure such breach within 10 (*ten*) calendar days following notice thereof from Malwarebytes.
- 16.2.3. **Termination for Convenience.** Malwarebytes may terminate this Agreement for convenience upon 30 (*thirty*) calendar days prior written notice, and Distributor is entitled to terminate this Agreement with sixty 60 (*sixty*) calendar days' notice to the end of an anniversary of the Effective Date, first with effect to the third (3rd) anniversary of the Effective Date.
- 16.3. **Effect of Termination.** Upon any termination of the Agreement: (i) all licenses granted by Malwarebytes hereunder will automatically cease; (ii) Malwarebytes may, at its discretion, repurchase any or all the Products then in Distributor's possession at prices not greater than the prices paid by Distributor for the

Products; (iii) the due dates of all outstanding invoices to Distributor for the Products will automatically be accelerated so they become immediately due and payable at the time of termination or expiration, even if longer terms had been provided previously; (iv) all purchase orders or portions thereof remaining undelivered on the date of termination or expiration will automatically be cancelled; (v) Distributor will return to Malwarebytes any copies of Malwarebytes marketing collateral in Distributor's possession or control or dispose of them with Malwarebytes' prior written consent; (vi) Distributor will immediately stop using the Malwarebytes Marks and discontinue all representations that it is a distributor of the Products; and (vii) each Party will promptly return to the other Party or (at such other Party's option) dispose all Confidential Information of the other Party in its possession or control, and, if requested, will provide the other Party with a certification, signed by one of its officers, certifying the return or disposal of all such Confidential Information.

16.4. **Form.** A Party must deliver all notices regarding termination (e.g., including the notice setting a reasonable grace period and the termination notice) in writing (email sufficient) to the other Party, and the other Party shall confirm receipt of these notices in each case without undue delay.

16.5. **Survival.** Sections 2, 7.3, 9, 14, 15, 17 and 18 will survive termination of this Agreement for any reason.

17. **General**

17.1. **Assignment.** Distributor may not assign or transfer this Agreement, in whole or in part, by operation of law or otherwise, without Malwarebytes' express prior written consent. Any attempt to assign or transfer this Agreement, without such consent, will be null and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of each Party's permitted successors and assigns. Notwithstanding anything to the contrary, Malwarebytes may, without consent, assign, delegate, sub-contract or otherwise transfer this Agreement or any of its obligations hereunder upon notice to Distributor.

17.2. **Governing Law and Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of California excluding that body of laws known as conflict of laws. The Parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration shall take place in Santa Clara County, California, the proceedings will be conducted in English and the arbitral award shall be final and binding on the parties. The parties hereby agree that any such arbitral award shall be automatically binding on the parties and automatically enforceable, and deemed enforced, in court in California and in any other jurisdiction, including jurisdictions outside of the United States. For any required enforcement of any such arbitral award, the parties hereby agree to exclusive jurisdiction in the courts in Santa Clara County, California. In the event, the a court of competent jurisdiction find the agreement to arbitrate as provided for in this section to be unenforceable, the parties hereby agree to the exclusive jurisdiction in the courts in Santa Clara County, California and agree to waive any right to a trial by jury they may have

17.3. **Non-exclusive Remedy.** Except as expressly set forth in this Agreement, the exercise by either Party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

17.4. **Severability.** If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible, and the other provisions of this Agreement will remain in full force and effect.

17.5. **Waiver.** The failure by either Party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.

17.6. **Notices.** All notices required or permitted under this Agreement will be in writing and delivered by confirmed facsimile transmission, by courier or overnight delivery services, or by certified mail, and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth above or to such other address as may be specified by either Party to the other in accordance with this Section.

- 17.7. **Force Majeure.** Neither Party will be responsible for any failure or delay in its performance under this Agreement (except for any payment obligations) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain energy, raw materials or supplies, war, terrorism, riot, or acts of God.
- 17.8. **Relationship of Parties.** The Parties to this Agreement are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between the parties. Neither Party will have the power to bind the other Party or to incur any obligations on its behalf without the other Party's prior consent.
- 17.9. **Export Control.** Distributor will comply fully with all relevant export laws and regulations of the United States, and other countries as may be applicable ("**Export Laws**") to ensure that neither the Products nor any direct product thereof or technical data related thereto is: (i) exported or re-exported directly or indirectly in violation of Export Laws; or (ii) used for any purposes prohibited by the Export Laws, including, but not limited to, nuclear, chemical, or biological weapons proliferation.
- 17.10. **Anti-Corruption Practices.** Distributor hereby agrees that it and its employees, consultants, agents and representatives will fully comply with, and fully abide by, the U.S. Foreign Corrupt Practices Act and United States and applicable local country or other anti-corruption and anti-bribery laws and regulations. Distributor hereby represents and warrants to Malwarebytes and agrees that it will not, either directly or indirectly, offer any payment or other gift or promise, or authorize the giving of anything of value, for the purpose of influencing an act or decision of an official of any Government or of an employee of any company in order to assist Malwarebytes or Distributor in obtaining, retaining, or directing any business or any sale. Distributor represents and warrants to Malwarebytes that neither it nor any of its employees, officers or other agents is an official, employee, agent or active member of the armed services of the Territory government or active member or affiliate of a governmental entity, an official of the Territory government or other governmental entity, an official of a political party, or a candidate for political office. Distributor covenants that it will promptly notify Malwarebytes in the event any of its employees, officers or other agents assumes the position of government official during the term of this Agreement. Distributor represents and warrants to Malwarebytes that neither it, nor any of its employees or representatives, has been charged with, convicted of, or pleaded guilty to an offense involving fraud, corruption, moral turpitude, and that it is not now listed by any government agency as debarred, suspended, proposed for suspension or debarment, or otherwise is ineligible for government procurement programs.
- 17.11. **Conflicts of Interest; Gifts.** Distributor certifies that, to the best of Distributor's knowledge and belief, after conducting a reasonable and appropriate review, no economic, ownership, beneficial interest, employment or managerial relationship exists, directly or indirectly, between Distributor and any employee or officer of Malwarebytes or member of the Board of Directors of Malwarebytes, or between Distributor and any relative of any such Malwarebytes employee, officer or Board member. For reference to help Distributor make the above certification, Malwarebytes's Board members and officers are listed on Malwarebytes's website at www.Malwarebytes.com. Distributor hereby certifies and agrees that, except for customary offerings that are appropriate under applicable laws and that are, in the aggregate, nominal in value and not in exchange for business, Distributor and its employees, agents and representatives have not and will not, directly or indirectly, offer, provide, or participate in providing, to Malwarebytes or any Malwarebytes employee, agent or representative any money (except for the proper payment by Distributor to Malwarebytes through its finance department for Distributor's purchase of Malwarebytes's products and services as contemplated by this Agreement), gift item, personal service, entertainment, reimbursement of expenses or payment of expenses, such as travel costs, unusual hospitality or other items of value. Distributor certifies that it and its employees, agents and representatives have not, directly or indirectly, offered, provided or participated in providing, and will not, directly or indirectly, offer, provide or participate in providing, any Malwarebytes employee, agent, or representative, any money, improper payments, "kick-backs," improper profit sharing, or other improper items of value, and Distributor further certifies that it has not received, and will not accept, any of the foregoing from any Malwarebytes employee, agent or representative, in exchange for entering into this Agreement or in connection with business under this Agreement. Further Distributor shall notify Malwarebytes immediately in writing if it becomes aware that any of its officers, employees, representatives, or other agents has engaged in any conduct in violation of the above clauses or in violation of applicable laws. Any violation of the provisions of this Section constitutes a material breach of this Agreement.

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

Distributor Qualification Requirements

Distributor

- (i) has an excellent reputation in the sale and distribution of standard software products and services to businesses and consumers in the Territory;
 - (ii) is in great financial shape and there is no indication that this will decline;
 - (iii) is not subject to any sanctions or sanction laws and operates no business (and has not operated any business in the past) in any country that is subject to sanctions (for example, Russia or Iran).
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Exhibit B

Personnel Qualification Requirements

Distributor shall ensure that all personnel has the following qualifications:

Each individual assigned by Distributor to the performance of this Agreement

- (i) has appropriate experience and the required skills and qualifications to market, resell and distribute the Covered Malwarebytes Products;
- (ii) has always properly performed her or his obligations under the employment agreement with Distributor, and has always been loyal to Distributor and the contract partners of Distributor;
- (iii) speaks the local language in the relevant country of the Territory in mother tongue or C1-level; and
- (iv) is appropriately trained and prepared by Distributor and will continuously be trained over the entire term of this Agreement, regarding Malwarebytes and the Covered Malwarebytes Products.